



520 West Fayette St., Baltimore, MD 21201

410-685-7878 / 800-492-1964

Fax 410-685-4016 / tdd 410-539-3186

msba.org

To: Members of the Senate Judicial Proceedings Committee

From: Family & Juvenal Law Section Council (FJLSC)

Date: February 17, 2022

Subject: Senate Bill 508
Family Law – Estates and Trusts – Guardianship of Minors – Appointment by Court

Position: SUPPORT

The Maryland State Bar Association (MSBA) FJLSC supports Senate Bill 508 - Family Law - Estates and Trusts – Guardianship of Minors – Appointment by Court

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 providing 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 the 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.

Current Legal Background:

Currently, Maryland Family Law Article § 13-701 stipulates that “Unless prohibited by agreement or court order, the surviving parent of a minor may appoint by will one or more guardians and successor guardians of the person of an unmarried minor. The guardian need not be approved by or qualify in any court.”

Further, Maryland Family Law Article § 13-702(a) stipulates that “If neither parent is serving as guardian of the person and no testamentary appointment has been made, on petition by any person interested in the welfare of the minor, and after notice and hearing, the court may appoint a guardian of the person of an unmarried minor. If the minor has attained his 14th birthday, and if the person otherwise is qualified, the court shall appoint a person designated by the minor, unless the decision is not in the best interests of the minor. This section may not be construed to require court appointment of a guardian of the person of a minor if there is no good reason, such as a dispute, for a court appointment.”

Both of these sections would be repealed and reenacted with amendments with the passing of SB508.

Since Maryland Court of Appeals opinion, *In re Guardianship of Zealand W.* (220 Md.App. 66 (2014)) there has been inconsistency across Maryland’s jurisdictions when an adult seeks guardianship of a minor child and there are one or more living legal parents. Some jurisdictions proceed with a

guardianship petition. Other jurisdictions either require the filing of a custody case or convert the guardianship case to a custody case with the filing of a custody petition.

This inconsistency creates confusion and delays legal relief for minor children, who are a vulnerable population.

Benefits of SB508:

SB508 alters the circumstances under which the court may appoint a guardian of the person of a minor to address and resolve the inconsistencies since *In re Guardianship of Zealand W.*. Specifically, SB508 allows the appointment of a guardian under certain circumstances when a minor child has one or more living legal parents and parents either consent or fail to file an objection to the guardianship. SB508 also specifies that guardianship does not require termination of parental rights.

Under current law as written, in some counties, the court does not consider the guardianship of a minor if there is a living parent. SB508 allows a guardianship of a minor in a case where a parent still survives. This allows for continuity between the counties and provides clear direction and consistency to the court in the matters where a living parent is involved in the case. It is a goal of the Family Juvenile Law Section Council to assure consistency across State. This bill would amend Article § 13-701 and § 13-702(a) to provide such consistency.

The FJLSC urges a favorable report. For more information or if any questions, please contact either Lorraine Prete (lprete@kandplawfirm.com or 301-694-6363) or Lindsay Parvis (lparvis@jgllaw.com or 240-399-7900).