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March 9, 2022

Senator William C. Smith, Jr.
2 East
Miller Senate Office Building
Annapolis, Maryland 21401

**RE: Maryland Legal Aid's Written Testimony in Opposition to SB 889 –
Family Law – Child Custody Actions – Considered Judgment of Minor
Children**

Dear Chairperson Smith and Committee Members:

Thank you for the opportunity to present testimony in opposition to SB 889, a bill that seeks to establish a rebuttable presumption that children in child custody cases have considered judgment and requiring an attorney be appointed to represent them, as well as an opportunity for children to testify and file motions in custody cases. Maryland Legal Aid (MLA) is a private, non-profit law firm that provides free legal services to indigent Maryland residents. From 12 offices around the state, MLA helps individuals and families in every Maryland county with many civil legal issues, including housing, consumer, public benefits, and family law matters. MLA also represents children who are victims of abuse and neglect, and provides legal assistance to older adults and nursing home residents.

MLA prioritizes representation in family law cases where there is a demonstrated greater need for extended legal representation due to an imbalance in power in a custody, support, access, or divorce matter. As a result, MLA is involved in family law cases that are high conflict, contested matters. This letter serves as notice that Alice V. Mutter, Esq., will testify on behalf of MLA at the request of Senator West.

Custody determinations are based upon the best interests of the minor children. There are many factors that the Court considers in determining the best interests of the child, including the preferences of the child. The “voice” of the child should be heard and taken into consideration by the family courts making child custody and access

decisions. Inevitably, children are profoundly impacted by the separation of their parents.

Md. Code, Family Law § 1-202 provides that the Court may appoint a child advocate or best interest attorney to represent the minor child. The child advocate represents the child's stated position. However, appointment of counsel for the child usually only occurs upon a motion of one of the parties, and it is rare that a child advocate is requested by either party. This motion can be objected to by the other party. In appointing child counsel, the Court may impose against either or both parents counsel fees. While some jurisdictions have funds available for compensating child counsel where parties are low income, such funds are very limited and are never guaranteed. Thus, parties usually have to pay the attorney's fees themselves for child counsel.

SB 889 would require counsel for the minor child be appointed in all custody or access cases with a child age thirteen and over where the presumption of considered judgment has not been rebutted. Maryland Legal Aid supports the rebuttable presumption and appointment of counsel for children in these matters, as children's voices are an important factor in the court's best interest analysis. However, establishing such a requirement as currently proposed in SB 889 would create an untenable financial hurdle to custody litigation for many low-income litigants. For MLA clients who are low-income, SB 889 would impose litigation costs on individuals who are already unable to hire their own counsel and are assisted free of cost by Maryland Legal Aid. Even cases that are resolved through settlement may still incur thousands of dollars in fees. Paying for child counsel is therefore not financially feasible for indigent litigants, and would create a painful obstacle for low-income Marylanders already making impossible financial decisions.

This bill would create additional financial hardship to low-income litigants and inequities in the court system. Thank you for considering this written testimony. **For the reasons stated above, MLA urges an unfavorable report on SB 889.**

Sincerely,

/s/ Alice Mutter

Alice V. Mutter, Esq.

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