SB889-MKB.pdf
Uploaded by: Jared Ross
Position: FAV

Jared Ross
14617 Mustang Path
Glenwood, MD 21738
(240) 994-6477

RE: SB-889

To whom it may concern.

I, Jared Ross, am in favor of SB-889.

When a child has considered judgement, the child has ability to understand situations, the ability to reason, and understands right and wrong. Otherwise considered judgement would not be applied.

A subset of what my children have recently experienced:

- Children have been relocated twice within 1 year. (Each time against a court order: once during the trial, once immediately after the trial with no notification of said move per Maryland law)
- Children who were withheld from visitation during part of the pandemic (against the high court's March 25, 2020 statement)
- Children had to immediately live with a parent's paramour (against a court order)
- Children have expressed their views and feelings on events on a continual basis without wavering.

Their BIA has:

- Not objected to (or alerted) the court to the children's changes in residence nor expressed the kids' feelings and impacts on them.
- Not objected to (or alerted) the court to visitation withholding nor expressed the children's feelings and impacts on them.
- Not objected to (or alerted) the court to a paramour's living arrangement and impact as viewed by the children.

A child with considered judgement is heavily impacted by situations like these. The child knows something is "wrong" but don't have the ability to "speak" as a BIA can prevent or mute the child's views and feelings. The child is placed in a mental "pressure cooker." The person a child should trust becomes untrustworthy (BIA mentions not being trusted in their document to be removed from the case).

Each divorce has many positions and views. However, major issues and blatant disregard for law such as above, all children would be impacted. Children with considered judgment are more impacted as their ability to reason and understand gets pushed aside; even when there are basic/real grounds for their views and reactions.

Since a child with considered judgement is viewed differently in the court, the direct support for them should be different and aligned with their abilities.

Kids deserve a future as they are the future.

Jared Ross

SB 889_mgoldstein_fav 2022.pdf
Uploaded by: Mathew Goldstein
Position: FAV

Secular Maryland secularmaryland@tutanota.com

March 10, 2022

SB 889 - SUPPORT

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

Dear Chair Smith, Vice-Chair Waldstreicher, and Members of the Judicial Proceeding Committee,

This bill proposes giving children a rebuttable presumption of considered judgement in contexts where that child's future custody is being decided by a judge. This would give such children a role in assisting judges with making better custody decisions by improving the ability of judges to take into account the best interests of the child.

Respectfully,
Mathew Goldstein
3838 Early Glow Ln
Bowie, MD

SB889_FAV_Lee_2022.pdf
Uploaded by: Susan Lee
Position: FAV

Susan C. Lee
Legislative District 16
Montgomery County

Majority Whip

Judicial Proceedings Committee

Joint Committee on
Cybersecurity, Information Technology,
and Biotechnology

Chair
Maryland Legislative Asian American
and Pacific Islander Caucus

President Emeritus
Women Legislators of the
Maryland General Assembly, Inc.

THE SENATE OF MARYLAND
Annapolis, Maryland 21401

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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.

SB 889 Testimony.pdf
Uploaded by: Alice Mutter
Position: UNF

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02.2022

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.
Senior Attorney for Family Law
Maryland Legal Aid
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301-637-1062

SB 889 UNF House of Ruth.pdf
Uploaded by: Dorothy Lennig
Position: UNF

Marjorie Cook Foundation
Domestic Violence Legal Clinic
2201 Argonne Dr • Baltimore, Maryland 21218 • 410-554-8463 • dlennig@hruthmd.org.

TESTIMONY IN OPPOSITION TO SENATE BILL 889
March 10, 2022
DOROTHY J. LENNIG, LEGAL CLINIC DIRECTOR

House of Ruth is a non-profit organization providing shelter, counseling, and legal services to victims of domestic violence throughout the State of Maryland. Senate Bill 889 creates a rebuttable presumption that a child at least 13 years old has considered judgment and that a child advocate attorney shall be appointed to represent them. **We urge the Senate Judicial Proceedings Committee to issue an unfavorable report on Senate Bill 889.**

SB 889, as written, essentially requires the court to appoint a child advocate attorney in every custody case that involves a child who is at least 13 years old. While it may not be the intent of the bill to order a child advocate attorney in every case, contested or not, the bill does not distinguish between contested and uncontested cases.

In addition, SB 889 does not address who pays for the child advocate attorney if the parties are unable to do so. Given the number of unrepresented litigants in family law cases, House of Ruth believes that children and families would be better served if the courts appoint attorneys for the parties, instead of allocating funds to appoint attorneys for children in every case.

SB 889 also allows the child to file motions and testify regarding their preference as though they were a party. This approach completely disregards the concerns of many child psychologists, who believe that involving a child in a custody dispute between the child's parents causes severe emotional distress and is one of the worst experiences a child can have.

Custody cases in which the parents are not able to agree on parenting time and decision making are highly contentious. Although there may be individual cases where it is beneficial to the child to have a voice in the legal proceedings, the decision to involve a child in the case as if they are a party should be exercised judiciously. In most situations, it is not in the child's best interest to be involved and certainly should not be done in cookie cutter fashion as it would be under SB 889.

The House of Ruth urges the Senate Judicial Proceedings Committee to issue an unfavorable report on Senate Bill 889.

SB 889 - UNF - Women's Law Center of MD.pdf
Uploaded by: Laure Ruth
Position: UNF

Women's Law Center of Maryland
JUSTICE FAIRNESS EQUALITY
305 West Chesapeake Avenue, Suite 201 Towson, MD 21204
phone 410 321-8761 fax 410 321-0462 www.wlcmd.org

BILL NO:	Senate Bill 889
TITLE:	Family Law – Child Custody Actions – Considered Judgment of Minor Children
COMMITTEE:	Judicial Proceedings
HEARING DATE:	March 10, 2022
POSITION:	**OPPOSE**

Senate Bill 889 would create a rebuttable presumption that a child of 13 or older has considered judgment and is entitled to counsel in any custody case. The Women's Law Center opposes this bill as its underlying premises are completely flawed.

Social science indicates that it is traumatic for most children to be put in the position of deciding how their parent's child access will work if the parents are not together. Having the children be parties to their own custody cases, including filing motions, arguing, and being present in the courtroom for what can be a very contentious trial is a terrible thing to do to children.

Furthermore, determining if a child has considered judgment is not magical – it does not occur exactly on the child's 13th birthday. There is lot of relevant material and information to be gathered to determine if a child has considered judgment[1]. It is completely illogical to have laws that protect a child until their 13th birthday and then a law like this that would do a complete 180 degree turn on the birthday and say the child understands the consequences of their actions as of that birthday (see, for example this year's SB 20, extending the tender years doctrine for children under age 13) and should be considered a party to their own child access case. This is inconsistent reasoning.

In addition, SB 889 does not explain how the enormous cost of having counsel for virtually every child 13 or over (even in an uncontested case, as the bill is written) would be met (at the time of writing this there is no fiscal note, but will the state pay for this right to counsel?). How will low income families pay for this sometimes very expensive cost? What if there are three children in a family who are 16, 14 and 13 years old and all have a different preference for where they will live and how much time they will spend with each parent? That would require three separate attorneys for one case. Will the child get an attorney even if the parents can't afford to have their own attorneys, as we know occurs for at least one party in family law cases in Maryland now? A better use of funds would be to provide counsel for self-represented litigant parents.

Therefore, the Women's Law Center of Maryland, Inc. urges an unfavorable report on Senate Bill 889.

The Women's Law Center of Maryland is a private, non-profit, legal services organization that serves as a leading voice for justice and fairness for women. It operates the statewide Family Law Hotline, serving thousands self-represented litigants a year on that line with information and referral.

[1] See MD Rules Attorneys - Appendix 19-D –Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children [in custody cases].

Senate Bill 889 - Considered Judgment Minor Childr

Uploaded by: Lindsay Parvis

Position: UNF

MSBA
MARYLAND STATE BAR ASSOCIATION

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To:	Members of the Senate Judicial Proceedings Committee
From:	Family & Juvenal Law Section Council (FJLSC)
Date:	March 10, 2022
Subject:	Senate Bill 889 Family Law – Child Custody Actions – Considered Judgment of Minor Children
Position:	OPPOSE

The Maryland State Bar Association (MSBA) FJLSC opposes Senate Bill 889 - Family Law - Child Custody Actions – Considered Judgment of Minor Children

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:
In a court case involving custody or visitation rights[1], a Court may appoint a lawyer to serve as a child advocate attorney or a best interest attorney (FL §1-202)[2]. Existing Maryland Rule, 9-205.1 sets out factors for the Court to consider when appointing child counsel and requirements of Orders appointing child counsel. The Rules' Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access (found in the Maryland Rules' Appendix to Title 9, Chapter 200) define the role of the Child Advocate Attorney (Guideline 1.2), considered judgment (Guideline 2.1), scope of work and responsibilities (Guidelines 2.3), and alternatives if a Child Advocate Attorney determines her client does not have considered judgment (Guideline 2.3).

A Child Advocate Attorney is one who advocates the child's position, with the same duties of loyalty, confidentiality, and competency as are due adult clients. The Guidelines set out a process for determining considered judgment (Guideline 2.1). Considered judgment means that the child client understands the risks & benefits of the child's own legal position and can reasonably communicate their

[1] Language mirrors that of the code.
[2] The law does not reference Child Privilege Attorneys, which are another type of child counsel in contested custody cases.

own wishes. This includes whether the child sees his/her own interests as distinct from the parents' interests.

If a Child Advocate Attorney determines the child client does not have considered judgment, the Guidelines invite the Child Advocate Attorney to petition the court either to amend the role to Best Interest Attorney or appoint a separate Best Interest Attorney. (Admittedly, the Guidelines do not speak to the duty of loyalty, which may weigh against doing either so the child's position is not undermined, but may invite the Child Advocate Attorney to withdraw instead.)

Problems with SB889:

SB889 is replete with problems. This written opposition focuses on but a few critical ones:

Rebuttable Presumption: SB889 is unclear about how & who will determine considered judgment.

1. Is age the determining factor? Meaning: every child age 13+ years old will automatically have a Child Advocate Attorney appointed?
2. Or, will the Court hold a considered judgment hearing to determine if the child has considered judgment and, if so, to appoint an advocate attorney?
3. Or, will parents bear the responsibility of requesting a child advocate attorney?

If SB889 intends #1 (every child & automatic), then per the Guidelines, the appointed Child Advocate Attorney must decide if the child client has considered judgment. If the child does not, then what? Convert to Best Interest Attorney? Appoint a separate Best Interest Attorney? Withdraw?

Overly Broad: SB889 would mandatorily apply in all actions involving child custody or child access. So, not only in contested child custody cases. But also in domestic violence protective order cases. And (while perhaps unintentionally), perhaps CINA and TPR cases which also involve "custody".

Families with multiple siblings: Because conflicts of interest may exist among siblings (See Guideline 3) and siblings' positions may differ, SB889 sets the stage for each child to have separate Child Advocate representation. This invites siblings testifying against each other & building cases against one another. This imposes a huge expense for families with resources and multiple qualifying children. Or, this overtaxes already stretched pro bono and family law fund/reduced fee child counsel attorneys.

Cost: As written SB889 invites that every child in Maryland will be represented by a Child Advocate Attorney. Who will pay the cost of this? Families? The State?

Child's Treatment as a Party: Page 2, lines 3-4 treats children ages 13+ years old as parties in their parents' contested custody cases. This opens the door for children to be deposed, to participate in discovery (Interrogatories, Requests for Production of Documents, Requests for Admissions), and to engage in motions practice. SB889 increases the likelihood that children will be compelled to testify because if a party, a child can be subpoenaed and forced to testify (despite the "may" as written).

Forced Participation: SB889 forces children ages 13+ to participate, even if they do not want to. This flies in the face of considered judgment.

The FJLSC urges an unfavorable report. For more information or if any questions, please contact Lindsay Parvis (lparvis@jgllaw.com or 240-399-7900).

SB 889_MNADV_UNF.pdf
Uploaded by: Melanie Shapiro
Position: UNF

BILL NO: Senate Bill 889
TITLE: Family Law - Child Custody Actions - Considered Judgment of Minor Children
COMMITTEE: Judicial Proceedings
HEARING DATE: March 10, 2022
POSITION: **OPPOSE**

The Maryland Network Against Domestic Violence (MNADV) is the state domestic violence coalition that brings together victim service providers, allied professionals, and concerned individuals for the common purpose of reducing intimate partner and family violence and its harmful effects on our citizens. **MNADV urges the Senate Judicial Proceedings Committee to issue an unfavorable report on SB 889.**

This bill establishes a rebuttable presumption in child custody cases that a minor child who is at least age 13 has considered judgment. It further requires a child advocate attorney 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.

SB 889 does not contemplate the traumatic impact that placing a 13-year-old child as essentially a party in their own custody case might have on them. It also does not address the extraordinary costs that might be imposed on families to pay for a child advocate attorney if they are not eligible for a fee waiver. While it is appropriate in some cases for children to have an attorney appointed on their behalf the rebuttable presumption created in HB 889 would require an attorney be appointed in every case in which there is a child over the age of 13.

Current Maryland Rules allow for the appointment of an attorney for a child at the court's discretion and indicates that it may be most appropriate in certain circumstances including cases that involve family violence. MNADV believes that the existing rules are sufficient to address the need for appointment of an attorney for a child both over the age of 13 as well as younger and that the rebuttable presumption and assumption that every custody case involving a child over the age of 13 is both harmful and unnecessary.

For the above stated reasons, the **Maryland Network Against Domestic Violence urges an unfavorable report on SB 889.**

For further information contact Melanie Shapiro ■ Public Policy Director ■ 301-852-3930 ■ mshapiro@mnadv.org

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Tel: 301-429-3601 ■ E-mail: info@mnadv.org ■ Website: www.mnadv.org

MPA Testimony 2022 - Unfavorable - SB889 - Family

Uploaded by: Paul Berman

Position: UNF

MARYLAND
PSYCHOLOGICAL ASSOCIATION

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March 7, 2022

Senator William C. Smith, Jr. Chair
Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

RE: SB 889 – OPPOSE

Dear Chair, Vice-Chair, and Members of the Committee:

The Maryland Psychological Association, (MPA), which represents over 1,000 doctoral level psychologists throughout the state, asks the Senate Judicial Proceedings Committee to issue an **UNFAVORABLE REPORT on Senate Bill 889**. SB 889 would provide for a rebuttable presumption that a 13-year-old child has considered judgment and allow them to file motions and testify regarding their preferences as though the child were a party.

One factor Maryland's courts already consider when making determinations in custody divorce cases is the preference of the child. The child's voice may be heard through the BIA, Child Advocate Attorney, sometimes through a custody evaluation, and sometimes directly by testimony.

This bill, if enacted, would irreparably harm Maryland's children. Research shows that the single greatest factor that negatively impacts a child's long-term adjustment when their parents divorce is being exposed to the parents' conflict. This bill not only exposes the child to the parents' conflict but directly involves them in the conflict. Children need to be protected from their parents' conflict, not placed in the middle.

Does Maryland law presume that 13-year-old children can decide whether they are going to attend school or presume that a 13-year-old child can make their own decision about marriage? Does Maryland law presume that a 13-year-old child can vote in local elections, purchase a gun, or adopt a child? The answer to all of these questions, of course, is no – Maryland does not presume that 13-year-old-children can exercise their own judgment in these circumstances because we know they do not have considered judgment – they are not able to understand and appreciate the risks, benefits, and long-term impact of their decision. Please do not put our children's health and well-being at risk by further involving them in their parent's divorce. For these and other reasons, we strongly urge the Judicial Proceedings Committee to issue an **UNFAVORABLE report on SB 889**.

Please feel free to contact MPA's Executive Director Stefanie Reeves at exec@marylandpsychology.org if we can be of assistance.

Sincerely,

Linda McGhee
Linda McGhee, Psy.D., JD
President

R. Patrick Savage, Jr.
R. Patrick Savage, Jr., Ph.D.
Chair, MPA Legislative Committee

cc: Richard Bloch, Esq., Counsel for Maryland Psychological Association
Barbara Brocato & Dan Shattuck, MPA Government Affairs

sb889.pdf
Uploaded by: Sara Elalamy
Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO:	Senate Judicial Proceedings Committee
FROM:	Legislative Committee Suzanne D. Pelz, Esq. 410-260-1523
RE:	Senate Bill 889 Family Law – Child Custody Actions – Considered Judgment of Minor Children
DATE:	March 2, 2022 (3/10)
POSITION:	Oppose

The Maryland Judiciary opposes Senate Bill 889. This bill establishes a rebuttable presumption that certain minor children in certain actions involving child custody or child access have considered judgment.

This bill would require the court to appoint a child advocate attorney in all custody cases that involve a child with considered judgment, even if the case is uncontested. The bill, however, does not specify who will pay the attorney when a child's parents are not able to.

This bill is also unnecessary. The court can already appoint child advocate attorneys, best interest attorneys, and child privilege attorneys and order custody and visitation-related assessments when warranted. Md. Rules 9-205.1 and 9-205.3. When making custody decisions, one of the factors courts consider is a child's preference. Lemley v. Lemley, 102 Md. App. 266, 288 (1994) (citing Levitt v. Levitt, 79 Md. App. 394, 403 (1989)). Courts also have discretion as to whether to speak with a child. That discretion is guided by a child's knowledge and maturity, the potential for psychological damage caused by their involvement in the custody dispute, and whether the child's preference for custody can be discovered through other sources. Leary v. Leary, 97 Md. App. 26, 30 (1993); Marshall v. Stefanides, 17 Md. App. 364, 369 (1973); Karanikas v. Cartwright, 209 Md. App. 571, 595 (2013).

Further, and most problematic, is that this bill would also involve children in their parents' custody case, even when that may not be in their best interest. While there are children with considered judgment who may want to file motions or testify in their parents' case, that desire is sometimes based on pressure from one parent or a desire to please that parent. The court and parents need to weigh the value in allowing a child to

testify against the risk of harm that may result. Divorce and separation are already difficult for children. The CDC-Kaiser Permanente Adverse Childhood Experiences (ACEs) study found that instability due to parental separation or divorce can undermine a child's sense of safety and stability and is linked to health and other problems in adulthood. *Adverse Childhood Experiences (ACE) Study*. American Journal of Preventive Medicine, 14*(*4), 245–258. Putting a child in the position of testifying against one or both parents and subjecting that child to cross-examination may be damaging, especially if that child has been abused by a parent. Discretion should be left to the court whether it is in the best interests of child.

cc. Hon. Susan Lee
Judicial Council
Legislative Committee
Kelley O'Connor