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BALTIMORE COUNTY
CHAIR

HON. RICHARD SANDY
CIRCUIT COURT
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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 721
Family Law – Grandparent Visitation
DATE: February 5, 2025
(2/20)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 721. This bill alters the circumstances under which an equity court may grant visitation rights to a grandparent of a child.

The Judiciary recognizes the important role grandparents can play in a child's life. These cases require the balancing of what is the best interests of a child and a parent's constitutional rights. Current law allows grandparents to ask a court for visitation or custody of their grandchildren. The process is easy if the child's parents consent. Depending on the nature of their relationship with the child, grandparents may also be able to establish that they are a *de facto* parent who has standing to seek custody or visitation. See *E.N. v. T.R.*, 474 Md. 346 (2021); and *Conover v. Conover*, 450 Md. 51 (2016) (establishing a four-factor test to determine *de facto* parentage status¹).

¹ To establish *de facto* parent status, the party seeking such status must prove: 1) that the biological or adoptive parent(s) consented to and fostered, the formation and establishment of a parent-like relationship with the party and the child; 2) that the party and the child lived together in the same household; 3) that the party assumed obligations of parenthood by taking significant responsibility for the child's care, education, and development, including contributing towards the child's support without an expectation of financial

If a parent objects to a grandparent's request for visitation with a child and *de facto* parentage cannot be established, the Supreme Court of the United States and the Supreme Court of Maryland have established a clearly defined test for grandparent visitation. The test requires that the court first find that the parents are unfit or that exceptional circumstances exist and if, and only if, the court makes such a finding, can the court consider whether grandparent visitation (or the lack of the same) is in the child's best interests. *Troxel v. Granville*, 530 U.S. 57 (2000); and *Koshko v. Haining*, 398 Md. 404 (2007).

This bill conflicts with this standard, would not withstand constitutional scrutiny, and would introduce opportunities for confusion. Specifically, this bill imposes certain presumptions and requirements that would give grandparents equal status as parents in a divorce, annulment, custody, or paternity case without a threshold finding of parental unfitness or exceptional circumstances. The drafting of the bill is also confusing and unclear. For example, it is not clear if section (c)(1) of the bill requires the child to reside with the grandparent for at least 12 consecutive months or if the time the grandparent lives with the child and parents count toward the 12 months.

cc. Hon. Jackie Addison
Judicial Council
Legislative Committee
Kelley O'Connor