



## POSITION ON PROPOSED LEGISLATION

**BILL:**                    **HB0505 – Child Custody – Legal Decision Making and Parenting Time**

**POSITION:**            **SUPPORT WITH AMENDMENTS**

**DATE:**                 **February 16, 2021**

The Maryland Office of the Public Defender respectfully requests that with the amendment below, the Committee issue a favorable report on House Bill 0505.

This bill changes the terminology used to address legal custody and visitation to “legal decision making” and “Parenting time.” The proposed legislation requires the court to consider certain factors and articulate findings of fact, and empowers the court to award joint legal decision making power under certain circumstances. The Office of the Public Defender (OPD) has a stake in this proposed legislation because the OPD represents parents whose children have been or are about to be placed in the child welfare system, giving the court jurisdiction to make custody and visitation decision about them. The Office of the Public Defender **SUPPORTS** this bill with amendments as follows:

**Include language expressly excluding the application of this statute to Children In Need of Assistance (CINA) cases.**

- This bill addresses custody and visitation disputes between parents, not disputes where the State (the local department of social services) initiates the case and seeks to separate children from their parents for placement in the foster care system. Including language that states that the statute does not apply to CINA cases will avoid confusion and litigation over the statute.
- Senate Bill 57 and House Bill 748, which seek to modify and amend Family Law 9-101, specifically exclude CINA cases. Excluding CINA cases in HB0505 will make it consistent with the other subsections.
- The CINA statute already provides for the safety and welfare of children and prevents a court from giving legal decision making authority and parenting

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time to parents if doing so would be harmful for the children. CINA cases do not need to be included in this statute and should be resolved by applying Courts & Judicial Proceedings Title 3 Subtitle 8, the Children In Need of Assistance statute.

- In a CINA case, the court always has the authority to deny custody or visitation to the parents if the court finds that giving custody of the child back to the parents is “is contrary to the safety and welfare of the child.” (C&J § 3-815 (d)(1)).
- Additionally, the court is authorized to “Grant limited guardianship to the department or an individual or both for specific purposes including medical and educational purposes or for other appropriate services if a parent is unavailable, unwilling, or unable to consent to services that are in the best interest of the child...” C&J § 3-819 (c)(1)(ii).
- Furthermore, the court has the authority to “Determine custody, visitation, support, or paternity of a child in accordance with § 3-803(b) of this subtitle...” C&J § 3-819 (c)(2).
- The court in a CINA case may retain jurisdiction of a case until the child attains the age of 21 or the court terminates its jurisdiction. C&J § 3-804(b). However, the order issued by the court remains in effect and may only be revised or superseded by another court of competent jurisdiction. This means that when the CINA case is over, if there is a custody dispute between the parents, they may go to family court and this proposed legislation would apply to them.
- In either situation, whether a private custody dispute involving two parents or a CINA case involving the Department of Social Services and the parents, the children involved will have the protection of the law. There is less of a possibility of legal challenges to this proposed bill if the statutes are clear about which one applies to CINA cases and family law disputes.

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For these reasons, with the amendment, the Maryland Office of the Public Defender urges a favorable report on House Bill 0505.