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**To:** Members of House Judiciary Committee

**From:** Maryland State Bar Association Family Law Section Council

**Date:** February 26, 2024

**Subject:** **House Bill 1307:**  
Family Law – Child Custody and Visitation – Visitation Reevaluations and Remedies

**Position:** **OPPOSE**

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The Maryland State Bar Association (MSBA) Family Law Section Council (FLSC) **opposes House Bill 1307 – Family Law – Child Custody and Visitation – Visitation Reevaluations and Remedies.**

The FLSC is the formal representative of the Family Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of Family Law and, at the same time, tries to bring together the members of the MSBA who are concerned with Family Laws and in reforms and improvements in such laws through legislation or otherwise. The FLSC 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 FLSC acknowledges and appreciates the extent to which this body is seeking to ensure that Court Orders concerning custody and visitation are followed, however, HB 1307 runs afoul of various existing guardrails for the enforcement of Court Orders and this may not be the most efficient way of handling this issue. First, it is unclear whether when the draft includes all the times that the parties fail to follow the Court Order or is it only when it was done maliciously or intentionally. The language now appears to cover every time that visitation is missed, which would overrun the Courts and possibly create an insurmountable traffic jam of cases particularly because each would require its own expedited hearing. Moreover, if there were to be an expedited hearing within 10 days of the filing of an emergency evacuation plan, the Judicial branch would lose control of its ability to maintain and regulate court calendars and schedules. It is noteworthy that if someone were being denied all visitation and access, that the Circuit Courts already allow for the filing of emergency proceedings to determine whether the case needs to be addressed on an expedited basis.

Similarly, HB 1307 largely overlaps with an existing statute—namely, Md. Code Ann., Fam. Law § 9-105. That statute—titled “Unjustifiable denial or interference with visitation granted by order”—addresses the exact same concerns as HB 1307. The statute permits a court to take certain actions against a parent upon a finding that the parent has “unjustifiably denied or interfered with visitation granted by a custody or visitation order,” including (1) rescheduling the visitation; (2) modifying the order “to ensure future compliance with the order”; or (3) award fees and costs against the offending party. As structured, HB 1307 would create a new statute, FL § 9-109, while leaving FL § 9-105 in place.

Enacting this new legislation in tandem with an existing law that already accomplishes the same purpose will simply frustrate the already complex practice of family law in the State of Maryland. More importantly, the existing statute leaves more discretion in the hands of the judiciary to craft appropriate sanctions and remedies for violations of a custody schedule. Child custody is not an area of the law that lends itself to simple, one-size-fits-all solutions that HB 1307 would impose on Maryland courts. The bill also requires an emergency hearing “if a parent fails to comply with a court-ordered visitation schedule without just cause,” without considering how broad that definition can be. “Failure to comply could mean withholding a child” from a scheduled entirely, or it could mean showing up thirty minutes late to a custodial exchange. Simply put, the potential for unnecessary, vexatious litigation is incredibly high with such broad and sweeping language, particularly in an area of the law as emotionally charged as family law.

Second, this bill ignores that there is an entire area of practice, with well-developed case law that exists associated with the enforcement of Court Orders concerning contempt. The purpose of contempt is to enforce court orders and bring parties into compliance without necessarily being punitive, because it’s central purpose is to be coercive; however, HB 1307 has several characteristics that appear to be punitive in nature. For example, the automatic imposition of attorney’s fees and cost to the “at fault” party appears to be punitive because it is based on success of the filing party.

Third, Section B(3) of HB 1307 contradicts current law concerning the standards to obtain a modification. The Courts have been very clear that in order to obtain a modification, the moving party must prove that there is a material change in circumstances. While the denial of visitation could constitute one of the many facts that are presented as material changes in circumstances, unless there is an adverse impact on the children it may not constitute as a basis for the modification.

The FLSC urges House Judiciary Committee, for the reasons stated above, to issue an unfavorable report on HB 1307.

Should you have any questions, please contact:

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