
To: Members of the Senate Judicial Proceedings Committee

From: Family Law Section Council (FLSC)

Date: February 19, 2024

Subject: **Senate Bill 670:**
Child Custody and Visitation – Best Interest of the Child

Position: **Letter of Information**

The Maryland State Bar Association (MSBA) FJLSC provides this letter of information on **Senate Bill 670 – Child Custody and Visitation – Best Interest of the Child**

This letter of information is submitted on behalf of the Family Law Section Council (“FLSC”) of the Maryland State Bar Association (“MSBA”). The FLSC is the formal representative of the Family Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family law and, at the same time, tries to bring together the members of the MSBA who are concerned with family laws and in reforms and improvements in such laws through legislation or otherwise. The FLSC 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 670 is an outcome of the efforts of the Commission and reflects the same list of the factors recommended in that thorough study on Child Custody Decision Making.

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, judicial 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 of a claim for custody, a litigant has to identify the correct appellate decisions and be able to distill the legal holdings of each case and correctly apply those holdings 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 seminal appellate decisions are decades old and not necessarily reflective of today's families and the modern demands of parenting. SB 670, which would codify the factors that a court should consider when deciding parenting time and legal decision-making issues, would finally make the factors recommended by the Commission available and accessible to all litigants and would encourage the consistent use of the best practices regarding such custody decisions.

In addition, SB 670 provides appropriate guardrails to the Judge in such custody determinations in setting out the comprehensive list of factors the court may consider, including any other appropriate factor, while also mandating that the Judge shall articulate his/her findings of fact on the record or in a written opinion, specifying each of the factors that were considered. Thus, the passage of SB 670 would lead to more uniformity, clarity and transparency in the legal process and understanding of the outcomes and possible appellate issues for both litigants and counsel involved in these highly emotionally charged and significant family law cases.

For the reason(s) stated above, the MSBA FLSC approves of the language in SB 670; however, we have provided our official support to the very similar, but improved bills: Senate Bill 327 and the cross-filed House Bill 848. SB 327 and HB 848 contain a more comprehensive, blended list of the same factors from the Commission, while also taking the important step of codifying the proper legal standard for cases in which a modification of legal and/or physical custody is sought.

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