

SUSAN C. LEE  
Legislative District 16  
Montgomery County

MAJORITY WHIP

Judicial Proceedings Committee

Joint Committee on  
Cybersecurity, Information Technology,  
and Biotechnology

*Chair*

Maryland Legislative Asian American  
and Pacific Islander Caucus

*President Emeritus*

Women Legislators of the  
Maryland General Assembly, Inc.



James Senate Office Building  
11 Bladen Street, Room 223  
Annapolis, Maryland 21401  
410-841-3124 · 301-858-3124  
800-492-7122 Ext. 3124  
Susan.Lee@senate.state.md.us

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

January 26, 2022

## Sponsor Testimony - FAVORABLE - SB 41 - Family Law – Child Custody and Visitation

Senate Bill 41 is the exact same language as SB57/HB748 third reader from 2021. Both bills passed their respective chamber but didn't go on to pass both chambers as one individual vehicle. This bill was tailored down from last year's first reader to include only two important provisions to protect children in custody disputes and is a result of the [Workgroup to Study Child Custody Court Proceedings Involving Child Abuse or Domestic Violence Allegations](#).

There likely will be many comments from practicing lawyers and judges about this legislation that may not have been provided last session, but please consider the statements of the protective parents first. And please don't confuse any concerns about one provision, with unanimity of support that courts should articulate their findings of fact on the record and explain their considerations of the custody factor of abuse that is codified under Family Law Article 9-101. We also avoided any confusion with CINA cases that rely on 9-101 through case law for their standards. This is now a very simple bill with one outstanding question to consider.

Is it justifiable to protect a child from abuse, even if the language of a court order would force you to subject a child to reasonably foreseeable and imminent abuse? From the non-lawyer view, do pro se litigants know what a justifiable interference is when it comes to the protection of their child? If not, who if not the legislature should spell this out for them, so they can determine their own legal rights? Should those legal rights only exist after the abuse has occurred?

We have language from the Administrative Office of the Courts for a potential amendment – and I will include that here for discussion purposes, however, the fact that it was proposed illustrates the concern that there is not enough guidance here, especially for pro se litigants. If the language is circular, does that hurt the process, or provide a clear path to protect a child and not subject yourself to a criminal or CINA failure to protect? The Office of Public Defender brought up this catch-22 during our workgroup, and that issue should not be ignored because hypotheticals can poke holes around the edges. Our policy should allow protective parents to

follow the law and not just guess if their actions are indeed justifiable when the safety of the child is at substantial risk.

There is a concern that the status quo has holes the plain reading of the statute, in which judges can make mistakes, and also lead parents to believe they have to return their child to an abuser, even if they will re-abuse. For these reasons, I respectfully request a favorable report on SB41, amended if needed.

*\*This language below is for discussion purposes only, as it was provided just last week. If nothing else, it highlights the argument that the “unjustifiably denied or interfered” standard is not clear enough to protect children from objectively impending harm.*

--

AOC's suggested amendment -

*On page 3, strike lines 24 through 27 and substitute:*

**(B) IN DETERMINING WHETHER OR NOT A PARTY UNJUSTIFIABLY DENIED OR INTERFERED WITH VISITATION GRANTED BY A CUSTODY OR VISITATION ORDER, THE COURT MAY CONSIDER WHETHER:**

- (1) THE PARTY WAS PREVIOUSLY FOUND TO HAVE DENIED OR INTERFERED WITH VISITATION;**
- (2) THE ALLEGED DENIAL OF OR INTERFERENCE WITH VISITATION WAS THE SUBJECT OF LITIGATION OR ORDERS IN THE CASE PRIOR TO THE INSTANT ALLEGED DENIAL OR INTERFERENCE;**
- (3) THE ALLEGED DENIAL OF OR INTERFERENCE OCCURRED AFTER THE PARTY REPORTED THE ALLEGED ABUSE OF THE CHILD, THE PARTY OR THE PARTY’S SPOUSE TO THE COURT, LAW ENFORCEMENT OR OTHER GOVERNMENTAL AUTHORITY;**
- (4) THE PARTY PREVIOUSLY FILED A MOTION OR PETITION TO REVISE OR AMEND CUSTODY OR VISITATION SUPPORTED BY AFFIDAVIT STATING THE BASIS OF THE ALLEGED ABUSE; AND**
- (5) THE ALLEGED DENIAL OF OR INTERFERENCE WITH CUSTODY OR VISITATION WAS DONE TO PROTECT THE CHILD FROM CLEAR AND PRESENT DANGER TO THE HEALTH, SAFETY, OR WELFARE OF A CHILD, A PARTY OR A PARTY’S SPOUSE.**