

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