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TESTIMONY IN SUPPORT OF SENATE BILL 548

Family Law - Child Support - Determination of Custody and Agreements Between Parents

TO: Hon. William Smith, Chair, and Members of the Senate Judicial Proceedings Committee

FROM: Zachary Alberts, Director of Advocacy and Strategic Initiatives at the Center for Urban Families

DATE: February 16th, 2026

Good afternoon, my name is Zachary Alberts. I am the Director of Advocacy and Strategic Initiatives at the Center for Urban Families, a workforce and family strengthening program in Baltimore City. The Center for Urban Families requests a favorable report on SB 548, Determination of Custody and Agreements Between Parents, which would allow parents, not the government, to decide whether, and how much, child support is appropriate.

Co-parenting outside of a romantic relationship does not have to be a contentious process. The Center for Urban Families has been running our Baltimore Responsible Fatherhood Services program for almost three decades. Our clients, who are often non-custodial parents, discuss the myriad of ways they support their co-parents; whether it is through school drop offs and pick ups, providing basic necessities, or often giving cash directly, our parents report that the formal child support system is not able to adequately capture all the ways parents show up for their children.

This issue is particularly acute for lower-income parents, whose access to disposable income is not as consistent as the child support establishment process through the courts demands. Custodial parents know when their co-parent is doing everything they can to support their children, but external factors are interfering. The courts and the Child Support Administration do not have that flexibility.

Maryland should allow parents to decide what kind of financial arrangement is best conducive to a happy, healthy childhood for their children, instead of interfering in a relationship they would otherwise have no business being in.

We urge a favorable report.

For more information, contact:

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SB 548 - Child Support Agreements 2026 -MLA.pdf

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Position: FWA

Senate Bill 548
Family Law - Child Support - Determination of Custody and Agreements Between Parents
In the Senate Judicial Proceedings Committee
Hearing on February 18, 2026
Position: FAVORABLE WITH AMENDMENTS

Maryland Legal Aid submits its testimony on SB 548 at the request of Senator Charles.

Maryland Legal Aid urges a favorable report on SB 548, a bill that supports the ability of parents to determine, by mutual consent, the level of formal child support that is most appropriate for their children, based on the individual circumstances of their family. Maryland Legal Aid is a private, nonprofit law firm providing free civil legal services to low-income individuals and families in every county of Maryland. Maryland Legal Aid handles a variety of civil legal issues, including family law cases such as divorce, custody, child support, and domestic violence matters. Maryland Legal Aid represents mothers as well as fathers, and custodial as well as non-custodial parents.

While many of our cases are contentious, we have seen many parents come together to reach co-parenting agreements based on a common understanding of how to best meet their children's needs. However, recent case law has constrained the ability of parents to mutually decide how to ensure the financial wellbeing of their children. In 2025, the Supreme Court of Maryland ruled in *In re Marriage of Houser* that child support must be addressed in *every* court case involving child custody, regardless of whether either parent is seeking court-ordered support. In the wake of the *Houser* decision, Maryland Legal Aid has seen Circuit Courts around the state taking varying approaches to resolving custody cases where both parents are on the same page about not wanting formal child support or about wanting child support to be set at a lower than that calculated by the Child Support Guidelines.

By giving parents the freedom and flexibility to jointly decide their family's financial arrangements (informed by and in furtherance of the best interests their children), SB 548 will likely result in less litigation, less hostility between co-parents, and more consistent financial support for children. Furthermore, Maryland Legal Aid suggests the adoption of the amendments detailed below to ensure that any child support agreements reached by parents are based on informed consent rather than haste or coercion. Maryland Legal Aid believes that these amendments, if adopted, will resolve the confusion and inconsistency currently plaguing Maryland family law courts by establishing a standard for courts to approve parental agreements that deviate from the Child Support Guidelines.

- A. By allowing parents to negotiate and agree upon a child support amount that works best for their specific circumstances, SB 548 may result in less adversarial co-parenting relations and less unnecessary litigation.***

Family courts – like the rest of our legal system – were designed to be adversarial, pitting one parent against another and, thus, perpetuating conflict and animosity. However, “child support and other family law cases may not be best served by adversarial procedures because of the intimate, emotional, and often culturally sensitive issues involved.”¹ In fact, research has found that “the adversarial nature of child support processes can create or exacerbate conflict between parents.”²

Rather than forcing parents to participate in lengthy court proceedings wherein judges or magistrates decide the issue of child support based on the factors permitted by the Maryland Child Support Guidelines, SB 548 empowers families to independently work out a financial support arrangement that serves their specific needs. “When parents settle their conflicts in less adversarial ways, they have better feelings toward each other, toward the courts, and toward the law.”³ It is not in the best interests of children or co-parents when the legal system creates familial conflict where none exists. Furthermore, because parents usually have the most intimate understanding of their children’s best interests and needs, they are often best suited to figure out the exact level of financial support that is required. By allowing courts to honor child support agreements reached by fit parents, SB 548 will likely lead to less litigation and fewer hours in court.

SB 548 does *not* eliminate a parent’s right to establish child support through a contested, adversarial court process, if that is what they want. Not every child support case can be resolved through consent agreements, and parents may have valid reasons for seeking differing levels of child support; those cases are well-suited for court adjudication. However, the law should not get in the way of parents who *are* able to resolve matters on their own, if that is their choice. SB 548 would be a welcome addition to Maryland’s child support laws because it codifies the ability of co-parents to amicably resolve child support matters, and because non-adversarial conflict resolution promotes healthy co-parenting and may lead parents to spend less time in court.

B. SB 548 will result in realistic child support awards that are more likely to be paid.

Maryland law presumes that the amount of child support calculated by the Child Support Guidelines is correct amount to be awarded but allows for deviations from that amount if application of the Guidelines would be unjust or inappropriate.⁴ Some Maryland courts already recognize the agreement of parties as a basis for deviation from the Guidelines.⁵ Research has shown that, in Maryland, deviations – particularly those based on the agreement of both parties –

¹ Ascend at the Aspen Institute & Good+Foundation, “Providing Equal Access to Justice: Child Support Policy Fact Sheet,” *Centering Child Well-Being in Child Support Policy*, 2023, available at https://ascend.aspeninstitute.org/wp-content/uploads/2023/11/6_ChildSupport_Justice_final-1.pdf.

² L.K. Vogel et al. “‘Let’s Bring It Into the 21st Century’: Perceptions of fairness in child support,” *Children and Youth Services Review*, 163 (2024).

³ *Supra* note 2.

⁴ Md. Family Law Code § 12-202.

⁵ Demyan, N. & Passarella, L.L. (2022). *Maryland Child Support Guidelines: 2015-2018 Case-Level Review*, available at <https://archive.hshsl.umaryland.edu/handle/10713/22422>.

are linked with *greater* compliance with child support orders, and this is especially true for low-income obligors such as the non-custodial parents Maryland Legal Aid represents.⁶

In Maryland Legal Aid's experience, parents often agree to downward deviations to accommodate the non-custodial parent's ability to pay. For example, in one case, a custodial parent agreed to an amount of child support below what the Guidelines prescribed because the non-custodial parent reported having difficulty finding full-time employment due to his criminal history. Rather than set child support at an amount she knew the non-custodial parent could not pay, the custodial parent preferred a lower child support order with which her non-custodial parent was more likely to comply. As SB 548 may lead to the establishment of child support orders with higher rates of compliance, we urge its passage.

C. To ensure that parents enter child support agreements knowingly and voluntarily, SB 548 should be amended to include procedural safeguards to protect parents from coercion and to ensure the child's best interests.

While Maryland Legal Aid supports the ability of parents to mutually decide upon the financial support arrangement that best serves their children, we recognize that in some co-parenting relationships, parents may have unequal bargaining power due to domestic violence, wealth, immigration status, or community reputation. For those reasons, it is imperative that the court ensure that child support agreements are reached through informed consent of parents, as opposed to intimidation.

Maryland should look to how California has dealt with this issue. Although California has codified the ability of parents to establish child support orders deviating from the child support guidelines by mutual consent, the state has also instituted various procedural safeguards to ensure that parents do not feel coerced into agreeing to child support arrangements that do not serve their children's best interests.⁷ Namely, under Cal. Fam. Code § 4065(a),

[T]he court shall not approve a stipulated agreement for child support below the guideline formula amount unless the parties declare all of the following:

- (1) They are fully informed of their rights concerning child support.
- (2) The order is being agreed to without coercion or duress.
- (3) The agreement is in the best interests of the children involved.
- (4) The needs of the children will be adequately met by the stipulated amount.

⁶ Demyan, N., & Passarella, L.L. (2018). *Do deviations from child support guidelines improve payment compliance?* University of Maryland School of Social Work, available at https://www.ssw.umaryland.edu/media/ssw/fwrtg/child-support-research/cs-guidelines/guidelines_deviations.pdf

⁷ See Cal. Fam. Code § 4065.

- (5) The right to support has not been assigned to the county pursuant to Section 11477 of the Welfare and Institutions Code and no public assistance application is pending.

By requiring the court to inquire into whether a child support agreement is entered into intelligently and voluntarily, California law both supports parents who are able to resolve the issue of child support on their own, while ensuring that the agreement adequately meets the needs of the children and is not the product of coercion. Moreover, Cal. Fam. Code § 4065(d) provides that

If the parties to a stipulated agreement stipulate to a child support order below the amount established by the statewide uniform guideline, no change of circumstances need be demonstrated to obtain a modification of the child support order to the applicable guideline level or above.

Thus, California further protects parents who agree to child support orders deviating from the guidelines by easing their ability to obtain child support modifications back up to the amount prescribed by the guidelines. If, for example, a custodial parent later regrets their decision to agree to a lower amount of child support, or if they were deceived into accepting a lesser amount of formal support in exchange for the other parent promising to provide additional informal support that never materializes, California law allows the custodial to change their mind and obtain a new child support order based on the calculation of the guidelines.

Maryland Legal Aid encourages the Committee to consider adding similar protections to SB 548, to strike a balance between protecting the ability of parents to jointly resolve their own family matters and simultaneously protecting parents who may be vulnerable to coercion. These amendments will create a singular process for all Maryland family law courts to follow when presented with co-parents who are in agreement as to the best way to protect their child's financial security. For the reasons stated above, we urge a favorable report on SB 548 with the amendments we suggested. If you have any questions, please contact me at: avora@mdlab.org.

SB 548 - MNADV - UNF.pdf

Uploaded by: Laure Ruth

Position: UNF



BILL NO: Senate Bill 548
TITLE: Family Law - Child Support Guidelines - Agreement Between Parents
COMMITTEE: Judicial Proceedings
HEARING DATE: February 18, 2026
POSITION: **OPPOSE**

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 Judiciary Committee to issue an unfavorable report on SB 548.**

Although the language of the bill is terribly convoluted, Senate Bill 548 would create a presumption that if two parents or parties agreed to deviate from the child support guidelines, it would be *presumed* to be in the best interests of the child or children. This is a dangerous proposition and could be very damaging for custodial parents and children. The bill arises from a case decided by Maryland's Supreme Court, Houser v. Houser, In re Marriage of Houser, 490 Md. 592 (2025) where the parties agreed that mother, primary custodian, would waive virtually everything financially. The trial court refused the parents' agreement and ordered father, who earned more than mother, to pay child support according to the guidelines. The court found that the parties did not articulate a reason it was in the best interests of the child to deviate to no child support being paid at all.

We have several concerns:

Coercion and Unequal Bargaining Power: In situations involving domestic violence, one parent may exert undue influence or pressure on the other to agree to a child support arrangement that is not fair or adequate. The bill's presumption in favor of mutual agreements could inadvertently legitimize agreements reached through coercion, leaving the victimized parent with insufficient support.

Inability to Rebut the Presumption: Although typically presumptions can be rebutted if a court determines that the agreement is not in the child's best interest, under SB 548 *there would not be a party to present evidence to rebut the presumption*. This would create a de facto exception in these cases to judicial review of the child support agreed upon. The Court itself cannot present evidence. Therefore, this bill would give this type of agreement (mutual consent to deviate from the Guidelines) more power than any other type of arrangement.

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Overlooking the Dynamics of Abuse: The bill does not account for the complexities of domestic violence situations, where the abusive partner may manipulate or control the victim's decisions. Without safeguards to protect victims, the legislation could perpetuate financial abuse and instability. Most often the victim is the economically inferior parent. She may be coerced into agreeing to terms that are not favorable to her or the child or children.

It will Increase Instances of Power and Control: Most importantly, the Network believes in and supports victim autonomy. However, our very strong fear is that if SB 548 passes, it will increase instances of power and control, threats, or other behaviors engaged in by abusers, or the economically superior parent even if there is no domestic violence, to force the other parent to give up what they are entitled to under our child support laws. In turn, this will harm the children.

SB 548 puts the wishes of the parent, or one parent, over the well-being of the child, and we suspect this may be part of a larger effort geared towards parents' rights. Maryland law should protect citizens from laws such as SB 548 and should make sure parents support their children economically when, and to the extent, they are able.

We understand from our colleagues at Maryland Legal Aid that California has a better version of this bill that allows for the ability to revert back to the guidelines without a showing of material change of circumstances.

For the above stated reasons, the **Maryland Network Against Domestic Violence strongly urges an unfavorable report on SB 548.**

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Uploaded by: Michelle Smith

Position: UNF

To: Members of The Senate Judicial Proceedings Committee

From: Family Law Section Council (FLSC)

Date: February 16, 2026

Subject: Senate Bill 548:
Family Law- Child Support Guidelines – Determination of Custody Agreements
Between Parents

Position: OPPOSED

The Maryland State Bar Association (MSBA) FLSC **opposes Senate Bill 548.**

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.

SB 548 attempts to override the decision of the Supreme Court of Maryland in the recently decided *In the Matter of the Marriage of Houser*, 490 Md. 592 (2025). The MSBA filed an *amicus curiae* brief in support of the ultimate decision in *Houser*, which was consistent with the understanding and experiences of family law practitioners throughout the State.

SB 548 would lead to an evisceration of the entire child support statute and decades of Maryland Law, as it would permit parents to agree to waive child support and ignore the statutory scheme and Maryland Child Support Guidelines. The underpinning of the entire child support statute is the accepted premise that Maryland Judges *must* utilize the Guidelines in an objective manner in order to protect the financial needs of the children in the child support and custody matters which come before them on a daily basis.



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SB 548 would not just throw the baby out with the bath water of that accepted premise, but is, frankly, a solution in search of a problem. It is critical to note that Md. Code Ann., Fam. Law § 12-204 already permits a court to deviate from the child support guidelines, including by agreement of the parties—it simply requires that the parties “show their work” to explain *why* that deviation should occur and, more importantly, how that deviation will serve the best interest of the child. As the MSBA wrote in its brief in *Houser*, this is not a particularly difficult burden to meet, yet provides our courts with a baseline assurance that any agreement between the parties is child-focused, rather than parent-focused.

The FLSC refers the Committee to the MSBA’s *amicus curiae* brief filed in the *Houser* case, a copy of which has been submitted for consideration alongside this written testimony.

For the reason(s) stated above, the MSBA FLSC **opposes Senate Bill 548 and urges a unfavorable committee report.**

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

Enclosure:

Brief of Amicus Curiae Maryland State Bar Association in *In the Matter of the Marriage of Houser*

IN THE SUPREME COURT OF MARYLAND

September Term, 2024

Case No. SCM-REG-0034-2024

IN THE MATTER OF THE MARRIAGE OF HOUSER

**Petition from the Appellate Court of Maryland,
Case No. ACM-REG-2220-2022**

**Appeal from the Circuit Court for Anne Arundel County
(Honorable Michael J. Wachs)**

**BRIEF OF AMICUS CURIAE
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INTERESTS OF AMICUS CURIAE AND STATEMENT OF THE CASE

Amicus curiae Maryland State Bar Association (“MSBA”) files this Brief in support of the reported opinion issued by the Appellate Court of Maryland in *Houser v. Houser*, ACM-REG-2220-2022, as well as the positions of fellow Amicus Curiae Attorney General of the State of Maryland. While their arguments differ to some extent, the Cross-Petitioners in this case, Erica Hall Houser (“Mother”) and Nicholas Houser (“Father”), both seek reversal of the decision of the Circuit Court for Anne Arundel County rejecting a child support agreement entered into as part of a global settlement agreement arising out of their divorce. This Brief represents the positions of the MSBA, the Family Law Section Council of the MSBA, the members of the Family Law Section of the MSBA, and other members of the MSBA that practice family law.¹

The MSBA (and specifically, its Family Law Section) represents the interests of over 1000 licensed family law attorneys practicing in the State of Maryland and routinely advocates in support of or against proposed legislation and rules that affect the practice of family law in this State. The arguments presented by the Cross-Petitioners are not only a foundational challenge to this State’s laws on child support,

¹ Undersigned counsel, Daniel V. Renart, Esquire, is the current chair of the Family Law Section Council of the MSBA, a former president of the Maryland Hispanic Bar Association, and a fellow in the American Academy of Matrimonial Lawyers. He and his law firm, Reinstein, Glackin, & Herriott, LLC, practice regularly in courts throughout Southern and Central Maryland, including in Anne Arundel County.

but the Cross-Petitioners purport to speak for the interests and experience of other practitioners in this State. It is of fundamental importance that the Court receive the input of family law practitioners of this State, so that it can appropriately weigh the impact of the decision now pending before it. The MSBA endorses the opinion of the Appellate Court of Maryland, which sets forth a thorough review of established Maryland law that is consistent with the understanding and experiences of family law practitioners throughout the State.

QUESTIONS PRESENTED

- 1) Did the trial court err when it issued a child support order after the parties had voluntarily withdrawn child support as a justiciable issue, and the court did so over the objections of the parents who the court found to be fit and proper?
- 2) Did the trial court mis-apply the statute, or abuse its discretion, when the court ordered child support and arrears over the express objection of the parents who the court found to be fit and proper?
- 3) Did the trial court violate the parents' constitutional rights when the court *sua sponte*, and without evidence, rejected their agreement regarding the financial support of their child when the parents were found to be fit and proper?
- 4) Does the Maryland child support statute permit parents to waive a party's child support obligation, as part of a global settlement agreement, where the parties have shared physical custody, and their combined adjusted gross income exceeds the highest level of income set forth in the Maryland Child Support Guidelines?
- 5) Does the ACM's decision have a chilling effect on parents' rights to enter into agreements that they believe to be in their children's best interest?

ARGUMENT

I. THE OPINION OF THE APPELLATE COURT SETS FORTH A RECITAL OF ESTABLISHED AND UNCONTROVERSIAL MARYLAND LAW, NOT AN UNWRITTEN “LOCAL RULE”

The Cross-Petitioners argue that the decision of the trial court in this matter is the result of an isolated and improper “local rule” followed by the Circuit Court for Anne Arundel County, and that—by adopting that supposed “rule”—the Appellate Court’s opinion will have a “chilling effect” on the rights of parents seeking to enter agreements they believe to be in their children’s best interests.

This opinion is not shared by the MSBA, whose members practice throughout the courts of this State (including in the Circuit Court for Anne Arundel County). Far from an endorsement of a “local rule,” the Appellate Court’s ruling is understood by the MSBA as little more than a quotidian restatement of firmly established Maryland law. It is well known to the members of the MSBA that trial courts possess the authority to override agreements that pertain the interests of parties’ minor children.

Furthermore, while courts may have the authority to override these agreements, they do so only sparingly. To the contrary, courts are often very willing to accept agreements that deviate from a strict application of the child support guidelines, so long as the parties present sufficient reasons justifying that deviation in accordance with Maryland statutory and case law. Ultimately, it is a relatively

simple task to establish meaningful deviations from a recommended child support guideline.

In fact, far from creating a “chilling effect” on the ability of parties to enter into negotiated agreements, as Cross-Petitioners claim, the knowledge that a trial court maintains an independent obligation to assess and set child support is a powerful tool in the daily practice of family law that assists in shaping expectations and brokering agreements both inside and outside of the courtroom. It forces parties to moderate their sometimes-extreme positions regarding child support, providing a springboard for negotiations and ensuring some degree of concessions from even the most recalcitrant parent (or, as may be the case, that parent’s recalcitrant attorney). Litigants are restricted from taking a hard-line approach on child support because of the knowledge that the trial court has an independent obligation to assess support regardless of what the parties say to the contrary.

Indeed, beyond a mere willingness to accept agreements, judges will often work with the parties and their counsel in order to facilitate those very same agreements. The trial judge in this case did exactly that—the record indicates that he initially tried to identify a factual basis that might help justify the significant deviation downward from a recommended child support guideline. That he was ultimately unable to do so speaks more to the extraordinary terms of the agreement

in this case, and is hardly proof of the existence of the sort of overreaching policy spoken of by the Cross-Petitioners.

II. THE CHILD SUPPORT AGREEMENT IN THIS CASE IS A MAJOR OUTLIER AND SHOULD NOT SERVE AS THE BASIS FOR THE TYPE OF MAJOR POLICY CHANGE REQUESTED BY THE CROSS-PETITIONERS

The MSBA also wishes to confirm what the Court has likely assumed: that the child support agreement in this case is a major outlier and is hardly representative of the types of negotiated child support agreements that litigants typically present for approval by the courts. As such, whatever weight this Court may give to the Cross-Petitioners' legal arguments, the actual facts of this case provide a questionable platform for the type of major policy shift that would result from a ruling in the Cross-Petitioners' favor.

Despite earning just 30% of the parties' combined monthly income, Mother not only waived her right to support (and support arrears of roughly \$41,000) but also assumed the costs for nearly every significant itemized expense for the child moving forward (daycare, extracurriculars, and extraordinary medical expenses up to \$6,000 per year). *See Houser*, 262 Md. App. at 483-84.² In addition to those day-

² Father, meanwhile, would only be obligated to maintain existing health insurance for the child (\$150 per month), in addition to incidental expenses while the child is in his care. *Id.* at 484. The MSBA will also note that while Father may technically have the child roughly 40% of the time, that does not equate to 40% of the overall childcare expenses. *See, e.g., Payne v. Payne*, 132 Md. App. 432, 444-45 (2000) ("Clearly, some periods of time in the life of a child are more costly for a parent than others. The reality is that all of a child's

to-day terms of the child support agreement, Mother also agreed to restrict her ability to modify the support agreement for “at least a period of twenty-four months,” and that attempting to do so would “immediately constitute a material change in circumstances” entitling either parent to seek a modification of their separate custody agreement. *Id.* at 483, 485.

The agreement itself suggests that there is additional consideration for this apparently one-sided deal beyond the terms set forth within the document itself, without actually disclosing what those terms were:

[The parties] recited that they had “reached this agreement in consideration for many factors and considerations, some of which would not be considered by a court of competent jurisdiction if this matter were to be decided by that Court.”

Id. at 486.³ When pressed by the trial judge, the parties declined to provide any meaningful basis for these significant deviations, which eventually led to the following exchange:

The court responded [to Mother’s counsel] that it had heard no reason “other than...this is what the parents would like to do.” Counsel for Mother replied, “That is exactly the argument.”

financial needs and expenses are not incurred in precise weekly increments, even though child support may be paid on that basis.”).

³ The Appellate Court noted that the support agreement “did not identify the ‘factors and considerations’ that a court would not consider or why a court would not consider them.” *Id.*

Id. at 487.

As mentioned, despite such unbalanced terms, the trial judge did not dismiss the proposed agreement out of hand, but instead undertook his own fact-finding to try and justify those terms consistent with the requirements of Maryland law. It was only after it became clear that no real justification existed that the trial judge exercised his independent authority to reject the agreement and establish a separate child support order determined to be in the best interest of the child.

The MSBA does not believe that such an extraordinary and unusual agreement warrants the sweeping shift in Maryland law that would occur in the event of a ruling for the Cross-Petitioners, whatever legal arguments they may offer in support. To the extent that Maryland wishes to adopt a policy that empowers parties to waive child support freely and without the intervention of the courts, it should be a decision made by the legislature after considering the full breadth of the alleged issue, not by this Court relying on the narrative presented in a single, isolated case.

III. THE FINDING OF “PARENTAL FITNESS” IS NOT SUFFICIENTLY SCRUTINIZED AT THE TRIAL LEVEL TO WARRANT THE IMPORTANCE BEING PLACED ON IT BY THE CROSS-PETITIONERS

The Cross-Petitioners’ constitutional arguments rest largely on the finding that both parties were “fit and proper” parents. While the MSBA recognizes that such a finding may hold significant import from a constitutional standpoint, at the trial level, it is a largely meaningless, *pro forma* determination made in nearly every

private custody case. Part of that is likely due to the serious ramifications that may result from a finding of unfitness—e.g., third-party visitation, removal proceedings under CINA, etc. In private custody and support disputes, however, it is common that a court will open its best interest analysis with a general finding of parental fitness, only to pillory and harangue one or sometimes even both parents on its way to a final custody determination. Anecdotally, members of the MSBA can recall cases where a finding of “fitness” is accompanied by findings of physical and emotional abuse for the same parent. While this is not to say that a finding of “fitness” has *no* value at the trial-level, the significant import that has been placed on this term in the context of high-level constitutional analysis does not carry over to its day-to-day application by courts of general jurisdiction.

In the context of a non-adversarial hearing, as occurred here, the value of a “parental fitness” finding is even lower. When presented with a custody/child support agreement, courts will engage in little more than a *pro forma* voir dire of the parties. The reason that a court is justified in relying on the bare representations of the settling parties is *because of* its independent ability and obligation to consider any agreements regarding custody and child support on behalf of the interests of the child. A court is not required to engage in exhaustive fact finding about the parties because it understands that any agreement regarding their minor children has been made in light of the knowledge that it will be subject to that court’s independent

review. Adopting the arguments of the Cross-Petitioners here would basically eliminate that safeguard, as courts would not be permitted to challenge or question the custody and support agreements of parents it has determined to be fit and proper, with the caveat that no evidence will be presented to undermine that determination.

At oral argument, the Appellate Court referred to a “collusive relationship” between the parties in bringing this appeal. Of course, these types of agreements are somewhat “collusive” by their nature, given the highly charged and emotional nature of family law. It should be no shock to this Court that many agreements arising in the realm of divorce, custody, and child support are entered into with significant reservation by one or both of the parties, who may stomach meaningful concerns about the other parent’s ability or willingness to adequately care for and/or support the minor child in order to get a deal done. Once an agreement is entered, however, both sides will have a vested interest in pushing it through the courts without issue or delay. While certainly imperfect, the independent authority vested in the Court allows it to exercise its own judgment to set aside an agreement that it determines to be against a child’s interest. As discussed above, while this authority is rarely applied, that is in part because the possibility of that outcome has already helped shape the agreements entered into by litigants.

Were this Court to accept the arguments presented by the Cross-Petitioners, it would not relieve the obligation of trial courts to place a critical eye on the

agreements placed before them. Rather, it would simply shift the analysis of the trial court from the propriety of the agreement itself to the character of the parties standing before it—i.e., whether they *are* in fact “fit and proper” to warrant the total deference of a court in regard to decisions about the care and support of a minor child. Courts are not well-equipped to engage in that sort of fact finding, without notice and when both parties have a vested interest in putting their best faces forward.

IV. THE ABOVE-GUIDELINES DISTINCTION RAISED BY FATHER IS IMMATERIAL TO THE PRINCIPLES AT ISSUE IN THIS CASE

Father presents a more limited argument than Mother, asserting that deference should have been given to the parties in this case because they were “above-guidelines,” i.e., their combined monthly income of the parents exceeds the statutory maximum for child support guidelines.⁴ The Appellate Court, relying on this Court’s opinion in *Voishan v. Palma*, 327 Md. 318 (1992), has explained that this is a “numerical” difference, not a “conceptual” one:

When the statute and the case law speak of the inapplicability of the Guidelines to cases involving monthly parental income of more than \$10,000, it is clear that they mean that the numerical component of the Guidelines does not apply. We underscore that, even in an

⁴ It should be reemphasized that the parties in this case were “above guidelines” only by a quirk of timing, since their case initiated before the maximum statutory guidelines amount increased from \$15,000 per month to \$30,000 per month in July 2022. Were the parties to return to court on a modification with the same income levels, they would be subject to a rote application of the Maryland Child Support Guidelines.

above Guidelines case, “[t]he conceptual underpinning” of the Guidelines applies. *Voishan*, 327 Md. at 322. As we said earlier, the Guidelines are founded on the premise “that a child should receive the same proportion of parental income, and thereby enjoy the standard of living, [that] he or she would have experienced had the child’s parents remained together.” *Id.* That rationale is no less applicable here, merely because this is an above Guidelines case.

Smith v. Freeman, 149 Md. App. 1, 19-20 (2002).

Moreover, it is not clear how the distinction sought by Father would square with principles of equal protection, as it would allow parties with greater combined resources to enter agreements that place them outside the scrutiny of the courts, while parents who fall within the statutory guidelines would be entitled to no such privilege.

V. THE COURT SHOULD CLARIFY WHETHER THE ISSUE OF CHILD SUPPORT CAN BE RAISED BY A TRIAL COURT *SUA SPONTE*, WHETHER OR NOT THE ISSUE HAS BEEN RAISED BY THE PARTIES

As a final note, the MSBA addresses its sole concern regarding the opinion of the Appellate Court. In a footnote, the Appellate Court discusses Father’s “characteriz[ation] [of] the effort to withdraw the request for child support as an oral amendment of the pleadings” made on the day of trial, based on his argument that “a court has no power to address issues not framed by the pleadings.” *See Houser, supra*, at 494 n.5. The Appellate Court rejected this argument on the basis that Father had failed to obtain leave of court for the purported amendment under Rule 2-341(b), even though it had occurred within 15 days of trial. *Id.* Further, in its conclusion, the

Appellate Court begins that “[t]he circuit court correctly considered child support in this matter, as the issue was appropriately presented for review to that court.” *Id.* at 503-504.

Perhaps unintentionally, this procedural response fails to answer an important question—would the trial court be precluded from addressing the child support issue if the amendment *had* been timely made outside of the 15-day window? In other words, do the courts of this state have the authority to assess child support even if the issue has not been raised by either of the parties? The MSBA has long understood that the answer to that question is “yes,” based on the existing case law regarding child support.

Given the uniquely broad framing of the issues in this case, the opinion of this Court—as well as the opinion of the Appellate Court—are likely to become the bellwether cases regarding the authority and obligation of a trial court to order child support. As with any decision, however, clever litigants (and their clever attorneys) will look for any gaps that allow them to evade its stated restrictions.

Ironically then, despite its forceful defense of the child support regime, the Appellate Court’s response in Footnote 5 of its opinion may be destined to create an exception where one did not previously exist. As written, the opinion appears to suggest that Father’s argument failed because of timeliness; the MSBA suggests that this Court may wish to clarify whether the argument would also fail simply because

Maryland courts possess the ability to raise the issue of child support on a *sua sponte* basis when custody is at issue, whether or not it has been raised by the parties.

CONCLUSION

For the reasons stated above, the Court should affirm the opinion of the Appellate Court of Maryland and the decision of the Circuit Court for Anne Arundel County.

Respectfully Submitted,

/s/ Daniel V. Renart

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CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

This brief contains 3,212 words, excluding the parts of the brief exempted from the word count by Rule 8-503. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Daniel V. Renart

Daniel V. Renart

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of February, 2025, this Brief was submitted through MDEC to the following, with paper copies to be delivered to the same on the disposition of the contemporaneously filed Motion for Permission to File Brief of Amicus Curiae Maryland State Bar Association:

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sb548.pdf

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Position: UNF

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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 548
Family Law – Child Support – Determination of Custody and
Agreements Between Parents
DATE: February 11, 2026
(2/18)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 548.

Proposed § 12-202(a)(1)(ii), would require courts to make a custody determination prior to the establishment of child support if requested by a parent or if there is no prior judicial determination of custody. There are many cases in which parties do not need a custody order but do need child support. A significant number of those cases are handled by the Child Support Administration, which is precluded by federal law from filing or representing parties in custody actions. This would leave parties to find their own counsel, or to represent themselves in the custody action, even when a custody order has not been sought.

The Judiciary supports legislation that empowers and encourages parties to reach their own agreements about the care and support of their children. It is, however, important for courts to ensure those agreements are not the product of coercion or prioritize the interests of parents over the rights and interests of their children. Under current law, courts *voir dire* the parties about their agreements and ensure the resulting child support order serves the best interests of each child. This allows courts to consider the unique

facts and circumstances of each family and each child, including what the parents believe is in their child’s best interest, when evaluating agreements.

Proposed § 12-202(a)(2)(iv) would establish a “conclusive presumption” that applying the child support guidelines to an agreement between the parents that departs from the guidelines would be “unjust or inappropriate” if the parents “mutually assert that the agreement is in the best interest of the child.” It is unclear to the Judiciary what a “conclusive presumption” is, but it appears to preclude the court's examination of an agreement between the parties. The Judiciary is concerned that this provision will remove the court’s ability to ensure agreements that deviate from the guidelines are entered into knowingly and voluntarily by parties and do not impede on their child’s right to support. This provision also creates a statutory conflict with § 12-202(a)(2)(i) (page 2, lines 5-7), which establishes a rebuttable presumption that the amount of child support which would result from the application of the child support guidelines is the correct amount of child support to be awarded.

The Judiciary suggests that a “rebuttable” rather than a “conclusive” presumption would encourage parents to enter agreements while not limiting the ability of the courts to review those agreements and enter child support orders that are tailored to the needs of each child.

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

SB0548_DHS_INFO.pdf

Uploaded by: Justin Hayes

Position: INFO



DEPARTMENT OF HUMAN SERVICES

Wes Moore, Governor · Aruna Miller, Lt. Governor · Rafael López, Secretary

February 18, 2026

The Honorable William C. Smith, Jr, Chair
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, Maryland 21401

RE: TESTIMONY ON SB0548 - FAMILY LAW - CHILD SUPPORT - DETERMINATION OF CUSTODY AND AGREEMENTS BETWEEN PARENTS - POSITION: INFORMATION

Dear Chair Smith and Members of the Judicial Proceedings Committee:

The Maryland Department of Human Services (DHS) thanks the Committee for its consideration and the opportunity to provide information on Senate Bill 548 (SB 548).

This bill would require courts to determine custody before awarding child support if (1) requested by the parent during a child support proceeding, and (2) there has been no prior judicial determination of custody. Additionally, the bill would create a “conclusive presumption” that applying the Maryland Child Support Guidelines (Guidelines) to an agreement between parents would be unjust or inappropriate in cases if the parents mutually assert that the agreement, rather than the Guidelines, is in the child’s best interest.

The premise of SB 548 contradicts the well-established legal principle that child support is a right held by a minor child, not the parent to whom the child support is paid, and therefore cannot be waived by the parents. The child’s right to child support was recently upheld by the Maryland Supreme Court 2025 decision in the *Matter of Marriage of Houser*, 490 Md. 592 (2025).

SB 548 would allow parents to agree to deviate from the Guidelines and establish a “conclusive presumption” that applying the Guidelines in these circumstances would be unjust or inappropriate. “Conclusive presumption” is a legal term that forces a court to accept a specific fact as true, allowing no contradictory evidence or argument to the contrary. SB 548 conflicts with federal law, which requires that states “establish guidelines for child support award amounts within the State” that are *rebuttably presumed* to result in the correct amount of child support. To rebut this presumption, there must be a written or specific finding on the record that the

application of the Guidelines would be unjust or inappropriate in a particular case.¹ SB 548 would put Maryland in direct conflict with this provision of federal law.

SB 548 could increase the potential for coercion between parents when entering into a parental agreement for support. Power imbalances between parents, including circumstances where one parent fears violence by the other, make it difficult to assess whether a parental agreement for support that deviates from the Guidelines was freely entered into. Federal materials state that nearly 40% of custodial parents experienced domestic violence with the other parent in their case.²

Additionally, SB 548 may increase family reliance on public assistance; shifting the burden of financially supporting a minor child from the parents to the state. If the parents agree to a support amount that is not sufficient to care for the child, the custodial parent may need to apply for Temporary Cash Assistance, Supplemental Nutrition Assistance Program benefits, or other types of assistance.

SB 548 would delay the establishment of child support if a parent asks for custody to be determined during a child support proceeding and there has been no prior judicial determination of custody. The average custody case typically takes between six months and one year to resolve. During this period, the child(ren) would be without the support of both of their parents, and a custodial parent may apply for public assistance. Once custody is determined and the child support order is established, Maryland law requires that the child support award is retroactive to the filing date. Currently, paying parents typically start their order with retroactive arrears of three to six months. SB 548 could lead to twice the amount of retroactive arrears for the parent paying support, if the case requires a custody determination.

We appreciate the opportunity to provide information to the Committee for consideration during your deliberations. If you require additional information, please contact Justin Hayes, Acting Director of Government Affairs, at justin.hayes1@maryland.gov.

In service,



Rafael López
Secretary

¹ 42 U.S.C. § 667(a); 45 CFR 302.56(g)

² Office of Child Support Enforcement, [Policies to Promote Safety and Economic Stability for Survivors of Domestic Violence in the Child Support Program](#) (Jan. 2025).