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## **POSITION ON PROPOSED LEGISLATION**

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

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 1/30/2023**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 28. While at first glance it appears that the main purpose of the bill is to change the terms “custody” and “visitation,” the bill will significantly impact the rights of natural parents. Senate Bill 28 deletes a procedural protection for disabled parents and a provision that allows for grandparents to seek custody or visitation with their grandchildren under certain circumstances.

The definition of “parent” fails to account for same-sex partners, one or both of whom may not be the biological parents of a child conceived with a donor or surrogate. They may not be “biological,” “adoptive,” or “de facto,” but are in fact the parents. The definition of parent also puts de facto parents on equal footing as natural parents. This is problematic because natural parents have Constitutional protections that de facto parents do not. For example, in order to obtain custody or visitation, a de facto parent must make an initial showing that the objecting natural parent is unfit or that there are exceptional circumstances that would make it in the child’s best interest for custody or visits to be granted to the de facto parent. However, SB 28 treats de facto parents as having equal rights as natural and adoptive parents.

Under Senate Bill 28, the statutory provision allowing grandparents, under certain circumstances, to seek custody or visitation will be deleted, giving grandparents no avenue to continue their relationship with their grandchildren. This is not consistent with Maryland caselaw, which authorizes a court to grant custody or visitation with grandparents over the parents’ objection if the grandparents are able to show unfitness of the parents or exceptional circumstances and the court finds it would be in the child’s best interests for the grandparents to have custody or visitation.

Senate Bill 28 removes a significant part of the current statute, Family Law Article § 9-107, which defines disability and prohibits the court from considering a parent's disability except to the extent that it affects the best interest of the child. This protection for disabled parents would be removed by the passage of SB 28. This subjects the statute to a Constitutional challenge and, moreover, is not a desirable public policy.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on SB 28.**

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**Submitted by: Maryland Office of the Public Defender, Government Relations Division.**

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