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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
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RE: Senate Bill 521
Child Custody – Rebuttable Presumption of Joint Custody
DATE: January 29, 2025
(2/7)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 521. This bill creates a rebuttable presumption in child custody proceedings that joint custodial arrangements are in the best interests of a child. It also authorizes a court to consider specified factors when determining the best interests of the child and to award sole custody when a joint custodial arrangement is determined by a preponderance of evidence not to be in the best interests of the child. It also requires the court to enter specified information on the record.

Maryland Code, Family Law Art., § 5-203(a) provides that “parents are the joint and natural guardians of their minor child[ren].” Under current law and practice, courts approach custody cases with this presumption of joint custody then make determinations based on a set of best interest of the child factors set forth in caselaw. *Montgomery County v. Sanders*, 38 Md. App. 406 (1978); *Taylor v. Taylor*, 306 Md. 290 (1986). (“The light that guides the trial court in its [custody] determination...is the ‘best interest of the child standard,’ which ‘is always determinative in child custody disputes.’” *Santo v. Santo*, 448 Md. 620, 626 (2016) (quoting *Ross v. Hoffman*, 280 Md. 172, 178 (1977))). This gives the courts broad discretion to consider each family’s unique facts and circumstances. Courts also recognize that it is important for children to have close and meaningful relationships with parents who can act in their best interests.

This bill would make the presumption of joint custody *rebuttable*. Although this change would not affect parents who are able to reach an agreement regarding custody, it would set a more difficult and fraught standard for parents in the most contentious and litigious of cases. This presumption would apply even when there is a history of domestic violence or child abuse or neglect. In addition, the mandatory language in section (c)(2) (“when the court determines, in accordance with paragraph (1) of this subsection, that joint custody is not in the best interests of the child, the court *shall* award visitation in a manner that ensures frequent and continuing contact between the child and the noncustodial parent”) conflicts with Md. Code Family Law Art., §§ 9-101 & 9-101.1 to the extent that section applies to cases involving child abuse or neglect.

In practical terms, this bill would require parents who do not agree with 50/50 custody to present evidence to rebut the presumption. This would be harder for unrepresented litigants to accomplish and drive-up costs for those who can afford representation. This also sets a higher bar for modification of a custody order and would increase conflict between parties. Although the bill does incorporate consideration of what is in the best interest of a child, the factors set forth in (b) prioritize what is convenient for parents over other factors. Those factors would also put parents with fewer resources at a disadvantage (e.g., parents who cannot afford to live or work in a convenient location for custody-purposes). The factors are also parent-focused and would limit the court’s ability to make decisions based on facts and circumstances unique to each child and each family. The analysis under current law does not preclude consideration of the factors listed in section (b) of the bill, but rather prioritizes factors that affect the physical and emotional well-being of children.

The Judiciary encourages consideration of the report of the Child Commission on Child-Custody Decision Making, which includes analyses of relevant issues.¹ The Commission was comprised of over 125 stakeholders including parents, mental health providers, advocates for survivors of intimate partner violence, disability rights advocates, judges, attorneys, and members of the General Assembly.

cc. Hon. Nick Charles
Judicial Council
Legislative Committee
Kelley O’Connor

¹ It’s Final Report, including a recommendation for statutory best interest of the child factors, is available at <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/020000/020737/unrestricted/20150076e.pdf>.