Department of Planning and Budget
2020 Fiscal Impact Statement

1. **Bill Number:** SB872

House of Origin	⊠ Introduced	☐ Substitute	☐ Engrossed
Second House	☐ In Committee	☐ Substitute	☐ Enrolled

2. **Patron:** Marsden

3. **Committee:** Senate Committee on the Judiciary

4. **Title:** Appointment of a guardian ad litem

5. **Summary:** The proposed bill provides that the court may appoint a guardian ad litem to represent the best interests of a child in any case in which the custody or visitation of a child is at issue, regardless of whether the case is in a circuit or district court.

6. **Budget Amendment Necessary**: Yes, Item 39

7. **Fiscal Impact Estimates:** Preliminary (see Item #8)

8. **Fiscal Implications:** Under current law, juvenile and domestic relations district courts are authorize to appoint a guardians ad litem in custody and visitation cases, but if "each of the parents or other persons claiming a right to custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent the interests of the child or children unless the court finds, at any stage in the proceedings in a specific case, that the interests of the child or children are not otherwise adequately represented." Va. Code § 16.1-266 (F).

    According to the Office of the Executive Secretary of the Supreme Court ("OES"), the proposed bill is not expected to have a material fiscal impact on juvenile and domestic relations district courts nor is it expected to have much of an impact to appeals of custody and visitation proceedings from juvenile and domestic relations district court to circuit court. Guardians ad litem are already being appointed in these cases and compensated by the Commonwealth. Based on payments to guardians ad litem in Fiscal Year 2019, in juvenile cases generally the average compensation of a guardian ad litem in juvenile and domestic relations district courts under § 16.1-266 was $498.

    According to the OES, there is no current statutory authority for the appointment of guardians ad litem in custody and visitation matters in circuit courts except in appealed cases. However, the Court of Appeals has held that circuit courts may appoint guardians ad litem when the custody or visitation of a child requires determination as an exercise of their equitable powers. *Verrocchio v. Verrocchio*, 16 Va. App. 314 (1993). In that case, the Court of Appeals recognizes a limitation which is similar to the statutory authority of the juvenile and domestic relations district court under § 16.1-266: "While such an appointment is not required in every contested custody case, a finding that the appointment of a guardian ad litem is necessary and would be in the child's best interest is an essential prerequisite."

Therefore, the circuit court must "apportion the fees and expenses of the guardian ad litem as costs to the parties."(*Verrocchio v. Verrocchio*, 16 Va. App. 314 (1993)).   .

According to the statewide circuit court case management system, supplemented by data directly from the Fairfax and Arlington circuit courts (which operate separate automated systems), there were approximately 5,300 contested divorce proceedings concluded in Calendar Year 2019. OES believes that the determination of custody and visitation would most likely be litigated in this class of contested cases.

Using the number cases in calendar year 2019 remains constant (5,300) and that the average compensation of a guardian ad litem is $498, the following table provides an estimate of the potential fiscal impact of this bill:

Percentage of cases applicable	Average Compensation	Estimated Fiscal Impact
5 percent of 5,300	$498	$131,970
10 percent of 5,300	$498	$263,940
20 percent of 5,300	$498	$527,880

OES assumes that 10 percent of these cases would likely result in the appointment of a guardian ad litem with an estimated annual fiscal impact to the Commonwealth of $$264,000 (10% of 5,300 x $498).

9. **Specific Agency or Political Subdivisions Affected:** Courts

10. **Technical Amendment Necessary:** No

11. **Other Comments:** None