
To: Members of The House Judiciary Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: February 24, 2022

Subject: House Bill 564:
Family Law - Child Custody and Visitation – Disease or Illness

Position: UNFAVORABLE

The Maryland State Bar Association (MSBA) FJLSC urges an unfavorable committee report on House Bill 564 – Family Law - Child Custody and Visitation – Disease or Illness

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.

This bill proposes to prohibit a Judge from considering infections with the COVID 19 or similar Corona viruses from the factors a Judge may consider when determining whether to deny or limit custody or parenting time with a minor child. The FJLSC suggests that such a prohibition would be contrary to decades of case law which has established the factors a Judge MUST consider in determining the best interests of a child in a custody dispute. See *Montgomery County Department of Social Services vs. Saunders* 38 Md. App. 406 (1978) and *Taylor v. Taylor* 306 Md. 290 (1986). Such factors include the ability of each parent to maintain a stable and appropriate home and the physical condition of the parties and the child. Since the COVID 19 outbreak, many litigants have filed modifications of legal and physical custody based on facts involving one parent’s decisions related to conformity with recommended health protocols, vaccinations, treatments, and care provided to family members. These are factors and considerations that often can relate directly to the welfare of the minor child while in one parent’s care; and as such, these are appropriate considerations.



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

Moreover, the inclusion of phrase “a disease or an illness of a party” at page 2 line 25 of HB 564 is overly broad as it would encompass many conditions well beyond a temporary illness from a wide-spread virus, all of which would suddenly become off-limits for Judicial consideration in custody matters. The current statute 9-107 has a very narrow purpose to require certain facts to be stated by a Judge in a custody proceeding if the Judge finds that a disability affects the best interests of a child. Disability is clearly defined in this narrow statute and the Judge is not prohibited from considering the disability. Thus, the addition of the suggested language relating to diseases or illnesses is totally incongruent with the statute itself.

For the reason(s) stated above, the FJLSC **urges an unfavorable committee report for HB 564.**

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