

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 775
Family Law – Custody and Visitation – Abuse
DATE: February 17, 2021
(3/9)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 775. This bill requires a court that approves an arrangement for custody or visitation with a party who has committed abuse against the other parent of the party’s child, the party’s spouse, or any child residing within the party’s household, to impose certain conditions on the custody arrangement; etc.

This bill is based on recommendations contained in the [final report](#) of the *Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations* (the workgroup). The Judiciary’s primary concern is with the unintended consequences that would result from this legislation.

The bill would amend section (c) of Family Law Art., § 9-101.1, to require the court to impose one or more delineated arrangements if it FINDS that a party has committed abuse against the other parent of the party’s child, the party’s spouse, or any child residing in the party’s household.

While as policy, the Judiciary opposes legislation that limits a court’s discretion by directing what a court “shall” do, the options listed (with one exception) are consistent with arrangements courts can (and do) impose under current law. Section (c)(2)(vii) permits the imposition of “any other condition that the court determines is necessary for the safety and well-being of the child and safety of the victim of abuse.” The arrangement contained in section (c)(2)(i), could be clarified by using ‘or’ rather than ‘and’.

The aforementioned exception presents itself in section (c)(2)(1), which permits the court to mandate supervised exchanges or visitation in the presence of a third party who is “assigned by the court, and is accountable to the court.” The problem with this structure is that in the counties that do not have supervision visitation centers, the courts often rely on family members as “supervisors.” Mandating that a particular person be “assigned” to this would become problematic if that person is unavailable due to illness or some other

circumstance (i.e., used to deny visitation). Further, the court does not have personal jurisdiction over an individual who is not a party to the case.

The bill would also create a rebuttable presumption that it is not in the best interest of a child to grant sole or joint legal or physical custody to a party who has committed abuse. While it is hard to argue with that in a vacuum, if the court finds that both parties have committed abuse, the court must determine who is the primary aggressor. Additionally, judges are required to consider factors including “the relative severity of injuries; the likelihood that a party may commit future abuse; whether any acts of domestic violence were committed in self-defense; and the history of domestic violence between the parties or whether one party has exhibited coercive control toward the other party.”

These provisions can be weaponized against victims of intimate partner violence and set a high evidentiary standard that financially dependent and *pro se* litigants will find difficult to overcome. For example, an abusive party can use them to allege that their victim attacked first and that they acted in self-defense. The victim would then need to present evidence to overcome the presumption.

This burden will be even more difficult for victims of psychological abuse. As the workgroup’s report aptly notes, “psychological aggression is an essential component of intimate partner violence and [] is arguably the most difficult type of abuse to understand and prove. . . [A]ccording to [the Centers for Disease Control and Prevention], research suggests that psychological aggressions often precede physical and sexual violence in violent relationships and that the impacts of psychological aggression are just as significant as physical violence.” Workgroup report, p. 22.

Additionally, if after years of manipulation and gaslighting, a victim of psychological abuse is provoked to the point of physically striking out against their abuser, this bill requires that the court **must** presume it is not in the child’s best interest for the “abuser” (i.e., the victim of years of physical and mental abuse) to have custody. Thus, the (actual) victim is required to present evidence about their psychological injuries, the severity of them, that likelihood future abuse is unlikely, that they acted in self-defense, and demonstrate there was a history of domestic violence or show there as coercive control. As Family Law Art., § 4-501 does not define domestic violence to include psychological abuse or coercive control, the bill presents an impossible task for a psychologically abused victim.

cc. Hon. Susan Lee
Judicial Council
Legislative Committee
Kelley O’Connor