
To: Members of The House Judiciary Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: January 27, 2022

Subject: **House Bill 104:**
Family Law – Child Custody and Visitation

Position: **SUPPORT WITH AMENDMENTS**

The Maryland State Bar Association (MSBA) FJLSC **SUPPORTS WITH AMENDMENTS**
House Bill 104 – Family Law- Child Custody and Visitation.

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC 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 1,200 attorney members.

The FJLSC acknowledges that the issue of abuse in custody and visitation matters is often not adequately addressed in litigation and supports efforts to improve the way in which the issue is handled by the Courts. The FJLSC supports HB 104 provided the following amendments are made to the bill:

1. The FJLSC believes that Lines 30 – 33 on page 2 should be deleted. The Section is concerned that this provision will regularly result in parents believing that “any reasonable effort to protect a child” can be determined by a litigant or someone other than a Judge or Magistrate. Such an outcome would result in the wrongful withholding of children from a parent and would, in too many families, disrupt the stability and predictability (and all of the benefits thereof) that the court ordered custody and parenting time order is designed to provide. The FSLC strongly advocates for the protection of children from abuse and believes that, in addition to section 9-105 as written, there are

already several avenues available for a concerned parent to protect a child from abuse. These include: (1) the Domestic Violence statutes; and (2) a Request For Emergency Hearing. As a result the potential benefits of this proposed modification are outweighed by the risks of its abuse.

2. The FJLSC believes it is critical to make clear that the findings required of the Judge in the proposed changes to Family Law Section 9-101 (i.e. that there is no likelihood of further child abuse or neglect) must be made by the Judiciary either orally from the bench or in a written opinion.
3. The FJLSC proposes that the bill be amended to allow more discretion to the Judiciary in cases where there are reasonable grounds to believe that abuse or neglect has occurred so that the Court is able to fashion a custody and visitation award which assures the best interests of the child(ren) at issue. A “one size fits all” approach to abuse is too limiting and will often result in an outcome that is contrary to the best interests of the child(ren) at issue. The FJLSC would support an amendment requiring the Judge to state how the custody and parenting time ordered assures the safety and well-being of the child(ren). As practicing family law attorneys we are often involved in complex matters where addressing the allegations of abuse requires an intricate solution unique to the case.

For the above reasons, the FJLSC urges a favorable with amendments (as stated above) report on HB 104.

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