

# **SB 521 Child Custody - Rebuttable Presumption of J**

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Position: UNF

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BILL NO:	Senate Bill 0521
TITLE:	Child Custody – Rebuttable Presumption of Joint Custody
COMMITTEE:	Judicial Proceedings
HEARING DATE:	February 7, 2025
POSITION:	<b>OPPOSE</b>

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Senate Bill 0521 creates a presumption of joint legal custody and physical custody for equal periods of time for each parent. The Women's Law Center opposes the presumption for joint legal and equal physical custody created by this Bill. SB 0521 is particularly egregious in that there is no exception for situations in which there has been domestic violence. The current standard of "best interests of the child" is the most child-centered and appropriate standard for physical custody and decision-making.

SB 0521 includes some factors the court can use when determining custody. However, it does not include key issues, such as the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare, and the willingness of the parents to share custody. The factors in case law now recognize that it requires a high level of cooperation and commitment to equally parent a child after a relationship has been dissolved. Joint legal custody is a challenging legal arrangement and the presumption for joint legal custody proposed by Senate Bill 0521, despite including *some* factors for consideration, would make it more likely that joint custody would be imposed in inappropriate situations. Furthermore, the cases that require judicial intervention are the highest conflict cases, where the very fact that the parties are in court indicates an inability to work together in the best interests of the child. Finally, custody cases are not cookie cutter, where each case ends in the same arrangements. Every family law case is different. SB 0521's presumption assumes that these cases are more or less the same.

The preference for joint custody and equal physical custody is particularly problematic when domestic violence is involved. A joint legal custody and equal physical custody arrangement requires an intense level of communication and contact between the parents. This degree of interaction could put the victim of domestic violence at significant risk. *In families where violence occurs, the children are often used as a tool to control the victim.* If joint custody is awarded, the capacity to use the children in this negative way is enhanced. It is also extremely difficult for a victim of domestic violence to negotiate on equal footing regarding parenting decisions. Senate Bill 0521 completely ignores the risks inherent in this situation. It also places a legal burden of overcoming a presumption on the domestic violence victim. And in 80% of family law cases, at least one if not both parties are unrepresented, and may not even understand the concept behind a rebuttable presumption.

The Women's Law Center recognizes and deeply respects the benefits of having both parents actively involved in a child's life. However imposing a preference for joint legal custody and equal physical custody that is difficult to overcome would increase the incidence of this type of custody arrangement when it is not appropriate or constructive. This could be counter-productive and detrimental to the well-being of the child and the parents' ability to work together.

Therefore, the Women's Law Center opposes Senate Bill 0521 and urges an unfavorable report.

*The Women's Law Center of Maryland is a non-profit legal services organization whose mission is to ensure the physical safety, economic security, and bodily autonomy of women in Maryland. Our mission is advanced through direct legal services, information and referral hotlines, and statewide advocacy.*

# **SB 521- MNADV - UNF.pdf**

Uploaded by: Laure Ruth

Position: UNF



**BILL NO:** Senate Bill 521  
**TITLE:** Family Law – Presumption of Joint Custody  
**COMMITTEE:** Judicial Proceedings  
**HEARING DATE:** February 7, 2025  
**POSITION:** **OPPOSE**

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The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to issue an unfavorable report on SB 521.**

Senate Bill 521 creates a presumption of joint legal custody and physical custody for equal periods of time for each parent. MNADV supports both parents being active and involved in their child's life. However, SB 521 does not acknowledge that there are circumstances, *such as when there is domestic violence*, that a presumption of joint legal custody and physical custody could in fact be harmful or even dangerous for the child or one of the parents. It also does not appreciate the power and control dynamics that exist in domestic violence, often placing the victim in an inferior position who would, under Bill 521, need to rebut the presumption of joint custody.

A joint legal custody and equal physical custody arrangement requires an intense level of communication and contact between the parents. This degree of interaction could put the victim of domestic violence at significant risk. In families where violence occurs, the children are often used as a tool to control the victim. If joint custody is awarded, the capacity to use the children in this negative way is enhanced. It would also be extremely difficult for a victim of domestic violence to negotiate on equal footing regarding parenting decisions. **Senate Bill 521 completely ignores the risks inherent in this situation.**

Each case and familial situation is unique, and there are even cases with domestic violence that are appropriate for there to be joint custody. Retaining the "best interest of the child" standard is the best way to make this very case specific analysis. MNADV supports the current standard of "best interest of the child" which is the most child centered, case specific, and appropriate standard for custody decision making. MNADV opposes the presumption for joint legal and equal physical custody created by SB 521 (although it's not entirely clear that both types of custody are included in this bill). This year's SB 548 is a much more child-focused approach to child custody cases and a bill that MNADV supports.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges an unfavorable report on SB 521.**

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## **Joint Custody - house - testimony - 2025 - SB521 U**

Uploaded by: Lisae C Jordan

Position: UNF



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## Working to end sexual violence in Maryland

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### **Testimony Opposing Senate Bill 521** **Lisae C. Jordan, Executive Director & Counsel** February 7, 2025

The Maryland Coalition Against Sexual Assault (MCASA) is a non-profit membership organization that includes the State's seventeen rape crisis centers, law enforcement, mental health and health care providers, attorneys, educators, survivors of sexual violence and other concerned individuals. MCASA includes a statewide direct legal services program for survivors of sexual assault: the Sexual Assault Legal Institute (SALI). MCASA represents the unified voice and combined energy of all of its members working to eliminate sexual violence in the State of Maryland. We urge the Judicial Proceedings Committee to report unfavorably on Senate Bill 521.

**A presumption in favor of joint legal custody would have the unintended consequence of endangering children in difficult to prove child sexual abuse cases.** Cases involving allegations of child sexual abuse can be extremely difficult to prove and are full of gray areas. Sometimes awarding sole custody to the parent more likely to protect the child is the best that can be done. A rebuttable presumption for joint custody should not be permitted color the Court's focus on the needs of a child in these very difficult cases.

**Family Law §§ 9-101 and 9-101.1, by themselves, would not provide adequate protection for cases involving grooming behavior if SB521 were enacted.** Perpetrators of child sexual abuse typically "groom" child victims prior to committing abuse. This grooming behavior can involve testing a child to see if he or she will keep a secret, cultivating a private relationship with a child, or pushing physical boundaries. Grooming, however, stops short of abuse and would not fall under provisions of the law regarding abuse such as Family Law Article §§ 9-101 and 9-101.1. Current law gives judges the discretion – and the duty – to consider all factors related to the best interests of a child. This child-centered focus should not be changed with a presumption.

**Senate Bill 521 would help abusers by forcing abused or protective parents to rebut a joint custody presumption.** A presumption of joint custody is not necessary. Judges currently have the authority to order joint custody and must consider it whenever either parent asks them to. Currently, before a joint custody order is entered, Maryland case law requires trial judges to consider whether parents are able to communicate and reach shared decisions regarding their child's welfare. *Taylor v. Taylor*, 306 Md. 290 (1986); *Leary v. Leary*, 97 Md.App. 26 (1993). This is good law. Judges should be required to evaluate the relationship of parents before ordering joint custody. The best interests of children will not be served by requiring shared decisions between parents when one believes that the other parent has sexually abused or failed to protect their child.

**This bill would also harm adult victims of marital rape and sexual abuse. An order of joint legal custody is almost never appropriate when one parent has committed acts of sexual or physical violence against the other.** Violence is only one facet of a battering relationship. Batterers also use psychological and emotional abuse to manipulate and control their victims. Joint custody orders allow this type of abuse to continue by forcing victims to negotiate and compromise with their batterers. This places victims in danger of further violence, burdens the courts with post-judgment proceedings, and can cause mental harm to children who witness abuse.

**Senate Bill 521 would lead courts to order joint custody in error in many cases, particularly cases with pro se litigants.** Many -- if not most -- victims of domestic abuse do not identify themselves as such. Victims of marital rape and sexual abuse are even more reluctant to disclose abuse. Unfortunately, many lawyers also do not interview their clients with the care necessary to uncover abuse. As a result, evidence of marital rape and abuse would often not be presented and inappropriate joint custody orders would be entered.

**The Maryland Coalition Against Sexual Assault  
urges the Judicial Proceedings Committee to  
report unfavorably on Senate Bill 521**

## **SB521 House of Ruth**

Uploaded by: Lisae C Jordan

Position: UNF





### Domestic Violence Legal Clinic

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Bill No.: Senate Bill 521  
Bill Title: Child Custody – Rebuttable Presumption of Joint Custody  
Committee: Judicial Proceedings  
Hearing Date: February 7, 2025  
Position: **UNF**

House of Ruth is a non-profit organization providing shelter, counseling, and legal services to victims of domestic violence throughout the State of Maryland. House of Ruth has offices in Baltimore City, Baltimore County, Prince George’s County, and Montgomery County. Senate Bill 521 would create a rebuttable presumption of joint custody. **We urge the Senate Judicial Proceedings Committee to report unfavorably on Senate Bill 521.**

**In 2013, the General Assembly passed a law convening the Commission on Child Custody Decision Making.** The purpose of the Commission was to study all aspects of child custody decision-making and make recommendations to improve the process throughout the State. The Commission explored, among other things, the possibility of creating a custody statute that would codify the myriad case law which currently governs custody decision making. After more than a year of work by many, many experts in a variety of fields and disciplines, the Commission ultimately recommended against a presumption of joint custody.

**Senate Bill 521 refocuses the standard used in custody decisions from “best interest of the child” to a presumption of joint custody.** The best interest of the child standard ensures that custody cases are not determined on a cookie-cutter basis. A presumption of joint custody presumes that most families function in a similar way; this is simply not the case. Each child, each family, each situation needs to be judged on its own merits and decided based on its own needs and resources. One size does not fit all when it comes to custody decisions.

**Ordering joint custody is rarely appropriate when one parent has committed acts of violence against the other.** Successful joint custody presumes that parents have the ability to work together cooperatively and have equal negotiating power in the relationship. The opposite is true in cases involving domestic violence. Joint custody orders allow physical abuse and emotional intimidation to continue by forcing victims to negotiate and compromise with their batterers. Many batterers will use joint custody, not as a way to co-parent, but as a way to gain continued and ongoing access to the victim. Batterers use this order of joint custody as a way to continue to control and dominate

their victims. These are the very reasons the victim sought to end the relationship. 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.

**Judges currently have the authority to order joint custody.** However, before a joint custody order is entered, Maryland case law requires trial judges to consider whether parents are able to communicate and reach shared decisions regarding their child's welfare. *Taylor v. Taylor*, 306 Md. 290 (1986). This is good law and reflects the need for judges to make individualized inquiries and determinations based on each family's unique circumstances. 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

**The House of Ruth urges the Senate Judicial Proceedings Committee to issue an unfavorable report on Senate Bill 521.**

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Uploaded by: Michelle Smith

Position: UNF

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**To:** Members of The Senate Judicial Proceedings Committee

**From:** Family Law Section Council (FLSC)

**Date:** February 5, 2025

**Subject:** Senate Bill 521:  
Child Custody-Rebuttable Presumption of Joint Custody

**Position:** OPPOSED

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**The Maryland State Bar Association (MSBA) FLSC opposes Senate Bill 521.**

This testimony 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 and law and, at the same time, tries to bring together the members of the MSBA who are concerned with family related 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 1,100 attorney members.

In 2013, the General Assembly passed HB687, convening 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 custody determinations. The Commission issued its Final Report on December 1, 2014. The Final Report included a Proposed Draft Custody Statute to include factors to be utilized by Judges in making custody determinations in similar form this year as SB548. The Final Report concludes “there should be no presumed schedule of any kind” and “as a general rule, a minimum of 30 to 33 percent time with each parent is optimal for a child when both parents are emotionally healthy and focused on the needs of their child, in the context of a parenting plan based on the child’s developmental age and needs.”<sup>1</sup>

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<sup>1</sup> Final Report, p. 35, emphasis added.

SB521 creates a rebuttable presumption in an initial custody proceeding (when there is no existing custody agreement or order) that joint legal custody and joint physical custody of equal timesharing are in a child's best interests.

A "presumption" is a conclusion a court must make when certain threshold facts are established, even if the facts would otherwise be insufficient to reach that particular conclusion. A "rebuttable presumption" is a presumption that must be reached in the absence of evidence to the contrary.

Custody consists of two components: 1) legal custody, which is decision-making about important issues such as health, education, and religious upbringing; and 2) physical custody, which is where a child lives and when a child spends time/has visitation with both parents.

Currently, the standard for determining custody of a child is the "best interests of the child". This requires a court to consider all the facts and circumstances of the individual family before determining custody for the specific child. Under current law, both parents are the "joint natural guardians of their minor child" and "[n]either parent is presumed to have any right to custody that is superior to the right of the other parent."<sup>2</sup>

Judges already have the authority to issue joint custody orders, but only after considering all the facts and circumstances and determining that it is in the best interests of the individual child/ren at the center of any given case.

A presumption does not account for the specific needs of each family and each child, but elevates the wishes of the parents over the best interests of the children. Orders based on nothing more than a presumption, without due and exacting consideration of whether joint custody is truly in the best interests of the specific children involved, are likely to lead to more discord between the parents, family chaos, and harm to the children. This is especially true when joint custody is imposed over the objections of one or both parents, which is almost certainly going to be the situation in any case that has to be resolved by litigation as opposed to an agreement between the parties.

There are additional problems with SB521:

The rebuttable presumption would apply at both the *pendente lite* hearing on temporary custody (so, custody until the final custody merits trial) and at the final custody merits trial. Not all jurisdictions determine *pendente lite* legal or physical custody (i.e. Montgomery

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<sup>2</sup> Maryland Family Law Article §5-203



County). SB521 encourages more *pendente lite* litigation. It also prioritizes equal physical custody over temporary stability, further uprooting children. It could result in a change from the status quo that existed by the parents' agreement prior to filing suit. Additionally, in many jurisdictions, *pendente lite* hearings occur early in the case, when there is insufficient time to conduct discovery and obtaining relevant documents and information to inform the ultimate decision. This prejudices parents who are unable to sufficiently prepare before their trial or will result in delayed *pendente lite* hearings so parents can conduct discovery and therefore result in prolonged and more contentious litigation.

SB521 refers to “permanent” proceedings, but custody is always modifiable in the event of a material change in circumstance. Custody is never “permanent”, although a custody determination may be “final” and no longer appealable, subject to modification.

SB521's language intending to “equalize” the parents' positions before the court - “regardless of a parent's marital status or gender” – is too narrow. What about: sexual orientation; gender identity; age; race, color, or national origin; religious affiliation, belief, creed, or opinion; mental or physical disability; economic circumstances; or, extramarital sexual conduct? Does the presumption not apply in these circumstances? Or, does the presumption operate against a parent for these unmentioned reasons?

SB521 enumerates factors the court “may” but is not required to consider when determining the child's best interests in light of the rebuttable presumption. This invites a court to disregard the factors and simply rubber stamp joint custody regardless of the enumerated factors. Furthermore, the factors enumerated in SB521 are not a comprehensive list mirroring the concepts which have been judicially accepted in years of Maryland case law<sup>3</sup> or from the Commission Final Report.

SB521 does not require the court to articulate the basis for its decision, the factors it considered, and its analysis of the presumption in a particular case. Without this requirement, parents will continue to have no better understanding of the court's reasoning than under current law and practice (which do not require this).

A recent in-depth review of the child custody determination statutes across our country revealed that every single state in our country utilizes the “Best Interest of the Child” legal standard for custody determinations. The review also revealed that only 18 states have statutes establishing a rebuttable presumption for joint custody, and of those 18 states, 50% (9) of those statutes apply the rebuttable presumption if the parties agree that it is in the best interests of

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<sup>3</sup> See *Montgomery County v. Sanders*, 38 Md. App. 406 (1978); *Taylor v. Taylor*, 306 Md. 290 (1986); *Santo v. Santo*, 448 Md. 620, 626 (2016).

the child(ren). Of the 18 states with rebuttable presumption statutes, only 4 include language of equal physical custody time. To enact SB521, Maryland would be included in a very small minority of states on the critically important issue of judicial determinations of physical custody for our children.<sup>4</sup> There is no legal justification or support for making such a drastic change to decades of Maryland statutory and case law on the issue of custody determinations.

Moreover, last month, the MSBA conducted a survey of the members of the Family Law Section asking the question of: "Should MD adopt a rebuttable presumption in favor of joint custody for parent?", to which 76.47% of the responses were No. A majority of Maryland's family law attorneys are not in support of making such a drastic change to decades of Maryland statutory and case law on the issue of custody determinations.

For the reason(s) stated above, the MSBA FLSC **opposes Senate Bill 521 and urges a unfavorable committee report.**

Should you have any questions, please contact Michelle Smith, Esquire at 410-280-1700 or [msmith@lawannapolis.com](mailto:msmith@lawannapolis.com).

**Enclosures:**

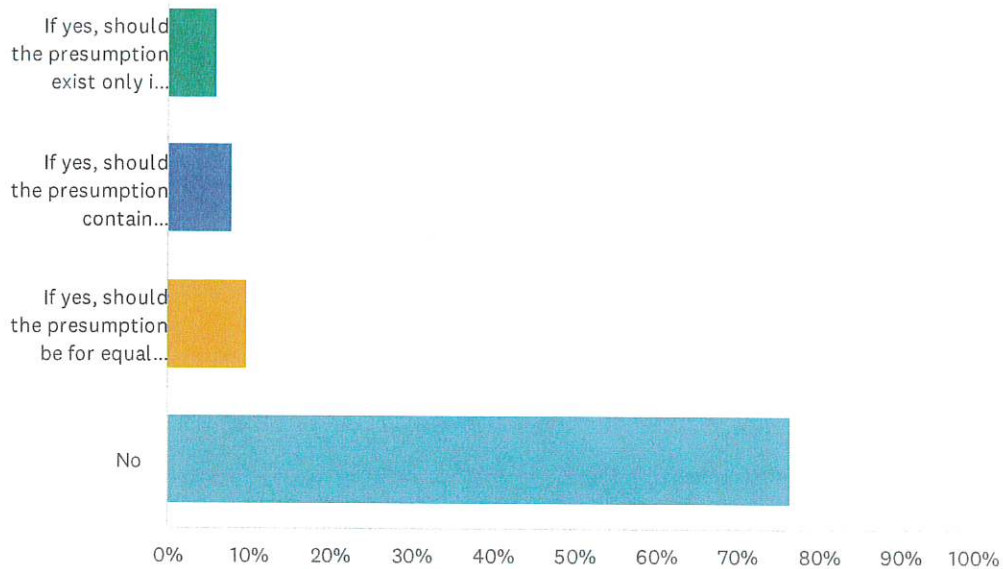
MSBA Family Law Section Poll result Q3  
US Custody Statutes Chart  
2024 Custody Statute Analysis

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<sup>4</sup> See attached chart and supporting detail documents

### Q3 Should MD adopt a rebuttable presumption in favor of joint custody for parents?

Answered: 51 Skipped: 0



#### ANSWER CHOICES

#### RESPONSES

If yes, should the presumption exist only if the parents agree to joint custody?	5.88%	3
If yes, should the presumption contain language for a presumed amount of parenting time?	7.84%	4
If yes, should the presumption be for equal parenting time?	9.80%	5
No	76.47%	39
TOTAL		51



	2024	US Custody Statutes	Analysis	MSBA Family Law	Section		
States	Best Interest of Child Standard	Custody Preference	Rebuttable Presumption for joint custody?	Rebuttable Presumption for 50/50 custody	Rebuttable Presumption if parties agree	Rebuttable Presumption or Restrictions against custody?	Custody Factors Included
Alabama	X		X		Y	X	X
Alaska	X					X	X
Arizona	X	X				X	X
Arkansas	X	X	X			X	
California	X		X		Y	X	X
Colorado	X	X				X	X
Connecticut	X		X		Y		X
D.C.	X		X			X	X
Delaware	X					X	X
Florida	X	X	X	Y		X	X
Georgia	X	X	X				X
Hawaii	X	X				X	X
Idaho	X	X	X			X	X
Illinois	X		X			X	X
Indiana	X						X
Iowa	X	X				X	X
Kansas	X	X				X	X
Kentucky	X	X	X	Y		X	X
Louisiana	X	X				X	X
Maine	X	X				X	X
Maryland	X	X				X	
Massachusetts	X					X	

	2024	US Custody Statutes	Analysis	MSBA Family Law	Section		
States	Best Interest of Child Standard	Custody Preference	Rebuttable Presumption for joint custody?	Rebuttable Presumption for 50/50 custody	Rebuttable Presumption if parties agree	Rebuttable Presumption or Restrictions against custody?	Custody Factors Included
Michigan	X	X					
Minnesota	X		X		Y	X	X
Mississippi	X	X			Y	X	
Missouri	X	X	X	Y	Y	X	X
Montana	X	X					X
Nebraska	X	X			Y		X
Nevada	X	X	X		Y	X	X
New Hampshire	X	X					X
New Jersey	X	X				X	X
New Mexico	X		X				X
New York	X					X	
North Carolina	X						
North Dakota	X					X	X
Ohio	X					x	X
Oklahoma	X	X					
Oregon	X					X	X
Pennsylvania	X	X				X	X
Rhode Island	X	X				X	
South Carolina	X						X
South Dakota	X				Y	X	X
Tennessee	X	X				X	X
Texas	X	X	X				X

	2024	US Custody Statutes	Analysis	MSBA Family Law	Section		
States	Best Interest of Child Standard	Custody Preference	Rebuttable Presumption for joint custody?	Rebuttable Presumption for 50/50 custody	Rebuttable Presumption if parties agree	Rebuttable Presumption or Restrictions against custody?	Custody Factors Included
Utah	X	X	X				X
Vermont	X					X	X
Virginia	X	X					X
Washington	X	X				X	X
West Virginia	X	X	X	Y		X	X
Wisconsin	X	X	X			X	X
Wyoming	X	X				X	X
Totals	51	32	18	4	9	37	42

2024 Custody Statute Analysis by Family Law Section, MSBA  
Contact: Michelle D. Smith, Esquire, msmith@lawannapolis.com

1. Legal Standard?
2. Custody Preference?
3. A rebuttable presumption for joint custody?
4. Rebuttable presumption or Restrictions against custody for one parent in certain circumstances?
5. Custody Factors included?

**Alabama: Ala. Code § 30-3-1, § 30-3-131, § 30-3-152,**

1. Best Interest Standard
2. No preference
3. Only if both parents agree, presumption that Joint custody is in the best interest of child
4. Rebuttable presumption against custody for parent found to have committed domestic or family violence
5. Custody Factors included

**Alaska: Alaska Stat. § 25.20.060, § 25.20.090, § 25.24.150**

1. Best Interest Standard
2. No preference
3. No rebuttable presumption for joint custody
4. Rebuttable presumption against custody for a parent who has a history of perpetrating domestic violence against the child, other parent, or a domestic living partner
5. Custody Factors included

**Arizona: Ariz. Rev. Stat. § 25-403, § 25-403.02, § 25-403.04**

1. Best Interest Standard
2. Preference for both parents sharing legal decision-making and maximizing parenting time – if consistent with best interest of child
3. No rebuttable presumption for joint custody
4. Rebuttable presumption against custody for parent who has abused drugs/alcohol in prior 12 months
5. Custody Factors included

**Arkansas: Ark. Code § 9-13-101**

1. Best Interest Standard
2. Preference for Joint custody
3. Rebuttable presumption that Joint custody is in the best interest of the child
4. Rebuttable presumption against custody for a parent who has a pattern of domestic abuse or sexual offense.
5. No Custody Factors included

**California: Cal. Fam. Code § 3011, § 3020, § 3044, 3080**

1. Best Interest Standard
2. No preference
3. If both parents agree, rebuttable presumption that joint custody is in the best interest of minor child
4. Custody not permitted for parent that committed DV or other crimes
5. Custody Factors included

**Colorado: Colo. Rev. Stat. § 14-10-124**

1. Best Interest Standard
2. Preference for frequent and continuing contact between each parent and the minor child
3. No rebuttable presumption for joint custody
4. Custody not permitted for parent that committed DV, child abuse, sexual abuse
5. Custody Factors included

**Connecticut: Conn. Gen. Stat. § 46b-56, 46b-56a**

1. Best interests Standard
2. No preference
3. If both parents agree, rebuttable presumption that joint custody is in the best interest of child
4. No rebuttable presumption against custody
5. Custody Factors included

**D.C.: D.C. Code § 16-914**

1. Best interest Standard
2. No preference
3. Rebuttable presumption for joint custody
4. No joint custody if one parent committed intra family violence, child abuse, child neglect, child kidnapping
5. Custody Factors included

**Delaware: Del. Code tit. 13, § 705A, § 722, § 728**

1. Best Interest Standard
2. No preference
3. No rebuttable presumption for joint custody
4. Rebuttable presumption against custody for parent who committed DV
5. Custody Factors included

**Florida: Fla. Stat. § 61.13(3)**

1. Best Interest Standard
2. Encourages frequent and continuing contact with both parents and both parents to share the rights and responsibilities, and joys, of childrearing
3. Rebuttable presumption for shared custody and equal time-sharing
4. Rebuttable presumption that shared custody is detrimental to the child if parent committed DV, certain felonies, sexual offense, or had parental rights terminated
5. Custody Factors included

**Georgia: Ga. Code § 19-9-3**

1. Best Interest Standard
2. Preference for continuing contact with parents in child's best interests
3. Rebuttable presumption of selection of parent by child at least 14 years old
4. No rebuttable presumption against joint custody
5. Custody Factors included

**Hawaii: Haw. Rev. Stat. § 571-46**

1. Best Interest Standard
2. Encourages frequent, continuing, and meaningful contact with both parents
3. No rebuttable presumption for joint custody
4. Rebuttable presumption that custody is detrimental to the child if parent committed family violence
5. Custody Factors included

**Idaho: Idaho Code § 32-717, § 32-717B,**

1. Best Interest Standard
2. Frequent and Continuing contact between each parent and child
3. Rebuttable presumption for joint custody
4. Rebuttable presumption against joint custody for parent who is perpetrator of DV
5. Custody Factors included

**Illinois: 750 Ill. Comp. Stat. 5/602.7, 5/602.7(b), 5/602.10, 5/603.10**

1. Best interest Standard
2. No preference
3. Rebuttable presumption for joint custody
4. Restrictions on joint custody if one parent seriously endangered the child's physical, mental, moral or emotional health
5. Custody Factors Included

**Indiana: Ind. Code § 31-17-2-8, § 31-17-2-8.3, § 31-17-2-13**

1. Best interest Standard
2. No preference
3. No rebuttable presumption for joint custody
4. No rebuttable presumption against joint custody
5. Custody Factors included

**Iowa: Iowa Code § 598.41**

1. Best interest Standard
2. Prefers joint custody for maximum continuing contact between the child and both parents after separation or divorce, encouraging parents to share in the rights and responsibilities of raising their child.
3. No rebuttable presumption for joint custody
4. Rebuttable presumption against joint custody if a history of domestic abuse exists
5. Custody Factors included

**Kansas: K.S.A. §§ 23-3201 - 23-3206**

1. Best Interest Standard
2. Preference for Joint Legal Custody (K.S.A. § 23-3206)
3. No rebuttable presumption for joint custody
4. Rebuttable presumption against awarding custody to parent living with convicted sex offender or child abuser
5. Custody Factors included

**Kentucky: § 403-270**

1. Best Interest Standard
2. Preference for Joint Custody
3. Rebuttable Presumption of Joint Custody with Equal Parenting Time;
4. No joint custody for parent who committed DV
5. Custody Factors included

**Louisiana: Civil Code 131-132; R.S. §9:364**

1. Best Interest Standard
2. Preference for joint custody
3. No rebuttable presumption for joint custody
4. Rebuttable presumption against custody for parent found to have engaged in DV or sexual abuse
5. Custody Factors included

**Maine: 19-A M.R.S. § 1653**

1. Best Interest Standard
2. Equal preference for parents; if parties agree to joint custody, court should award joint custody unless against best interest of the child
3. No rebuttable presumption for joint custody
4. Rebuttable presumption against custody for parent who has committed DV
5. Custody Factors included

**Maryland: Maryland Family Law Code § 9-101**

1. Best Interest Standard
2. "The parents are the joint natural guardians of their minor child" 5-203
3. No rebuttable presumption for joint custody
4. Restrictions on custody to parent who committed abuse of parent or child
5. No Custody Factors included.

**Massachusetts: Massachusetts General Laws Chapter 208, Section 31, 31A**

1. Best Interest Standard
2. No preference
3. No rebuttable presumption of joint custody
4. Rebuttable presumption against custody for a parent who has been found to have committed DV or child abuse
5. No Custody Factors included

**Michigan: Michigan Compiled Laws (MCL) § 722 et seq**

1. Best Interest Standard
2. It is presumed to be in the best interests of a child for the child to have a strong relationship with both of his or her parents
3. No rebuttable presumption of joint custody
4. No rebuttable presumption against custody
5. Custody factors included



**Minnesota: Sec. 518.17 et seq.**

1. Best Interest Standard
2. No preference
3. Rebuttable presumption for joint custody and that a child must receive a minimum of at least 25 percent of the parenting time with each parent.
4. Rebuttable presumption against custody for parent who committed DV
5. Custody factors included

**Mississippi: Mississippi Code Section 93-5-24**

1. Best Interest Standard
2. Preference for joint custody if parties agree to joint custody
3. No rebuttable presumption of joint custody
4. Rebuttable presumption against custody to a parent found to have committed family violence.
5. No Custody Factors included

**Missouri: MO ST § 452.375**

1. Best Interest Standard
2. Preference for both parents having frequent and meaningful contact with children
3. Rebuttable presumption in favor of joint custody with equal parenting time.
4. Rebuttable presumption against custody for parent with pattern of DV
5. Custody factors included

**Montana: § 40-4-212, Montana Code Annotated (MCA)**

1. Best Interest Standard
2. Preference for joint custody with frequent and continuing contact with both parents
3. No rebuttable presumption for joint custody
4. No rebuttable presumption against joint custody
5. Custody factors included

**Nebraska: Nebraska Revised Statutes § 42-364**

1. Best Interest Standard
2. Preference for joint custody is awarded if parties agree
3. No rebuttable presumption for joint custody.
4. No rebuttable presumption against custody
5. Custody factors included

**Nevada: NRS 125C.002 - NRS 125C.0035**

1. Best Interest Standard
2. Preference for joint custody arrangements
3. Rebuttable presumption for joint custody if parties agree
4. Rebuttable presumption against custody for parent who has committed DV
5. Custody Factors included

**New Hampshire: RSA § 461-A:2 et seq**

1. Best interest standard
2. Preference of joint custody with equal parenting time.
3. No rebuttable presumption for joint custody
4. No rebuttable presumption against custody
5. Custody Factors included

**New Jersey: N.J. Stat. Ann. § 9:2-4**

1. Best interest Standard
2. Preference for frequent involvement of both parents.
3. No rebuttable presumption of joint custody
4. No award of custody to a parent convicted of sexual assault.
5. Custody Factors included

**New Mexico: Section 40-4-9.1**

1. Best Interest standard
2. No preference
3. Presumption in favor of joint custody
4. No rebuttable presumption against custody
5. Custody Factors included

**New York: New York Domestic Relations Law (DRL) § 240**

1. Best Interest Standard
2. No preference
3. No rebuttable presumption for joint custody
4. Rebuttable presumption against custody for parent convicted of sexual assault
5. No Custody Factors included

**North Carolina: North Carolina General Statutes § 50-13.2**

1. Best Interest Standard
2. No preference
3. No rebuttable presumption for joint custody
4. No rebuttable presumption against custody

5. No Custody Factors included

**North Dakota: North Dakota Century Code § 14-09-06.2**

1. Best Interest Standard
2. No custody preference, best interest of the child
3. No rebuttable presumption of joint custody
4. Rebuttable presumption against custody to a parent who has committed DV
5. Custody Factors included

**Ohio: ORC § 3109.04**

1. Best Interest Standard
2. No preference
3. No rebuttable presumption for joint custody.
4. No rebuttable presumption against joint custody. Must consider abuse, domestic violence or certain other crimes as fact against naming that parent as the residential custodian but may if determine in best interests.
5. Custody Factors included

**Oklahoma: 43 O.S. § 112**

1. Best Interest Standard
2. When in best interests of the child, assure frequent and continuing contact with both parents and encourage parents to share the rights and responsibilities of child rearing
3. No rebuttable presumption for joint custody
4. No rebuttable presumption against joint custody
5. No Custody Factors included

**Oregon: 107.137**

1. Best Interest Standard
2. No preference
3. No rebuttable presumption for joint custody
4. Rebuttable presumptions against custody to parent who committed abuse or rape
5. Custody Factors included

**Pennsylvania: 23 Pa.C.S. § 5328**

1. Best Interest Standard
2. Give weighted consideration to the factors that affect safety of child
3. No rebuttable presumption for joint custody

4. No custody for a parent convicted of murder or to a parent convicted of certain sexual offenses
5. Custody Factors included

**Rhode Island: R.I. Gen. Laws § 15-5-16**

1. Best Interest Standard
2. Supports continuous contact between parents and child
3. No rebuttable presumption for joint custody
4. Restriction on custody for parent who has abused child
5. No Custody Factors included

**South Carolina: South Carolina Code of Laws § 63-15-220**

1. Best Interest Standard
2. No preference
3. No rebuttable presumption for joint custody
4. No rebuttable presumption against joint custody
5. Custody factors included

**South Dakota:**

1. Best Interest Standard
2. No preference
3. No rebuttable presumption for joint custody (unless parents agree)
4. Rebuttable presumption against custody to parent with history or conviction of domestic violence or conviction of a parent for death of the other parent
5. Custody Factors included (on request for joint custody)

**Tennessee:**

1. Best Interest Standard
2. Taking into consideration the best interests, a custody arrangement that permits both parents to enjoy the maximum participation possible in the life of the child consistent with the factors
3. No presumption for joint custody
4. Rebuttable presumption against custody for a parent committed DV
5. Custody Factors included.

**Texas:**

1. Best Interests Standard
2. Joint Managing Conservatorship
3. Presumption of Joint Managing Conservatorship. There is a standard possession order for physical custody

4. No rebuttable presumption against joint custody
5. Custody Factors included

**Utah:**

1. Best Interests Standard
2. Frequent and continuing contact between both parents and child after separation, promotes shared responsibilities
3. Rebuttable presumption for joint custody except in case where there is abuse, domestic violence, special needs of the child or a parent – MAY result in equal or nearly equal periods of physical custody – court not prohibited from specifying one parent as the primary caretaker
4. No rebuttable presumption against joint custody
5. Custody factors included.

**Vermont: 15 V.S.A. § 665**

1. Best Interest Standard
2. No preference
3. No rebuttable presumption for joint custody
4. No custody for parent convicted on rape
5. Custody Factors included

**Virginia:**

1. Best Interest Standard
2. Assure minor children of frequent and continuing contact with both parents, and when appropriate, encourage parents to share in the responsibilities of rearing their children.
3. No rebuttable presumption for joint custody
4. No rebuttable presumption against joint custody
5. Custody Factors included

**Washington: RCW § 26.09.002**

1. Best Interest Standard
2. Encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances
3. No rebuttable presumption for joint custody
4. Rebuttable presumption against custody for parent who committed abuse of a child, history of domestic violence, prior abandonment
5. Custody Factors included

**West Virginia: W.Va. Code § 48-9-102**

1. Best Interests Standard
2. Joint Custody
3. Rebuttable presumption for joint custody and “that equal (50-50) custodial allocation is in the best interest of the child.”
4. Rebuttable presumption against custody for parent in case of abuse of abuse, domestic violence or child conceived as result of sexual assault.
5. Custody Factors included

**Wisconsin:**

1. Best Interest Standard
2. Joint legal
3. Presumption for joint legal custody (not physical)
4. Presumption against joint legal in case of abuse or domestic violence
5. Custody Factors included

**Wyoming: Wyo. Stat. § 20-2-201**

1. Best Interest Standard
2. No preference – other than both parties involved
3. No rebuttable presumption for joint custody
4. Restrictions on custody for parent who committed spousal abuse or child abuse
5. Custody Factors included

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Position: UNF

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CIRCUIT COURT  
JUDGE  
BALTIMORE COUNTY  
CHAIR

HON. RICHARD SANDY  
CIRCUIT COURT  
JUDGE  
FREDERICK COUNTY  
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## MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 521  
Child Custody – Rebuttable Presumption of Joint Custody  
**DATE:** January 29, 2025  
(2/7)  
**POSITION:** Oppose

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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.<sup>1</sup> 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

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<sup>1</sup> 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>.