



Marjorie Cook Foundation
Domestic Violence Legal Clinic

2201 Argonne Dr • Baltimore, Maryland 21218 • 410-554-8463 • dlennig@hruthmd.org.

TESTIMONY IN OPPOSITION TO HOUSE BILL 947

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DOROTHY J. LENNIG, LEGAL CLINIC DIRECTOR

House of Ruth provides shelter, counseling, and legal services to victims of domestic violence throughout Maryland. The House of Ruth Domestic Violence Legal Clinic has offices in Baltimore City, Prince George’s County, Montgomery County, and Baltimore County. House Bill 947 creates a presumption of joint custody in child custody cases. **We urge the House Judiciary Committee to report unfavorably on House Bill 947.**

In 2013, the General Assembly passed a law convening the Commission on Child Custody Decision Making. The purpose of the Commission was to study all aspects of child custody decision-making and make recommendations to improve the process throughout the State. The Commission explored, among other things, the possibility of creating a custody statute that would codify the myriad case law which currently governs custody decision making. After more than a year of work by many, many experts in a variety of fields and disciplines, the Commission ultimately recommended against a presumption of joint custody.

House Bill 947 refocuses the standard used in custody decisions from “best interest of the child” to a presumption of joint custody. The best interest of the child standard ensures that custody cases are not determined on a cookie-cutter basis. A presumption of joint custody presumes that most families function in a similar way; this is simply not the case. Each child, each family, each situation needs to be judged on its own merits and decided based on its own needs and resources. One size does not fit all when it comes to custody decisions.

Ordering joint custody is rarely appropriate when one parent has committed acts of violence against the other. Successful joint custody presumes that parents have the ability to work together cooperatively and have equal negotiating power in the relationship. The opposite is true in cases involving domestic violence. Joint custody orders allow physical abuse and emotional intimidation to continue by forcing victims to negotiate and compromise with their batterers. Many batterers will use joint custody, not as a way to co-parent, but as a way to gain continued and ongoing access to the victim. Batterers use this order of joint custody as a way to continue to control and dominate their victims. These are the very reasons the victim sought to end the relationship. Joint

custody orders place victims in danger of further violence, burden the courts with post-judgment proceedings, and can cause mental harm to children who witness abuse.

We urge an unfavorable report even though this bill excludes cases where there is domestic violence. A significant number of litigants in family law cases are unrepresented. An unrepresented domestic violence victim will not know how to ask for sole custody. This means that many unrepresented domestic violence victims will end up with joint custody, putting not only the victim, but the entire family, at tremendous risk.

Judges currently have the authority to order joint custody. However, before a joint custody order is entered, Maryland case law requires trial judges to consider whether parents are able to communicate and reach shared decisions regarding their child's welfare. *Taylor v. Taylor*, 306 Md. 290 (1986). This is good law and reflects the need for judges to make individualized inquiries and determinations based on each family's unique circumstances. Judges should be required to evaluate the relationship of parents to each other before ordering joint custody. A presumption of joint legal and physical custody assumes parents can and do work collaboratively. For the most part, custody litigants who proceed to trial are not able to work collaboratively

Requiring equal child support payments completely disregards the parties' respective financial means and ability to contribute towards the children. This bill would completely disregard the child support guidelines and require the parties to share equally in the support of the children. Even in cases where the parents are awarded joint custody, this does not mean that they have the ability nor should they necessarily be required to contribute equally to the children's expenses. For example, if one of the parties was a full time parent during the relationship while the other party worked, they do not have comparable incomes or earning potential and it is unreasonable to require them to contribute equally to the costs of child-rearing. As with the custody analysis, the courts should decide child support based on the child support guidelines, which account for the parties' respective incomes.

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