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**To:** Members of The House Judiciary Committee

**From:** Family & Juvenile Law Section Council (FJLSC)

**Date:** February 24, 2022

**Subject: House Bill 1036:**  
Child Custody – Relocation of Child – Expedited Hearing

**Position: UNFAVORABLE**

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**The Maryland State Bar Association (MSBA) FJLSC urges an unfavorable committee report on House Bill 1036 Child Custody – Relocation of Child – Expedited Hearing**

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 appreciates the urgency underlying many requests for expedited hearings in cases in which the other parent has unilaterally relocated the primary residence of the minor child or children in a family leading to interference with the other parents’ time with the minor child or children. Such situations often require quick court intervention to prevent the relocating parent from establishing residency for the child in a different state and triggering a complicated analysis of the case under the Maryland Uniform Child Custody Jurisdiction and Enforcement Act. However, the FJLSC does not believe that current HB 1036 would accomplish the goals of properly addressing the urgency issues in custody relocation cases.

HB 1036 attempts to amend Family Law Article section 9-106 which grants the court the power to include a provision in a custody order issued by that court requiring either party provided advance written notice of a at least 90 days before relocating he permanent residence of the party or the child either within or outside the state. HB 1036 adds that, if either party files a petition regarding proposed relocation of 40 or more miles away from the current residence, the court shall set an expedited hearing.

Thus, the expedited hearing would not be available to parties without a court custody order and would only be triggered in the following cases:

1. In which the parties have a court order which contains a notice requirement pursuant to 9-106;
2. In which the relocating party moves 40 or more miles away;
3. In which the relocating party actually files a petition instead of just moving away; and
4. In which none of the other exception or defenses in 9-106 apply

It is not clear why 40 miles should be the best determining factor of triggering distance as the relocating party could simply move 39 miles away and subvert the hearing. Furthermore, 40 miles can be very different in cases across our state: for example, 40 miles in week day rush hour beltway traffic is different than 40 miles on a weekday at noon on the Eastern Shore.

Moreover, HB 1036 prohibits a court from considering the time the child spent with the relocating party as “advantageous” to that party. It is not clear what “advantageous” may mean in this circumstance; however, the FJLSC opposes restrictions being placed on Judges in custody determinations which prevent them from following the well-settled case law regarding the many and particular factors that must be considered to determine what is in the child’s best interests. *See Taylor v. Taylor*, 306 Md. 290 (1986) and *Montgomery County v. Sanders*, 38 Md. App. 406 (1978). In relocation custody cases, said factors are necessarily going to involve facts and circumstances from the circumstances in each parents’ household.

There is already a statute in the Family Law Article at 9-105 which informs the court of options for the unjustifiable denial or interference with “visitation” granted by a court that is often used to address some of the issues in relocation cases. If the child is in actual danger or risk of harm, the best path into family law court is to request an emergency custody hearing in conjunction with the filing of a Petition to modify custody and/or a Petition for Contempt. In cases where imminent harm to the child cannot be proven, often, the best path into court to address the urgency created by some drastic relocation cases is through a request for an expedited *Pendente Lite* custody hearing on custody. Each Circuit Court of the 24 counties in Maryland has different standards and requirements for the granting of such emergency custody and/or expedited *Pendente Lite* custody hearings. The FJLSC would respectfully suggest that a uniform rule regarding what constitutes “good cause” to grant such requests for hearings should be codified, adopted and followed by all of the counties across the state. The issue of relocation by one parent that unjustifiably denies or interferes with the parenting time of the other parent could be included in the factors for establishing good cause to grant an expedited *Pendente Lite* custody hearing in a state-wide family law case management plan for the Circuit courts.

For the reason(s) stated above, the FJLSC **urges an unfavorable committee report for HB 1036.**

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