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2016 Family Law Legislative Preview

By [Lindsay Parvis](#) | [January 12, 2016](#)

On January 13, 2016, the Maryland General Assembly begins its 2016 legislative session. Each session, the Family and Juvenile Law Section Council's ("FJLSC") Legislative Committee actively monitors all family law and related legislation, testifies in Annapolis, meets with legislators, and educates Section members. Here is a brief preview of some anticipated family law and related bills in the coming session:

Divorce

In the recent 2015 session, the Legislature enacted a new ground for divorce - Mutual Consent. At present, the Mutual Consent ground (Fam. Law Art., §7-103(8)) is limited to couples who do not have minor children in common. While there may not be an attempt in the 2016 session to expand this new ground to all couples, such an effort is anticipated to occur at some point in the not-too-distant future. Meanwhile, §7-103(8)(ii) (2)'s reference to §8-208 regarding use and possession is an artifact of the original draft of the bill (which did not exclude couples with minor children in common), which may result in a corrective bill in the upcoming session, or it may remain in the current version of the law until future attempts to expand the ground to include couples with minor children are undertaken.

In the meantime, the Mutual Consent ground has resulted in inconsistent procedures throughout Maryland regarding corroborating witnesses. Some jurisdictions require a third party corroborating witness, while others do not. This issue invites potential updates to two existing laws in the Family Law Article:

- 1) §7-101(b), which requires corroboration of grounds testimony; and,
- 2) §8-104, under which a separation agreement is corroboration of the ground of voluntary separation.

First, clarity is needed about whether third party corroboration is required for the Mutual Consent ground. It is also time to reexamine whether third party corroboration should be eliminated altogether. If so, this invites the question of whether the requirement of corroboration should be eliminated in all cases or just uncontested cases.

Second, with the elimination of "voluntary separation" in the 2011 session, §8-104 of the Family Law Article is no longer applicable. It is time either to eliminate it or update it to correspond to the new Mutual Consent ground.

Parenting and Custody Issues

As virtually all family law practitioners are aware, the Maryland Commission on Child Custody and Decision-Making recently drafted a model custody statute which was introduced in substantially similar form in the 2015 session. Proponents of this legislation could not successfully get the proposed legislation out of either House or Senate Committees. A version of the model custody statute - perhaps with some differences from last session's proposed legislation -- will be introduced again in the 2016 session.

Meanwhile, in the recent decision of *Conover v. Conover*, the Court of Special Appeals again restricted the concept of third party custody, and essentially invited the Legislature to take action if it desires some expansion of third-party *de facto* custody law. Consequently, we will likely see a standalone *de facto* custody and visitation bill introduced again in the upcoming session. Most recently, two such bills failed in the 2015 session. Efforts to reconcile these bills are underway so that a unified bill with unified support might be more successful in 2016. The current lack of a statutory framework to provide a predictable way for determining such third party rights, while giving due consideration to the constitutional rights of biological and adoptive parents, ignores the reality that many children are raised by people who are non-biological and nonadoptive caregivers.

In an unrelated area, because of the Attorney General's July 24, 2015 opinion that same-sex infidelity qualifies as adultery under that divorce ground, it is not anticipated that legislation will be introduced to further define "adultery" in the 2016 session.

Finally, legislation proposing a presumption for joint physical and joint legal custody will inevitably be reintroduced this session. The FJLSC continues to oppose such a presumption.

Child Support

The Multi-Family Adjustment bill has been filed many times since 2009. It is the product of the 2009 Child Support Guidelines Advisory Committee, which eventually led to the revision of the schedule of basic child support in the 2010 session. The purpose of the Multi-Family Adjustment is to address the problem under current child support law regarding how to calculate - consistently and predictably - child support for a payor parent when either parent has other dependent children, not the subject of a child support order, living in his/her home. Current law allows for a deviation in such situations. The lack of statutory standard or formula to calculate the deviation leads to inconsistent results, not only from one jurisdiction to the next but among judges within the same jurisdiction.

Status Quo Injunction

In 2014 and 2015, a workgroup of the FJLSC's Legislative Committee studied status quo injunctions of other states and developed proposed legislation for the 2016 session (provided a sponsor for such legislation steps forward). As drafted, the status quo injunction would take effect for the petitioner upon filing suit, and for the respondent upon service; would restrict the unilateral relocation of children and withdrawal of children from existing schools and childcare; and, would (broadly speaking) restrict parties from unilaterally pillaging assets, incurring joint debts, and cutting off all support and/or utilities and mortgage/rent. It will be interesting to see how this evolves.

Please look for legislative updates, debriefs, and post-session summaries from us during and after the 2016 session concludes. If you are a Section member and wish to volunteer for the Legislative Committee, please contact its Co-Chairs, **Lindsay Parvis** and **Deena Hausner**.

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