
To: Members of The Senate Judicial Proceedings Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: January 31, 2023

Subject: **Senate Bill 28:**
Child Custody – Legal Decision-Making and Parenting Time

Position: **FAVORABLE**

The Maryland State Bar Association (MSBA) FJLSC **supports Senate Bill 28 – Child Custody – Legal Decision-Making and Parenting Time**

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.

In 2013 the General Assembly convened the Commission on Child Custody Decision Making. The Commission was charged with studying child custody decision-making and offering recommendations to improve and bring statewide uniformity to the process of custody determinations by courts. Dozens of experts met over 90 occasions to examine current procedures, psychological research, process in other jurisdictions and best practices. SB 28 is an outcome of the efforts of the Commission.

In the Final Report issued December 1, 2014, the Commission set forth ten “guiding principles” that were approved by the Commission. The first of these principals was:

The need for a Maryland Custody Decision-Making Statute providing a clear, consistent, predictable, gender-neutral process guiding custody determinations for litigants, lawyers, and judges, focusing on factors that affect a child’s long-term adjustment, including significant regular contact with each parent, parenting quality, a child’s developmental

needs, the quality (conflict or not) of the relationship between the parents or parent figures, the parents' psychological adjustment, and a child's need to maintain significant relationships. (Commission on Child Custody Decision Making, Final Report, p.8)

Currently, determinations regarding child custody are made based on factors set forth in several Maryland appellate cases. In order to know what testimony and evidence to present to a court in support one's claim for custody, a litigant has to identify the correct appellate decisions and be able to distill the legal holding of the case and correctly apply it to the facts of their own case. While this may be fairly straightforward for experienced family law attorneys, most unrepresented non-lawyer parents would find this to be a herculean task. Further, the appellate decisions at issues are decades old and not necessarily reflective of today's families and the modern demands of parenting. SB 28 which seeks to codify the factors that a court must consider when deciding custody and parenting time issues, makes this information available and accessible to all litigants and reflects the best practices regarding such decisions.

SB 28 rests on the premise that neither parent is presumed to have any right to custody or parenting time that is superior to the right of the other parent. SB 28 sets forth a uniform method for courts to analyze the circumstances of each individual child and family and make decisions that are in the best interest of those individual children. This is the approach that will best protect the health, safety and welfare of Maryland children.

SB 28 also codifies the use of the term "parenting time" instead of physical custody, access or visitation with one's own child as well as "legal decision-making" instead of legal custody. These terms are already widely in use as the laws have already been changed over the past several years to require submissions to the court of proposed parenting plans using this terminology by litigants throughout Maryland. Thus, SB 28 also serves the important function of codifying those terms so our family law code will be consistent and less confusing.

SB 28 represents thousands of hours of analysis by leading experts in a variety of disciplines related to children and the legal processes used to determine custody issues. SB 28 is an important evolution in the way Maryland courts make decisions regarding children.

For the reason(s) stated above, the MSBA FJLSC **supports Senate Bill 28 and urges a favorable committee report.**

Should you have any questions, please contact Michelle Smith at 410-280-1700 or msmith@lawannaplois.com or Lindsay Parvis at 240-399-7900 or lparvis@jgllaw.com.