

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 41
Family Law – Child Custody and Visitation
DATE: January 12, 2022
(1/26)
POSITION: Oppose as drafted

The Maryland Judiciary opposes Senate Bill 41 as drafted. This bill is based on recommendations contained in the [final report](#) of the *Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations* (the workgroup).

The proposed amendment to Family Law § 9-105 asks whether a party has interfered unjustifiably with custody or visitation. If so, the court can take steps; if not (*i.e.*, if the interference was justifiable) it cannot. “Unjustifiable” is a high standard that is measured objectively. The proposed amendment would give a party the right to interfere “reasonably” with custody or visitation, which seems not only to lower the standard of proof, but also would require the court to decide whether the interferer thought subjectively that the interference was reasonable rather than whether it was objectively justifiable.

This amendment opens the door to a lot of unnecessary litigation and disruption to children in custody cases. A parent who has decided for him- or herself that the other parent is a danger to the child would have a means to violate the order with impunity. These orders will be challenged again and again and there will be hearings each time on whether the parent is being reasonable in not abiding by the order so as to protect the child (or him- or herself). Contested custody matters are acrimonious and long-lasting by nature; the subject of the dispute (the children) and the reason for the dispute (the parents’ adverse relationship) exist independently of the court’s decision. It is for this reason that the law requires an objective analysis of the dispute. Re-orienting the analysis around the subjective views of the interferer would make it substantially more difficult for the courts to define enforceable parameters for the parties’ ongoing relationships and conduct, and thus to bring peace and closure to difficult and potentially volatile situations.

Further, § 9-105 is not limited to situations where there's been a finding of abuse or neglect. An unintended consequence of the proposed language that it could turn every "reasonable" decision in a custody or visitation case into litigation over interference—was it "reasonable" for a parent to come pick up a child early on a Sunday so she could do homework? Was it reasonable for a parent to want to fly out Friday night rather than Saturday morning with the kids because the airfare was cheaper? Dropping down from "unjustified" to "reasonable" creates potential litigation on a whole host of fronts not currently at issue under that statute.

The Judiciary, having tracked the efforts of the workgroup, appreciates what the sponsor is attempting to do in § 9-105 but believes this bill as drafted is unworkable.

cc. Hon. Susan Lee
Judicial Council
Legislative Committee
Kelley O'Connor