

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 889 (Senator Lee)
Judicial Proceedings

Family Law - Child Custody Actions - Considered Judgment of Minor Children

This bill establishes a rebuttable presumption, in actions involving child custody or child access, that a minor child who is at least age 13 has considered judgment. If a child is deemed to have considered judgment in such matters, a child advocate attorney must be appointed to represent the child and the child may file motions and testify regarding the child's preferences as though the child were a party.

Fiscal Summary

State Effect: Potential significant fiscal and operational impact on the Judiciary, as discussed below. Revenues are not affected.

Local Effect: Potential significant operational impact on the circuit courts, as discussed below. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Current Law: Maryland Rule 9-205.1 generally governs the appointment of an attorney for a child in actions involving child custody or child access. The rule notes that appointment may be most appropriate in certain cases, including those that involve past or current child abuse or neglect, actual or threatened family violence, relocation that substantially reduces a child's time with a parent and/or sibling, or consideration of terminating or suspending parent time. The Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access complements Maryland Rule 9-205.1 and further specifies the roles of the

types of attorneys that may be appointed in such cases. A child advocate attorney is a lawyer appointed by a court to provide independent legal counsel for a child. These attorneys owe the child the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client. According to the guidelines, a child advocate attorney should be appointed when the child is in need of a voice in court, such as in relocation cases, when there are allegations of child abuse, or where the child is sufficiently mature and sees his or her interests as distinct from the interests of the child's parents.

The guidelines further state that one of the responsibilities of an attorney appointed on behalf of a child (including a child advocate attorney) is to determine whether the child has considered judgment. To determine whether the child has considered judgment, the attorney should focus on the child's decision-making process, rather than the child's decision. The attorney should determine whether the child can understand the risks and benefits of the child's legal position and whether the child can reasonably communicate the child's wishes. The attorney should consider the following factors when determining whether the child has considered judgment: (1) the child's developmental stage; (2) the child's expression of a relevant position; and (3) relevant and available reports, such as reports from social workers, psychiatrists, psychologists, and schools.

The guidelines further specify that if a child advocate attorney has determined that a child does *not* have considered judgment, the attorney should petition the court to (1) alter the attorney's role to permit the attorney to instead serve as a best interest attorney (an attorney who is appointed for the purpose of protecting the child's best interests, without being bound by the child's directives or objectives) or (2) appoint a separate best interest attorney. There is no reciprocal language under the guidelines for a child advocate attorney to be appointed in cases in which a best interest attorney has determined that a child has considered judgment.

State/Local Expenditures: As noted above, determinations regarding a child's considered judgment are often made by a child's attorney after a child's attorney (of some type) has been appointed. However, it is assumed that the bill necessitates, at a minimum, a process that gives parents an opportunity to rebut the presumption established in the bill prior to a court appointing a child advocate attorney for a child who is at least age 13. The Judiciary advises that due to the volume of child custody/access cases that are considered each year, the fiscal and operational impact on the Judiciary and the circuit courts may be significant to account for an increased complexity in such cases and for potential fee waivers. The magnitude of the impact, however, depends on (1) the number of cases involving a child older than age 13; (2) the number of cases for which a child advocate attorney is appointed that would have not been appointed absent the requirements of the bill; and (3) what actions the child takes once a child advocate attorney is appointed. Furthermore, the Judiciary notes that the parties typically share the costs of a child advocate

attorney's fees, with the Judiciary covering the fee if a party qualifies for a fee waiver. Accordingly, to the extent that child advocate attorneys are appointed in cases where a party is eligible for a fee waiver, general fund expenditures increase.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Legislative Services

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