
To: Members of The House Judiciary Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: February 24, 2022

Subject: **House Bill 947:**
Family Law – Joint Custody

Position: **UNFAVORABLE**

The Maryland State Bar Association (MSBA) FJLSC **urges an unfavorable committee report on House Bill 947 – Family Law - Joint Custody**

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

The Family and Juvenile Law Section opposes House Bill 947 because it would change the standard used in custody decisions from “best interest of the child” to a presumption of joint custody. This change would abrogate the decades of well-settled case law in Maryland which requires a Judge to apply numerous and particular factors, and to state that analysis on the record when delivering an opinion on custody matters. This process places the child or children at the center of a careful and thoughtful analysis of what is in the child’s best interests and is much more effective than simply relying on a presumption that each parent is equally fit or able to provide the best environment for the minor children in the family. *See Taylor v. Taylor*, 306 Md. 290 (1986) and *Montgomery County v. Sanders*, 38 Md. App. 406 (1978). In fact, the FJLSC supports efforts to codify these factors (*see* HB 1168) to make them clearly discernable to all participants in custody litigation, even unrepresented parents. To erode the relevancy of these important factors in favor of a legal presumption will likely have the effect of improper court decisions, especially in cases involving unrepresented litigants who do not understand the burden shifting requirements of legal



520 West Fayette St., Baltimore, MD 21201
410-685-7878 | 800-492-1964
fax 410-685-1016 | tdd 410-539-3186
msba.org

presumptions and the factors which may still be relevant to the best interests of their children in their cases.

In addition, HB 947 contains language which would nullify the application of the statutory child support matrix in Maryland in all cases in which joint custody is ordered. The child support statute and accompanying guidelines worksheet algorithm was just recently updated and the application of these tools are well-settled statutory law and case law in our state. The analysis currently required takes into consideration the incomes of each party, the amount of overnights and other expenses being paid for the children and then uses a carefully derived algorithm to determine the appropriate support obligation for each parent. HB 947 would prevent this analysis in favor of neither parent paying the other any support if the presumptive equal custody were to be awarded. This could result in thousands of Maryland children suffering extreme financial difficulty while residing in homes with one parent with an annual income substantially less than the other parent with joint custody. In fact, this consequence of the bill could lead to increased litigation for families in which one parent will “fight” for equal custody to avoid paying any child support even if they have no desire to have 50% parenting time with the minor children.

For the reason(s) stated above, the FJLSC **urges an unfavorable committee report for HB 947.**

Should you have any questions, please contact Michelle Smith by telephone at 410-280-1700 or by e-mail at msmith@lawannapolis.com.