

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

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 383
Family Law – Custody and Visitation – Notice of Intent to Travel
(Maryland Child Abduction Prevention Act)
DATE: February 2, 2023
(2/15)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 383. This bill would amend Md. Code, Family Law Art., § 9-106 to give the court discretion to require a party in a custody or visitation proceeding to provide certain notice before traveling outside of the United States with his or her child. The bill would also establish the Maryland Child Abduction Prevention Act, which could authorize the court to order and a party to petition for certain measures to prevent abduction of a child in a custody proceeding where certain risk factors exist and specifies procedures and limitations under the Act.

The Maryland Judiciary appreciates the goal of the legislation, but the drafting raises a number of concerns.

The title of the bill suggests its intention – to prevent child abduction, which is an important and laudable goal. Unfortunately, the bill’s language casts a much wider net and likely will have some significant unintended consequences. At the outset, the term “abduction” is defined to include the “keeping ... of a child that breaches rights of custody or visitation provided.” This definition is so broad that it would capture a parent who arrived a few minutes late to drop-off. That parent would have kept a child in breach of the other’s parent’s access rights. However, it is hard to imagine that anyone would want traffic congestion to result in a parent being accused of abduction and subjecting that parent to the requirements of this legislation.

Moreover, although abduction is defined in the bill, the only addition or change to Section 9-106 for an expedited hearing is for travel out of the country. There does not seem to be any provision in the bill for an expedited hearing in abduction cases without travel out of the country. It is unclear whether that omission is intentional.

It is also unclear how to read the provisions of 9.7-105 (D) and (E) in pari materia. It appears to read that the Court may consider emergency petitions if there is a significant change in circumstances but shall grant a petition for rehearing without requiring evidence of a significant change in circumstances. Those provisions are hard to understand when read together. Moreover, it is unclear how to define what a rehearing is and whether Section (E) mandates an annual review without request. That would be unusual, difficult to track and schedule, and likely a waste of valuable resources.

Moreover, on page 2, in line 19, the bill mandates a hearing any time a parent intends to travel outside of the United States with a child. While there may be times when such a hearing is necessary, there are also many times when it is not. The bill leaves no room for such discretion nor for the consent or agreement of the parties. There should be no reason to mandate a hearing unless there is an actual issue in controversy. Such a requirement would only burden the parties and take valuable court resources away from other litigants in actual need.

Additionally, on page 6, lines 30-31, the bill mandates that a court consider the likelihood of abduction even if there is no concern from either parent – and potentially even when the parties themselves are in agreement. It is hard to imagine that the legislation intends to require a Court to consider the potential for abduction in cases in which both parents agree that their child should benefit from study or travel abroad – and when neither parent has any concerns about abduction.

Finally, 9.7-106 provides that “the Court shall consider..any other relevant information as determined by the U.S. Customs and Border Protections Prevent Abduction Program and the U.S. Department of State.” This provision appears to require the Court to admit all manner of hearsay, without allowing objection of any party. This conflicts with current Maryland Rules designed to ensure the reliability of evidence. Under Maryland Rule 5-902(5), certain documents *may* be self-authenticating and the statements contained therein *may* be admissible under Maryland Rule 5-803(8). However, 9.7-106 thwarts these evidentiary procedures, requiring these hearsay statements to be admitted, and precluding any argument to the contrary.

cc. Hon. Mike McKay
Judicial Council
Legislative Committee
Kelley O'Connor