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BILL NO: House Bill 947  
TITLE: Family Law - Joint Custody  
COMMITTEE: Judiciary  
HEARING DATE: February 24, 2022  
POSITION: **OPPOSE**

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House Bill 947 would change the standard used in custody decisions from “best interest of the child” to a presumption of joint custody. The Women’s Law Center of Maryland (WLC) opposes this change because each custody case should be assessed on its own facts and merits, using the current best interests of the child standard. A presumption of joint custody is predicated on the idea that each family is the same and a cookie-cutter response would work to children’s benefit. Families are not the same, and a presumption of joint custody standard would not help children in Maryland.

Under current law, child custody is determined by considering an array of factors that have been enunciated over the years in case law. *See Taylor v. Taylor*, 306 Md. 290 (1986) and *Montgomery County v. Sanders*, 38 Md. App. 406 (1978). We fully support codifying these factors (*see* HB 1168). Courts can already award joint custody in the appropriate case, using these factors, and others announced in case law, to decide what is in the best interests of the child.

We urge an unfavorable report even though this bill excludes cases where there is domestic violence. Successful joint custody presumes that parents have the ability to work together cooperatively and have equal negotiating power in the relationship. This does not happen in cases involving domestic violence, even when the violence may not have escalated to the point of physical violence or may not have been disclosed. Joint custody orders force victims to negotiate and compromise with their batterers and physical abuse and emotional intimidation is part of the dynamic, creating an unequal playing field. 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.

In addition, in a large percentage of family law cases, one or both litigants are unrepresented. An unrepresented person may not have the capacity to understand how to overcome a presumption. Even if, or perhaps most especially if there is undisclosed domestic violence, or intimidation that does not rise to the level of seeking criminal charges or a protective order, this unequal playing field may exist. Many unrepresented domestic violence victims will end up with joint custody, putting not only the victim, but the entire family, including the children, at great risk.

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. These are the cases where the parties had enough acrimony that they were unable to reach a settlement prior to trial. These are the worst cases for a presumption of joint custody.

A very concerning part of HB 947 is the piece that makes child support equalized between the parties. This completely disregards the income share model of our Child Support Guidelines, devised and revised over the years in consultation with experts in the field. **The inequity this could cause cannot be**

**overstated.** If joint custody is the law in Maryland, the lower income parent would be severely compromised by this provision in this bill. Think of a parent earning \$20,000 per year, but required to share equally in all expenses with a parent earning \$100,000 per year. It could be devastating economically, and would certainly not be in the best interests the child. Requiring equal child support completely disregards the parties' respective financial means and ability to contribute towards the children. Even in cases where the parents are awarded joint custody now, this does not mean that they have the ability nor should they necessarily be required to contribute equally to the children's expenses.

The courts should decide child support based on the child support guidelines using the income based model. As odd effect of this bill would be that in the rare case someone was able to overcome the presumption, the parties would be back to using the Guidelines. The courts should foresee a large increase in litigation so that the higher income parent would not have to pay any child support.

Therefore, the Women's Law Center of Maryland, Inc. strongly urges an unfavorable report on House Bill 947.

*The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women.*