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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 1165
Family Law – Child Custody and Visitation – Visitation
Reevaluation and Remedies
DATE: February 12, 2025
(2/20)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 1165. This bill would allow a parent to petition for an emergency hearing within ten (10) days of the filing of the petition if another parent fails to comply with an existing visitation order. The bill would also authorize the court to take certain actions if a parent fails to comply with an order.

This Judiciary understands and appreciates the bill attempting to address interference with a parent's access to his, her, or their children. However, the mechanics of the bill create operational difficulties and may cause further disruptions.

Section 9-109(a)(2) would require courts to hold a hearing on a petition for emergency reevaluation of a visitation schedule within ten (10) days. This timeline interferes with the Judiciary's ability to handle other pending matters including cases in which a child's or vulnerable adult's health or safety is at risk, cases in which an individual's liberty is at stake, emergency motions to stay foreclosures and evictions, and jury trials. The Judiciary is in the best position to manage its docket to ensure effective and fair administration of all matters, including matters that require emergency or expedited relief, as interests and justice require. To this end, each circuit court has a differentiated

case management plan that includes procedures for emergency relief and expedited case processing in family law actions where there is a credible prospect of imminent and substantial physical or emotional harm to a child. Md. Rule 16-302. Whether expedited processing is warranted depends upon the facts and circumstances alleged.

Section 9-109(a)(1) would also allow a parent to file a petition for relief when another parent fails to comply with a court-ordered visitation schedule “without just cause.” This standard is broad and leaves it to the petitioning parent to decide what is “just cause.” In high-conflict cases, it is not uncommon for a disagreement over a custody order or unforeseen delays in dropping off a child to another parent to be characterized as failure to comply with an order. Paired with the ten-day hearing requirement, this statute could unintentionally be used as an escalation tool to jump the scheduling queue. This may also escalate the level of conflict between parents, which will in turn impact their children.

If the court finds that a parent fails to comply with a visitation order, Section 9-109(b)(ii) of the bill mandates that the court award the petitioner extra time to compensate for any time missed with that parent’s child. In custody and visitation cases, the court’s paramount concern is the best interest of the child. While “make-up time” may seem fair on its face for parents (and is an option courts may order), that may not be what is best for a particular child. For example, if the child is being breastfed or the existing visitation order takes into account the child’s social needs that are specific to one parent’s household, this could cause disruptions for that child. Sections 9-109(b)(1)(iii)(3) mandates that noncompliant parents incur any costs associated with any awarded “make-up time.” This does not allow for consideration of a parent’s ability to pay and could interfere with a parent’s child support and other obligations. These types of mandates limit judicial discretion and the court’s ability to consider each child’s unique facts and circumstances.

Attempts to interfere with a parent’s time with his, her, or their child are challenging for all. A goal of custody and visitation orders, however, is to provide children with stability and predictability while allowing courts to take steps to help ensure the same. It is for this reason there is an established standard for modifying a custody or visitation order. This bill would create a path for a parent to circumvent that standard and may, in turn, escalate conflict and litigation costs.

cc. Hon. N. Scott Phillips
Judicial Council
Legislative Committee
Kelley O’Connor