
To: Members of The House Judiciary Committee

From: Family Law Section Council (FLSC)

Date: January 27, 2026

Subject: House Bill 25:
Family Law – Grandparent Visitation

Position: **UNFAVORABLE**

The Maryland State Bar Association (MSBA) FLSC **opposes House Bill 25.**

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 law and, at the same time, tries to bring together the members of the MSBA who are concerned with family 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.

The issue of grandparent visitation is an important and highly emotional issue. There are many situations in which a grandparent is estranged from a grandchild by a parent and the result is that the child at issue suffers and court ordered grandparent visitation (or custody) could serve the child’s best interests. There are also situations in which a grandparent seeks court ordered visitation (or custody) in which the child at issue and/or the parent suffer harm. In recognition of the importance of this issue, the FLSC has convened an informal workgroup to consider this issue in previous years. When considering HB 25 the FLSC, reviewed, inter alia, the work done in the past workgroup.

The conclusions reached were:

1. It is difficult for any law providing for grandparent visitation to pass constitutional muster. The Supreme Court of the United States and the Supreme Court of Maryland have recognized that biological parents have a fundamental constitutional right to control the care and custody of their children. Because parents have this constitutional right to raise their children free from unwarranted interference by the State, there is a substantive presumption that it is in the best interest of children to remain in the custody and care of their parents. Before a Maryland Court can consider granting

access rights to a third party or grandparent, the Court must make a finding of either unfitness of the parents or find that exceptional circumstances exist. HB 25 may not fully comply with these constitutional standards.

2. In certain limited circumstances the best interests of a child require the granting of grandparent visitation. Current jurisprudence, including Family Law Section 9-102 as it is currently written (and interpreted by case law to require a threshold showing of parental unfitness or exceptional circumstances before applying the best interests standard) provides a means for grandparents to pursue visitation.

3. The issue of grandparent visitation cannot be separated from the more inclusive issue of 3rd party custody and visitation. For many children, the adult who serves in the role as “grandparent” or third-party caregiver is not a grandparent. The current laws in place allow for the consideration and granting of grandparent visitation by the Court, as well as the opportunity for De Facto parenthood, custody, or guardianship when appropriate. Therefore, the rights of a grandparent are not altered by the provisions of this bill. Case law is rapidly and regularly addressing this complex issue. Argument can be made to allow time for the case law to wrestle with the issue so that the law addresses the family structures and issues in a manner that is in line with the realities of our current society. HB 25 does not adequately address the complexities of this issue.

For the reason(s) stated above, the MSBA FLSC **opposes House Bill 25 and urges an UNFAVORABLE committee report.**

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