Testimony_Brian Schmitt_SB_508-Guardianship of Min
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TESTIMONY OF MAJ BRIAN C. SCHMITT, JUDGE ADVOCATE U.S. ARMY RESERVE
SUPPORTING SENATE BILL 508
FEBRUARY 17, 2022

Good afternoon, Chairman and Members of the Judicial Proceedings Committee:

I am here today to provide testimony in support of Senate Bill 508. I am a reserve soldier judge advocate in the U.S. Army Reserve. I hold the rank of Major. I commissioned into the Army on June 10, 2009 and have held diverse assignments in the Army. Assignments relevant to my testimony today are: Legal Assistance Attorney at Fort Meade, Maryland from June 2010 to June 2011 and Administrative and Civil Law Attorney at Aberdeen Proving Ground, Maryland from December 2014 through July 2018. In my military capacity, I am currently assigned to the 12th Legal Operations Detachment headquartered at Fort Jackson, South Carolina. My current assignment is that of Team Chief for a team of lawyers and paralegals serving at Fort Stewart, Georgia. These lawyers and paralegals provide legal assistance services to active and reserve component personnel, including Soldier Readiness Processing for units that are slated to mobilize or deploy. My testimony in my military capacity is based on my personal experience and I do not represent the Army or the Department of Defense, and I am not testifying as a subject matter expert for the Army on this particular subject. I have been granted permission to render this testimony in my personal capacity, in uniform, by my command and echelons above my command. I am licensed to practice law in Maryland, Michigan, and diverse federal courts, including the U.S. Supreme Court. I am a resident of Frederick County.

The Army provides legal assistance services to service members and their family members. In this context, some soldiers who have dependents and are either single or part of a dual-military couple must have a "Family Care Plan." This applies to both active and reserve component soldiers. *See* AR 600-20, para. 5-5b., which identifies soldiers for whom a Family Care Plan is mandatory. This is an essential part of military readiness because soldiers must be available for duty when and where the needs of the Army dictate – without interference of family responsibilities. Deployments are frequently sudden, leaving a soldier little time to make on-the-spot arrangements for family member care.

The Family Care Plan must include the plan itself, DA Form 5305-R, where the soldier explains and documents specific measures taken to ensure their family is cared for in their absence. It also includes DA Form 5841-R, Power of Attorney, which is the legal means by which the soldier gives another person the legal authorization to make important decisions regarding children on behalf of the absent soldier-parent. Additionally, DA Form 5840-R is a Certificate of Acceptance as Guardian or Escort, which shows that the guardian has accepted the responsibility of caring for the family members of a soldier and has been provided all necessary legal authority and means to do so. Other forms are also prepared such as DD Form 1172, Application for Uniformed Services Identification Card DEERS Enrollment for each family member. This will provide uninterrupted access to military benefits and privileges while the soldier is absent. Letters of instruction are also frequently executed by soldiers, such as authorization for the guardian to obtain access to military installations and basic military services such as the Commissary and PX.

Applying this to installations in Maryland, such as Fort Meade, APG, and Fort Detrick, the standard legal assistance protocol is for guardianship Powers of Attorney to be executed. These are routinely drafted by legal assistance offices at these installations per the client's request. Legal assistance lawyers are under the impression that these POAs are legally recognized in nearly all jurisdictions.

In Maryland, there is no statutory basis for a guardianship POA as described above. Nonetheless, lawyers drafted these POAs and courts and organizations accepted these until 2014 in the Court of Special Appeals, *In re Guardianship of Zealand W.*, 220 Md. App. 66 (2014), where the court held a court is "not authorized, under Section 13-702 of the Estates and Trusts Article to appoint a third party as temporary or permanent guardian of the person of either Zealand or Sophia when (1) the children's mother is alive; (2) mother's parental rights have never been terminated; **and** (3) no testamentary appointment has been made." (emphasis added) In other words, one cannot file a Petition for Guardianship and appoint a guardian for their minor child while a parent is alive AND a parent's rights have not been terminated.

In Maryland, some jurisdictions strictly follow *Zealand*, where other jurisdictions have carved out exceptions such as having both parents' consent, and other courts have individual judicial variance where one judge may act and another may dismiss for lack of subject matter jurisdiction. I am aware of three anecdotes in Howard County schools where the military guardianship POA was not accepted, where the Fort Meade legal assistance office engaged local elected officials to pressure the administrators to honor the POA.

Passage of SB 508 would fully resolve the aforementioned issues. As such, I personally ask this Committee for a favorable report on the bill. The passage of this bill will further ensure military readiness is achieved in the State of Maryland. Soldiers need to be reassured that on deployment or mobilization everything is taken care of at home, which will minimize family-related stress, which, in turn will enable a soldier to concentrate more fully on his or her mission. A deployment or mobilization carries immense stress on the service member and family members. Ensuring the best readiness in the State of Maryland will allow our military services to decisively fight and win our nation's wars.

Senator West SB-508 Guardianship of Minors FAV.pdf
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February 17, 2022
The Senate Judicial Proceedings Committee
2 East Miller Senate Building
Annapolis, MD, 21401
The Honorable William C. Smith Jr.

Re: SB 508 – Estates and Trusts - Guardianship of Minors - Appointment by Court

Dear Chairman Smith and members of the Committee,

It's my privilege to introduce Senate Bill 508.

Senate Bill 508 alters the circumstances under which a court may appoint a guardian of the person of a minor.

Under current law, if neither parent is serving as guardian of an unmarried minor, upon a petition filed by any person interested in the welfare of the minor, and after notice and a hearing, a court may appoint a guardian of the minor. Senate Bill 508 enhances and more carefully defines this policy. It provides that upon a petition filed by any person interested in the welfare of the minor, and after notice and a hearing, a court may appoint a guardian of an unmarried minor but only so long as the court finds by a preponderance of the evidence that (1) the appointment is in the best interests of the minor; (2) no testamentary disposition has been made; and (3) either (a) no parent is willing or able to serve as such a guardian; (b) each parent consents to the appointment of the guardian; and (c) no parent files an objection to such an appointment.

I am so pleased to have The Honorable Kathleen Dumais with me this afternoon to support this piece of legislation. I will defer to her to explain the rationale underlying this change in Maryland law.

Senate Bill 508 - Guardianship of Minors - Support

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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).

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Position: FAV

TESTIMONY OF THANH VAN T. DOAN
SUPPORTING SENATE BILL 508
FEBRUARY, 17, 2022

Good Afternoon, Chairman and Members of the Judicial Proceedings Committee.

I am here today to provide testimony in support of Senate Bill 508. I am an attorney in the Maryland Bar. I have practiced family law for over 20 years, during which time I have represented families throughout the state of Maryland. I reside in Howard County.

For as long as I've been practicing law, petitions for guardianship have been accepted as the ideal method for parents to ensure that a person they trust would be given the legal authority to care for their children in their impending absence. In Maryland, because of our diverse population and military bases, many of our parents have needed to appoint a guardian due to deployment, employment abroad, and the need to care for sick family members abroad. With the parent(s)' consent, courts routinely granted the petitions in light of the clear need to have someone authorized to make decisions regarding a child's education, health care, participation in extracurricular activities, etc. However, the availability of guardianship as a means to authorize another person to act in the parent's absence came to a grinding halt in 2014 when the Court of Special Appeals in *In re Guardianship of Zealand W.* held that a court is "not authorized, under Section 13-702 of the Estates and Trusts Article to appoint a third party as temporary or permanent guardian of the person of either Zealand or Sophia when (1) the children's mother is alive; (2) mother's parental rights have never been terminated; **and** (3) no testamentary appointment has been made." (emphasis added) *In re Guardianship of Zealand W.*, 220 Md. App. 66 (2014). In other words, regardless of consent and the parents' wishes, one cannot file a Petition for Guardianship and appoint a guardian for their minor child while a parent is alive **and** a parent's rights have not been terminated.

The chaos and uncertainty created by *Zealand* are still felt today as courts in different jurisdictions grapple with how to deal with the practical need for guardianship when for all intents and purposes, a parent can't appoint a guardian while they're alive. Some jurisdictions strictly follow *Zealand*, where other jurisdictions have carved out exceptions such as having both parents' consent, and yet in other courts, it's a matter of individual judicial interpretation where one judge may rule on the petition, while their colleague in the same courthouse may dismiss the same petition for lack of subject matter jurisdiction.

In those jurisdictions that adhere to *Zealand*, and thereby making guardianship non-existent, courts have advised parents to file a Complaint for Custody. Because of the legal ramifications which come with custody such as the right to child support, requiring parents to share custody is an unacceptable alternative to guardianship.

The lack of consistency and unpredictability from the courts and the absence of an acceptable alternative to authorize a person to act in the parent's stead are the reasons why Senate Bill 508 is necessary. The proposed amendments to Section 13-702 will rectify the problem created by *Zealand*. Parents will once again have the legal means to authorize a person of their choosing to make any decisions needed and to have that person's authority recognized by

schools, health care providers, etc. Parents will not have to worry about having to share custody or what will happen to their child in their absence.

Senate Bill 508 will ensure that when petitioning for the appointment of a guardian, parents will have access to and get the same result and relief from the courts regardless of where they live within Maryland. For these reasons, I ask this Committee for a favorable report on this bill.