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March 10, 2022

Senate Judicial Proceedings Committee

**SB889 - Favorable – Considered Judgment of Minor Children**

Senate Bill 889 is an attempt to correct a human rights injustice and failure to apply the Maryland judiciary's own guidelines faithfully. As you are well aware, I helped to establish and participated on the Workgroup related to child custody when there is an allegation of abuse. This is not an explicit recommendation from that effort, but the discussion provided my background to the problem this legislation aims to correct. A designation of a Child Advocate through the "considered judgment" analysis of a Best Interest Attorney (BIA) is disregarded.

SB 889 is legislation with the intent to give children a real voice in legal proceedings that United Nations Convention on the Rights of the Child (CRC) resoundingly provides with the endorsement of the entire world, except one country. The United States is a signatory, but it is the last country in the world that has failed to ratify the treaty. You will hear legitimate concerns raised in opposition to the bill's drafting errors, but I hope we can focus on the intent of the bill which deserve our considered judgment. My amendments clarify the scope.

This proposal is pretty tame when you think of some states where 14 year olds can basically decide which parent has custody. That is not this bill. This bill merely proposes an existing rule be faithfully executed under law, but with a presumption that fits international consensus. A BIA merely has to ensure that the child's position is made a part of the record, but a child advocate is supposed to be appointed when the child is need of a voice in court, such as a 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. Those are the Guideline the court appointed attorneys are supposed to follow now, but that is not how things work in practice from the information we are hearing around the state.

I am aware of the opposition from my friends in the family law section and concerns from the judiciary, but I am convinced we can explain the intent and collectively codify a policy that both protects children's rights, and their safety. There is no intent to force a child to testify, so we are requesting an amendment to prevent a child under 16 to be compelled even if they have a Child Advocate. Sixteen year olds can already motion in Maryland, but it is unclear how often this occurs because not many lawyers would take them as clients. That's why BIAs are the intended vehicle, because they are supposed to do this analysis anyway. An original draft of this bill codified the guidelines, but it was thought more elegant to limit the language.

Importantly, the process is intended to only apply when a BIA has already been appointed, so most of the concerns listed in the written testimony of the opposition should evaporate. This is only calling upon the BIA to do the considered judgment analysis they are already required to do, with the initial presumption that children over 13 have considered judgment. If you look back to case law, judges were finding children as young as 7 to have considered judgment in the 1950s. This analysis has been removed, we are trying to restore it. Just explain why the 14 year old doesn't have considered judgment and they don't, there is no discretion removed.

You will hear from my aide Michael Lore who will describe the BIA training he participated in last year and how he was struck that Child Advocates are not appointed in some counties at all because children themselves are not a party to the case, and therefore, courts don't see justification in appointing a child advocate. If there is alleged abuse and a Child Advocate should have been appointed instead of the BIA as stated by their own guidelines, but because there is no real considered judgment considered – the BIA determines if the rationale behind that allegation is trustworthy in a clear failure to provide best evidence when a child's preference should be reinforced, not undermined. The judge in turn can decide and usually decides to block child testimony, not on a case by case basis, but across the board as a superseding policy to their own guidelines. That is why we need a law in this space to protect the human rights of children to have access to counsel and legal proceedings.

Not every BIA is made equal, as there are excellent ones, even ones who don't allow children to testify to judges in chamber because of their personal concerns about adverse childhood experiences. But that is not what the guidelines provide. BIAs are quick to make sure they get paid, but not as fast to meet with the "clients". The good ones meet with the children early and determine if they have any serious abuse concerns, but the bad ones never meet with the children, or if they do so, they serve as the gatekeeper to every small decision the child wants to make in navigating two parents who can't agree to the most basic conditions of visitation. BIAs are not designed to become mediators between parents, but if that is what their role has become, perhaps they should have to intermittently reassess the child's considered judgment as some of these relationships span years. The failure of the courts should not fall at the feet of these children.

There is need for a clarifying amendment with this legislation, since it was not my intent that every child in a custody proceeding trigger the considered judgment analysis. That analysis

should be done with trained and accountable BIAs, and they should still have deference as to whether the child has considered judgment, simply that children 13 and older will have a rebuttable presumption that they have considered judgment. A judge could find a 15 year old to not have considered judgment if they can explain their reasoning to the court, as they should have to do already, but without a burden to overcome.

Judges in Maryland used to determine considered judgment, and as low as 7 years of age, but they have now largely deferred that judgment to BIAs, and seem to lack interest in questioning why Child Advocates were created in the first place. It would be enlightening to know how many child advocates were appointed statewide, and perhaps if nothing else this effort can lead to more transparency about their own internal failings to create incentives that faithfully adhere to their guidelines. If no one can trigger considered judgment, or if you do you lose your access to the proceedings, does anyone consider the child's rights to be considered at all? Should we stop training BIAs about considered judgment completely? I think not, I think we need to better train BIAs and judges about their crucial role protecting children who are subject to family court proceedings without the voice they should have under existing rules.

Finally, there is an amendment to track the number of BIAs and Child Advocates across all of the jurisdictions. This transparency is the bare minimum we can do to better hear from children, who have the most to lose in the decisions made in family court. We can't let these decisions fall to practitioners and judges alone. You and I are policymakers, let's examine this policy objectively for the good over everyone, especially the most vulnerable.

For these reasons I respectfully request a favorable report on SB 889, as amended with the reporting requirement, the clarification about who determines the considered judgment, and the prohibition of forced child testimony. Of course I am always open to input from the stakeholders, including children themselves. My intern did a poll of her classmates at Walt Whitman High School and out of the 138 of them surveyed, an overwhelming majority of the (mostly 18 year olds) thought children over 13 should have their preferences heard from them in court). Testifying in this committee might add to your ACE score, but I do not believe allowing a child to tell a judge in chambers why you prefer to live with one parent over the other, is harmful. Failure to be heard during perhaps the most important legal proceeding of their life is dangerous. Child advocates are supposed to exist under the courts Guidelines, but they won't unless we create a real roll for them. The intent is to build off of the existing goal.