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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 1191
Family Law – Child Custody - Determinations
DATE: February 6, 2025
(2/20)
POSITION: Support

The Maryland Judiciary supports House Bill 1191. The bill would establish factors for the court to consider when determining legal and physical custody arrangements are in the best interest of a child, require an articulation of certain factors by the court, and authorize certain modifications.

“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)).

For decades, this standard has been based on a series of ‘best interest of the child factors.’ To find these factors, parents must turn to appellate cases decided in 1978 and the other in 1986. *Montgomery County v. Sanders*, 38 Md. App. 406 (1978); *Taylor v. Taylor*, 306 Md. 290 (1986). Those cases are written in legalese and the factors are easier to find with an attorney, a privilege that is not an option for many litigants. In contrast, there are statutes setting forth factors for the division of marital property and the establishment of alimony. Md. Code, Family Law Art., §§ 8-205 & 11-106.

The factors in *Montgomery County v. Sanders* and *Taylor v. Taylor* are also dated and focus on the need of parents rather than their children. Families have evolved since those cases were decided as has our understanding of child development and how custody determinations can affect a child's physical and emotional well-being, security, and sense of self.

The factors delineated in this bill are nearly identical to factors listed in Maryland Rule 9-204.1 (Parenting Plans), which was adopted by the Supreme Court of Maryland in 2019 (eff. January 1, 2020) and are based on recommendations from the Child Commission on Child-Custody Decision Making.¹ That Commission identified the need for factors that are, unlike those from the aforementioned cases, child-focused and based on social science and literature on child development and the effects custody decisions have on parent-child relationships.

If enacted, this legislation would modernize how custody determinations are made and give everyone – courts, attorneys, and litigants – one set of factors to focus on in custody cases. It would also increase transparency of custody determinations and be especially meaningful for the overwhelming number of litigants who are unable to afford an attorney. Maryland would also no longer be among the minority of states that do not have statutory best interest of the child factors.

cc. Hon. Susan McComas
Judicial Council
Legislative Committee
Kelley O'Connor

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. Its 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>.