TERRI L. HILL, M.D.
Legislative District 12
Baltimore and Howard Counties

Health and Government Operations Committee

Subcommittees

Estates and Trusts

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THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Annapolis Office
The Maryland House of Delegates
6 Bladen Street, Room 215
Annapolis, Maryland 21401
410-841-3378 · 301-858-3378
800-492-7122 *Ext.* 3378
Fax 410-841-3197 · 301-858-3197
Terri.Hill@house.state.md.us

District Office
410-884-4380
Fax 410-884-5481

August 25, 2017

The Honorable Brian E. Frosh
Attorney General
200 St. Paul Place
Baltimore, MD 21202

Re: HB 0955

Dear Attorney General Frosh,

I am writing to request an updated opinion on HB955, a bill to give the equity courts authority to extend child support to age 23 for post-secondary education which I introduced in the 2017 legislative session and has been introduced in various forms during many legislative session in the past 20 years.

In this last session, as part of their testimony against the bill, the Maryland Judicial Conference (who I consulted as the legislation was drafted in an effort to be sure that any concerns unappreciated by me could be addressed) stated that "this legislation results in disproportionate treatment of children similarly situated as it provides for child support for children up to age 23, but only if they are pursuing post-secondary (college/trade school) education" and as it applies only to children, over the age of 18, of divorce it promotes inequity among children who are similarly situated".

Their concerns directly undermine the legislative intent, as the legislation was specifically designed to address the needs of a particular group– i.e. children who a court of jurisdiction has deemed entitled to financial support from the non-custodial parent, in cases of divorce, while receiving secondary education until age 18 or 19 and who require similar support during initial pursuit of post-secondary education to age 23. I believe that the same reasons which justify past societal determination that both parents bear some financial responsibility until their child reaches an age where self-support is a reasonable expectation, justify moving that age from 18 to 23, as the education requirements for such point of self-sufficiency have changed from that of a generation ago.

Upon request, Kathryn Rowe from the Attorney General's office sent a letter of advisement essentially in support of this opinion (See Office of Counsel to the General Assembly), a copy of which is attached.

An updated opinion from your office would be of great help as we seek to introduce this legislation in the 2018 legislative session.

Sincerely,

Terri L. Hill, M.D.

Attachments
Office of Counsel to the General Assembly Letter to Hon. Paul Carlson (2/10/2000)
Office of Counsel to the General Assembly Letter to Hon. Brian Frosh (1/31/2001)
Office of Counsel to the General Assembly Letter to Hon. Kathleen Dumais (3/22/2004)
Maryland Judicial Conference Memorandum to House Judiciary Committee (2/22/2017)
Office of Counsel to the General Assembly Letter to Hon. Terri L. Hill (3/6/2017)

BRIAN E. FROSH
ATTORNEY GENERAL

ELIZABETH F. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI
DEPUTY ATTORNEY GENERAL

SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER
ASSISTANT ATTORNEY GENERAL

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

March 6, 2017

The Honorable Terri L. Hill
215 House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Hill:

You have asked for advice concerning House Bill 955, "Family Law - Age of Majority - Jurisdiction of Court." Specifically, you have asked whether the bill would violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by treating adult children differently depending on whether their parents' marriage was intact, or by treating adult children in higher education differently than adult children who are not in college. It is my view that the bill does not violate the equal protections of the federal constitution.

General Provisions Article ("GP"), § 1-401(a)(1) provides that the age of majority is 18 years. It further provides that except as otherwise provided by statute an individual who is at least 18 years old is an adult "for all purposes and has the same legal capacity, rights, powers, privileges, duties, liabilities, and responsibilities that an individual at least 21 years old had before July 1, 1973." GP § 1-401(a)(2). Current law provides an exception to this rule for an individual who has attained the age of 18 years and is enrolled in secondary school, who has the right to receive support and maintenance from both parents until the individual dies, marries, is emancipated, graduates from or is no longer enrolled in secondary school, or attains the age of 19 years. GP § 1-401(b).

House Bill 955 would repeal GP § 1-401(b) and add new provisions to Family Law Article, § 1-201 that would require an equity court to retain jurisdiction over a support order to order support for a child who has attained the age of 18 years and who is enrolled in secondary school. As is the case under current law, the support would terminate when the child dies, is married, is emancipated, graduates from or is no longer enrolled in secondary school, or attains the age of 19 years.[1] The bill also requires that an equity court retain jurisdiction over a support order for purposes of ordering support for a child who has attained the age of 18 years and is enrolled for at least 12 credit hours per semester or the equivalent of 12 hours of credit at an institution of postsecondary education. The

[1] Current law and the version in the bill differ in that current law applies to all individuals who attain the age of 18 and are still in secondary school, while the bill would apply only where there is a custody or support case in existence over which the equity court can "retain jurisdiction" -- typically as a result of divorce or a paternity adjudication.

support is to continue to the age of 23 unless the child dies, gets married, is emancipated, or leaves school. The factors to be considered when deciding whether to award support for an individual pursuing postsecondary education are set out in the bill.

The claim that statutes like House Bill 955 violate equal protection by treating children of intact families differently than children from other families has been almost universally rejected. In an early case, *In re Marriage of Vrban*, 293 N.W.2d 198, 201-202 (Iowa 1980), the Court said:

> The respondent argues that divorced parents are arbitrarily ordered to support their adult children in order to accomplish this state purpose of education while no similar requirement is imposed upon married parents. However, this does not necessarily make the classification arbitrary or unreasonable. The statute was designed to meet a specific and limited problem, one which the legislature could reasonably find exists only when a home is split by divorce. The legislature could find, too, that most parents who remain married to each other support their children through college years. . . On the other hand, even well-intentioned parents, when deprived of the custody of their children, sometimes react by refusing to support them as they would if the family unit had been preserved. The legislature could consider these facts and decide there is no necessity to statutorily require married parents to support their children while attending college but that such a requirement is necessary to further the state interest in the education of children of divorced parents. The differences in the circumstances between married and divorced parents establishes the necessity to discriminate between the classes. The statute is neither arbitrary nor unreasonable.

Other courts have agreed. *McLeod v. Starnes*, 723 S.E.2d 198, 201, 206 (S.C. 2012), overruling *Webb v. Sowell*, 692 S.E.2d 543 (S.C. 2010); *In re Marriage of Grittman*, 730 N.W.2d 209 (Iowa 2007) (Table); *Johnson v. Louis*, 654 N.W.2d 886, 891 (Iowa 2002); *In re Marriage of McGinley*, 19 P.3d 954, 962 (Or. App. 2001); *Marriage of Kohring*, 999 S.W.2d 228, 233 (Mo. 1999); *McFarland v. McFarland,* 885 S.W. 2d 897, 899 (Ark. 1994); *LeClair v. LeClair*, 624 A.2d 1350, 1356-1357 (N.H. 1993); *Birchfield v. Birchfield*, 417 N.W. 2d 891, 894 (S.D. 1988); *Childers v. Childers*, 575 P.2d 201, 207 (Wash. 1978), *but see Curtis v. Kline*, 666 A.2d 265 (Pa. 1995).

All of the above cases involved the argument that the law treated children of intact marriages differently than others. I have found no cases challenging such a law on the ground that it favored children pursuing higher education over those who were working or hanging out in their mother's basement playing video games. It seems clear, however, that the State has a strong interest in encouraging young people to pursue higher education that supports this differential.

In light of the clear weight of authority, it is my view that the bill would not violate equal protection requirements.

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
hill06.wpd

MARYLAND JUDICIAL CONFERENCE
OFFICE OF GOVERNMENT RELATIONS

Hon. Mary Ellen Barbera
Chief Judge

580 Taylor Avenue
Annapolis, MD 21401

MEMORANDUM

TO:	House Judiciary Committee
FROM:	Legislative Committee Suzanne D. Pelz, Esq. 410-260-1523
RE:	House Bill 955 Family Law – Age of Majority – Jurisdiction of Court
DATE:	February 22, 2017 (3/2)
POSITION:	Oppose

The Maryland Judiciary opposes House Bill 955. This bill provides that an equity court retain jurisdiction in certain circumstances.

This legislation results in the disproportionate treatment of children similarly situated as it provides for child support for children up to age 23, but only if they are pursuing post-secondary (college/trade school) education. It also seems to apply only to children over the age of 18 whose parents live apart, thus promoting inequity among children similarly situated. The Judiciary is concerned that this bill advocates an inconsistent standard for the issuance of child support orders.

cc. Hon. Terri Hill
Judicial Council
Legislative Committee
Kelley O'Connor

J. Joseph Curran, Jr.
Attorney General

Carmen M. Shepard
Donna Hill Staton
Deputy Attorneys General

Robert A. Zarnoch
Assistant Attorney General
Counsel to the General Assembly

Richard E. Israel
Kathryn M. Rowe
Sandra J. Cohen
Assistant Attorneys General

The Attorney General of Maryland
Office of Counsel to the General Assembly

February 10, 2000

The Honorable Paul Carlson
225 Lowe House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Carlson:

You have requested advice on the interpretation and constitutionality of HB 312, which would allow a child support order to continue in effect temporarily for a child who has attained the age of majority and who is enrolled in secondary school.[1] Specifically, you have asked:

1. Does requiring a noncustodial parent to pay child support under the provisions of HB 312 after the child has reached the age of majority violate the equal protection guarantee of the United States or Maryland Constitutions by not requiring parents who are separated or divorced to support a similarly situated child in the same manner?

2. Under §5-203(b) of the Family Law Article, parents of a minor child are jointly and severally responsible for the child's support, care, nurture, welfare and education. Under §13-102 of the Family Law Article, a parent is required to support a destitute child (due to physical or mental infirmity). Is it adequate to say child support orders shall continue for a child over the age of majority under certain circumstances without adding language to §5-203 establishing the joint and several responsibility of a parent to support a child over the age of majority under the circumstances provided in HB 312?

For reasons detailed below, it is my view that HB 312 is constitutional and does not violate equal protection of the law and that an amendment to §5-203 would not be necessary to establish the joint and several liability of a parent to temporarily support a child over the age of

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[1] The support order would terminate on the occurrence of the first of the following events:

(1) The child graduates from or is no longer enrolled in secondary school; or
(2) The child attains the age of 19 years.

majority as provided in the proposed legislation.

Constitutionality

The equal protection issue you have raised has been litigated in a number of jurisdictions with statutes which allow child support orders to continue temporarily for adult children still in school and those courts have rejected the constitutional challenge.

In re Marriage of Vrban, 293 N.W. 2d 198 (Iowa 1980), the Supreme Court of Iowa upheld a state law allowing a court to order a divorced parent to pay support for an adult child in college. In upholding the statute, the Court said that:

> "The respondent argues that divorced parents are arbitrarily ordered to support their adult children in order to accomplish this state purpose [education] while no similar requirement is imposed upon married parents. However, this does not necessarily make the classification arbitrary or unreasonable. The statute was designed to meet a specific and limited problem, one which the legislature could reasonably find exists only when a home is split by divorce. The legislature could find, too, that most parents who remain married to each other support their children through college years... On the other hand, even well-intentioned parents, when deprived of the custody of their children, sometimes react by refusing to support them as they would if the family unit had been preserved. The legislature could consider these facts and decide there is no necessity to statutorily require married parents to support their children while attending college but that such a requirement is necessary to further the state interest in the education of children of divorced parents. The differences in the circumstances between married and divorced parents establishes the necessity to discriminate between the classes. The statute is neither arbitrary nor unreasonable. 293 N.W. 2d at 201-02.

A South Dakota appellate court reached the same conclusion about a law continuing child support until a child is 19 if he or she is a full-time student in a secondary school:

> "Father claims the classification was arbitrary, asserting that a qualified nineteen-year-old is arbitrarily entitled to child support while a similarly situated twenty-year-old, still in high school, is not entitled to support under *SDCL 25-5-18.1*. We disagree. The legislature simply chose to extend the minimum duty of support from the age of eighteen to nineteen. The legislature could reasonably conclude that once a person attains

> nineteen, whether they are in high school or not, they are old enough to be self-sustaining."

Birchfield v. Birchfield, 417 N.W. 2d 891, 894 (S.D. 1988). Finally, in *McFarland v. McFarland*, 885 S.W. 2d 897 (Ark. 1994), Arkansas's highest court rejected a noncustodial parent's equal protection challenge to a statute permitting a court to require child support past the age of majority when the child remained in high school, noting that the state's interest in the education of its citizens justified minimal interference with a purported parental right to stop supporting a child and that the statute's distinction between divorced and married parents was rational.

On the basis of these authorities, I believe HB 312 would not deny equal protection to a noncustodial parent or invidiously discriminate in favor of married parents.

Joint and Several Liability

Turning to your second question, I believe HB 312 need not expressly amend §5-203(b) of the Family Law Article to impose joint and several child support liability on both parents during the extended period provided in the legislation. Section 5-203(b) is merely reflective of the common law obligation of parents to support their children. *See Middleton v. Middleton*, 329 Md. 627, 633 (1993). In *Carroll County v. Edelmann*, 320 Md. 150, 170 (1990), the Court of Appeals described the source of the child support obligation in the following terms:

> "Parenthood is both a biological and a legal status. By nature and by law, it confers rights and imposes duties. One of the most basic of these is the obligation of the parent to support the child *until the law determines that he is able to care for himself.*" (emphasis added)

See also Rand v. Rand, 280 Md. 508, 517 (1977)("[P]arents must share the responsibility for parental support in accordance with their respective financial resources."); and Family Law Article, §12-204(a)("The basic child support obligation shall be divided between the parents in proportion to their adjusted actual incomes.")

The legal effect of HB 312 is simply to temporarily extend the child support obligation under limited circumstances, *i.e.*, "until the law determines that he is able to care for himself," *Carroll County v. Edelmann*, 320 Md. at 170. For that temporary period, the parental obligation -- the joint and several liability -- reflected in both common law and statute would in my view, remain unchanged.[2]

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[2] The application of HB 312 is also tied to a child support order, which typically binds both parents.

I hope this is responsive to your question.

Sincerely,

Robert A. Zarnoch

Robert A. Zarnoch
Assistant Attorney General
Counsel to the General Assembly

RAZ:ads

J. Joseph Curran, Jr.
Attorney General

Carmen M. Shepard
Donna Hill Staton
Deputy Attorneys General

Robert A. Zarnoch
Assistant Attorney General
Counsel to the General Assembly

Richard E. Israel
Kathryn M. Rowe
Sandra J. Cohen
Assistant Attorneys General

The Attorney General of Maryland
Office of Counsel to the General Assembly

January 31, 2001

The Honorable Brian E. Frosh
202 James Senate Office Building
Annapolis, Maryland 21401-1991

Dear Senator Frosh:

This is in response to your request for advice of counsel on whether State law extinguishes a parent's child support obligation when a child reaches the age of 18. Subject to certain qualifications, the general rule in Maryland is that a parent is not legally obliged to support a child who has turned 18 years old.

State law provides that the parents of a minor child are "jointly and severally responsible for the child's support." Md. Code, Family Law Article, Sec. 5-203(b)(1). A "minor" is a person who has not attained the age of 18 years. Md. Code, Art. 1, Sec.24. Thus, as a general rule, it can be said that State law extinguishes the parental support obligation at age 18. However, this rule is subject to qualification.

Where an adult child is distitute and disabled and a parent is financially able, the parent has a duty "to provide the destitute adult child with food, shelter, care and clothing." Family Law Article, Secs. 13-101(b) and 13-102(b). Moreover, parents may contractually agree to support a child who reaches the age of 18 years. If the parents consent to have such an agreement incorporated or merged into a divorce decree, a court will enforce the obligation. However, in the absence of such an agreement, a court cannot order a parent to support a healthy child who has attained his or her majority. *Corry v. O'Neill*, 105 Md. App. 112, 118 (1995).

Although the Maryland Uniform Interstate Family Support Act recognizes that a child support order may concern a child who has reached majority status, Family Law Article, Sec. 10-301(b), (c) and (v), this is essentially a reciprocal enforcement law which simply recognizes that other jurisdictions may allow support orders concerning adult children. The substantive Maryland statute which governs child support orders does not address the issue of the age of the children who are the subjects of such orders. Secs. 12-101through 12-204. In the absence of a statutory authorization or agreement by the parents , a court, as noted in the *Corry* case, 105 Md. A. at 118, cannot order a parent to support a healthly adult child.

In conclusion, the general rule in Maryland is that there is no parental obligation to support a child who has reached the age of 18 years.

Very truly yours,

Richard E. Israel

Richard E. Israel
Assistant Attorney General

REI:ss
cc: Joseph B. Spillman

Child Support

J. Joseph Curran, Jr.
Attorney General

Donna Hill Staton
Deputy Attorney General

Robert A. Zarnoch
Assistant Attorney General
Counsel to the General Assembly

Bonnie A. Kirkland
Kathryn M. Rowe
Sandra J. Cohen
Assistant Attorneys General

The Attorney General of Maryland

Office of Counsel to the General Assembly

March 22, 2004

The Honorable Kathleen M. Dumais
226 Lowe House Office Building
Annapolis, Maryland 21401-1991

Dear Delegate Dumais:

You have asked for advice about House Bill 1059, "Family Law - Child Support - Age of Majority - Postsecondary Education." Specifically, you have asked whether the law can require that parents support children who have reached the age of majority. You have also asked whether Article 1 of the Code is the appropriate place for this provision. It is my view that the law may require parents to support their children beyond the age of majority. It is also my view that so long as the bill imposes a duty on all parents, Article 1 is the correct location. However, it is also my view that the bill could be drafted to permit a court to order the support of children who have reached the age of majority until they finish college as part of a support order. If the bill were modified in that way, it should be drafted to the portions of the law that relate to the authority of the court to order the payment of child support.

Article 1, § 24, Annotated Code of Maryland, was enacted in 1973 to reflect the change in the age of majority from 21, which is the common law, to 18. 59 *Opinions of the Attorney General* 16 (1974). Since 2002 it has also provided that a person who has attained the age of 18 years and is enrolled in secondary school has the right to receive support and maintenance from both of the person's parents until the person dies, is married, is emancipated, graduates from or leaves secondary school, or attains the age of 19 years. House Bill 1059 would amend this provision to extend the right to support and maintenance to a person over the age of 18 who is enrolled full time in an institution of postsecondary education and to extend the cut off age for this right to 23 years. An uncodified section provides that when enacted, the bill is a material change in circumstances for purposes of modifying a child support order issued prior to the effective date of the bill.

In addition to the provisions of Article 1, § 24 with respect to 18 year olds who are still in secondary school,[1] current law provides that where an adult child is destitute and disabled and a parent is financially able, the parent has a duty to provide the destitute adult child with food, shelter, care and clothing. Family Law Article §§ 13-102(b) and 13-103(c). Moreover, parents may

[1] This extension is not uncommon, the Fiscal Note to Senate Bill 657 of 2002 reflects that 33 states allow continuation of child support past the age of 18 if the child is a high school student.

contractually agree to support a child who reaches the age of 18 years. If the parents consent to have such an agreement incorporated or merged into a divorce decree, a court will enforce the obligation. *Kirby v. Kirby*, 129 Md.App. 212, 215 (1999). In the absence of statutory authorization, or an agreement, a court cannot order a parent to support a healthy child who has attained his or her majority." *Corry v. O'Neill*, 105 Md.App. 112, 118 (1995). However, I have found no case that would indicate that a statute permitting such an order would be unconstitutional, and laws requiring parents to support children until they finish high school have been upheld. *McFarland v. McFarland*, 885 S.W.2d 897 (Ark. 1994); *Birchfield v Birchfield*, 417 N.W.2d 891 (S.D. 1988).

As discussed above, House Bill 1059 is currently drafted to Article 1, § 24. If the desire is to create an across the board obligation on the part of all parents whose children go to college, this would appear to be the correct placement. If, however, it is desired to simply authorize such a requirement when child support is ordered, it would probably be better to place it in the sections of law relating to such orders.

I understand that there is some question whether it would be constitutional to permit such orders only in the case of divorced non-custodial parents (or divorced and never-married non-custodial parents). This concern has been raised in light of the holding in the case of *Curtis v. Kline*, 666 A.2d 265 (Pa. 1995), where the court held that a law permitting a court to order either or both parents who are "separated, divorced, unmarried or otherwise subject to an existing support obligation to provide equitably for educational costs of there child whether an application for this support is made before or after the child has reached 18 years of age," violated the Equal Protection Clause. Specifically, the court concluded that there was no rational basis for the classification of young adults according to the marital status of their parents.

Every other court to consider the constitutionality of a similar law has concluded that they do not violate Equal Protection requirements. *In re Marriage of McGinley*, 19 P.3d 954 (Or.App. 2001) involved a challenge to a law that provided that, in cases of dissolution or separation the court could enter an order against either parent, or both of them, to provide for the support or maintenance of a child attending school up until the time the child attained the age of 21. The law was challenged as violating Equal Protection. The court found that classifications based on marriage or divorce were not suspect, and that the law did not interfere with a fundamental right, and thus, like the Pennsylvania Court, applied rational basis review, meaning that the law must be rationally related to a legitimate state purpose. The Court found that the state's interest in having a well-educated populace was a legitimate interest, and that, in light of the well documented disadvantages suffered by children of divorced parents, it was not irrational to attempt to ameliorate that disadvantage. It further stated that the legislature "reasonably could believe that divorced parents are likely to have greater difficulty than are married parents in making joint decisions about financial support for their 18-to 21-year old children. As a consequence, there is a greater likelihood that children of divorced parents will receive less support for post-secondary education than will children of married parents." *Id.* at 962.

In re Marriage of Kohring, 999 S.W.2d 228 (Mo.1999) involved a law that provided that a support obligation under a support order would continue until the child was 22 if the child enrolled in an institution of higher education, continued to attend, and met certain other requirements. This law also was challenged as violative of the Equal Protection Clause. The court found that unmarried, divorced and legally separated parents were not a suspect class, and also rejected the claim that the law burdened the class of illegitimate children and children from broken homes by alienating them from the parent required to pay support. The Court also found that the right to decide whether to lend financial support to adult children is not a fundamental one. The court concluded that the state has a legitimate interest in securing higher education opportunities for children from broken homes, noting that the "children of an existing marriage derive many benefits that children of a dissolved marriage are deprived of sharing."

Other courts have reached similar conclusions. *LeClair v. LeClair*, 624 A.2d 1350 (N.H. 1993); *In re Marriage of Vrban*, 293 N.W.2d 198 (Iowa 1980); *Childers v. Childers*, 575 P.2d 201 (Wash. 1978). *See also, Johnson v. Louis*, 654 N.W.2d 886 (Iowa 2002) (Application to children of divorced but not unmarried parents does not violate equal protection); *See also Curtis v. Kline*, 666 A.2d 265, 272 (Pa. 1995) (dissent).

Given the overwhelming weight of authority in favor of the constitutionality of such measures, it is my view that the bill could authorize a court to order support for a child in college without violation of the Equal Protection Clause.

Sincerely,

Kathryn M. Rowe
Assistant Attorney General

KMR/kmr
dumais03.wpd