

# SENATE BILL 940

D4, N2, E2

4lr3110  
CF HB 705

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By: **Senator Stone**

Introduced and read first time: February 5, 2014

Assigned to: Rules

Re-referred to: Judicial Proceedings, February 19, 2014

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Committee Report: Favorable

Senate action: Adopted

Read second time: March 26, 2014

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Victims of Crime – Legal Representatives of Minors and Disabled and Elderly**  
3 **Persons**

4 FOR the purpose of authorizing a certain personal representative to request certain  
5 compensation, restitution, or financial property interest for a certain decedent;  
6 providing that certain rights, duties, and powers of a certain guardian of the  
7 person of a certain minor shall include serving as a victim's representative  
8 under certain circumstances; authorizing a court to order a certain guardian of  
9 the person of a certain person with a disability to serve as a victim's  
10 representative under certain circumstances; authorizing a certain fiduciary to  
11 request certain compensation, restitution, or financial property interest of a  
12 certain beneficiary; authorizing a certain social services administration to notify  
13 a certain court of certain matters under certain circumstances; altering the  
14 requirements of a certain adult protective services program to include  
15 notification of certain matters to a certain court under certain circumstances;  
16 making stylistic changes; and generally relating to legal representation of  
17 minors and disabled and elderly persons who are victims of crimes.

18 BY repealing and reenacting, without amendments,  
19 Article – Estates and Trusts  
20 Section 7-401(a), 13-213, 13-708(a), and 15-102(b)  
21 Annotated Code of Maryland  
22 (2011 Replacement Volume and 2013 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,  
 2 Article – Estates and Trusts  
 3 Section 7–401(y), 13–702, and 15–102(p)  
 4 Annotated Code of Maryland  
 5 (2011 Replacement Volume and 2013 Supplement)

6 BY adding to  
 7 Article – Estates and Trusts  
 8 Section 13–708(e)  
 9 Annotated Code of Maryland  
 10 (2011 Replacement Volume and 2013 Supplement)

11 BY repealing and reenacting, with amendments,  
 12 Article – Family Law  
 13 Section 5–532 and 14–202  
 14 Annotated Code of Maryland  
 15 (2012 Replacement Volume and 2013 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
 17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Estates and Trusts**

19 7–401.

20 (a) (1) In the performance of a personal representative’s duties pursuant  
 21 to § 7–101 of this title, a personal representative may exercise all of the power or  
 22 authority conferred upon the personal representative by statute or in the will, without  
 23 application to, the approval of, or ratification by the court.

24 (2) Except as validly limited by the will or by an order of court, a  
 25 personal representative may, in addition to the power or authority contained in the  
 26 will and to other common–law or statutory powers, exercise the powers enumerated in  
 27 this section.

28 (y) (1) [He] **A PERSONAL REPRESENTATIVE** may prosecute, defend, or  
 29 submit to arbitration actions, claims, or proceedings in any appropriate jurisdiction for  
 30 the protection or benefit of the estate, including the commencement of a personal  
 31 action which the decedent might have commenced or prosecuted, except that:

32 [(1)] (I) A personal representative may not institute an action  
 33 against a defendant for slander against the decedent during the lifetime of the  
 34 decedent.

35 [(2)] (II) In an action instituted by the personal representative  
 36 against a tort–feasor for a wrong which resulted in the death of the decedent, the  
 37 personal representative may recover the funeral expenses of the decedent up to the

1 amount allowed under § 8–106(c) of this article in addition to other damages  
2 recoverable in the action.

3 **(2) A PERSONAL REPRESENTATIVE MAY REQUEST CRIMINAL**  
4 **INJURIES COMPENSATION, RESTITUTION, OR ANY OTHER FINANCIAL PROPERTY**  
5 **INTEREST FOR A DECEDENT WHO WAS A VICTIM OF A CRIME.**

6 13–213.

7 All the provisions of § 15–102 of this article with respect to the powers of a  
8 fiduciary and the manner of exercise of those powers are applicable to a guardian.

9 13–702.

10 (a) **(1)** If neither parent is serving as guardian of the person and no  
11 testamentary appointment has been made, on petition by any person interested in the  
12 welfare of the minor, and after notice and hearing, the court may appoint a guardian  
13 of the person of an unmarried minor.

14 **(2)** If the minor has attained his 14th birthday, and if the person  
15 otherwise is qualified, the court shall appoint a person designated by the minor, unless  
16 the decision is not in the best interests of the minor.

17 **(3)** This section may not be construed to require court appointment of  
18 a guardian of the person of a minor if there is no good reason, such as a dispute, for a  
19 court appointment.

20 (b) **(1)** Venue in proceedings under this subtitle shall be as prescribed by  
21 the Maryland Rules.

22 **(2)** The contents of the petition and the manner of giving notice of the  
23 hearing on the petition shall be as prescribed by Maryland Rules.

24 **(C) IF THERE IS NO VICTIM'S REPRESENTATIVE WHO CAN ADEQUATELY**  
25 **ASSERT THE MINOR'S RIGHTS AS A VICTIM OF A CRIME OR A DELINQUENT ACT**  
26 **AND NO COURT HAS APPOINTED A GUARDIAN AD LITEM TO PROTECT THE**  
27 **MINOR'S INTERESTS, THE RIGHTS, DUTIES, AND POWERS THAT THE COURT MAY**  
28 **ORDER THE GUARDIAN TO EXERCISE SHALL INCLUDE SERVING AS A VICTIM'S**  
29 **REPRESENTATIVE TO ASSERT THE MINOR'S INTERESTS.**

30 13–708.

31 (a) **(1)** The court may grant to a guardian of a person only those powers  
32 necessary to provide for the demonstrated need of the disabled person.

1           (2) The court may appoint a guardian of the person of a disabled  
2 person for the limited purpose of making one or more decisions related to the health  
3 care of that person.

4           **(E) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, AND IN  
5 ADDITION TO THE RIGHTS, DUTIES, AND POWERS THAT THE COURT MAY ORDER  
6 UNDER SUBSECTION (B) OF THIS SECTION, THE COURT MAY ORDER THE  
7 GUARDIAN OF A PERSON WITH A DISABILITY TO SERVE AS A VICTIM’S  
8 REPRESENTATIVE TO ASSERT THE PERSON’S INTERESTS IF:**

9           **(1) THERE IS NO VICTIM’S REPRESENTATIVE WHO CAN  
10 ADEQUATELY ASSERT THE PERSON’S RIGHTS AS A VICTIM OF A CRIME OR A  
11 DELINQUENT ACT; AND**

12           **(2) NO COURT HAS APPOINTED A GUARDIAN AD LITEM TO  
13 PROTECT THE PERSON’S INTERESTS.**

14 15–102.

15           (b) (1) A fiduciary may perform the functions and duties enumerated in  
16 this section without application to, approval of, or ratification by a court.

17           (2) Except as expressly limited in the governing instrument, the  
18 powers of a fiduciary under this section are in addition to those derived from common  
19 law, statute, or the governing instrument.

20           (3) The powers listed in this section may be extended or limited by the  
21 appropriate court, and the court may also eliminate any limitation imposed by a court  
22 on a fiduciary.

23           (p) **(1)** Except as provided in the Maryland Rules, **[he] A FIDUCIARY** may  
24 prosecute, defend, or submit to arbitration any actions, claims, or proceedings in any  
25 jurisdiction for the protection of the fiduciary estate.

26           **(2) THE FIDUCIARY MAY REQUEST CRIMINAL INJURIES  
27 COMPENSATION, RESTITUTION, OR ANY OTHER FINANCIAL PROPERTY INTEREST  
28 OF A BENEFICIARY WHO IS A VICTIM OF A CRIME.**

### 29   Article – Family Law

30 5–532.

31           (a) The Administration shall adopt rules and regulations to carry out the  
32 child welfare services and foster care programs under this subtitle.

33           (b) The regulations shall authorize the Administration to:

1 (1) conduct a background check of child support arrearages on an  
2 applicant for foster home approval who is also a biological or adoptive parent; [and]

3 (2) consider any child support arrearage in determining whether to  
4 approve or disapprove the application; AND

5 **(3) NOTIFY THE APPROPRIATE CRIMINAL OR JUVENILE**  
6 **DELINQUENCY COURT IF THE ADMINISTRATION HAS INFORMATION INDICATING**  
7 **THAT THE CHILD'S INTERESTS AS A VICTIM ARE NOT ADEQUATELY PROTECTED**  
8 **IN A CASE BEFORE THE COURT.**

9 14-202.

10 (a) The adult protective services program shall include:

11 (1) intake and investigative services including, if appropriate, medical,  
12 social, and psychiatric evaluation;

13 (2) planning for the needs of the recipient of services;

14 (3) assistance to locate, apply for, and effectively use home care, day  
15 care, chore services, transportation, counseling, emergency arrangements, and other  
16 health and social services;

17 (4) cooperation with the courts, including provision of any necessary  
18 recommendations, reports, or petitions;

19 (5) counsel to represent any indigent recipient of services in any  
20 protective proceeding or any review board hearing conducted under Subtitle 3 or  
21 Subtitle 4 of this title, and assistance to locate, apply for, and effectively use other  
22 legal assistance; [and]

23 (6) notification of and participation by the Secretary of Aging or the  
24 director of the local office on aging, as appropriate, as a party in any protective  
25 proceeding or review board hearing relating to an individual who is 65 years old or  
26 older; AND

27 **(7) NOTIFICATION OF THE APPROPRIATE CRIMINAL OR JUVENILE**  
28 **DELINQUENCY COURT IF THE PROGRAM HAS INFORMATION INDICATING THAT**  
29 **THE INTERESTS OF THE PERSON WITH A DISABILITY AS A VICTIM ARE NOT**  
30 **ADEQUATELY PROTECTED IN A CASE BEFORE THE COURT.**

31 (b) For adults 65 years old and over, the services of the protective services  
32 program shall be coordinated with the Department of Aging or the local office on aging  
33 as appropriate.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2014.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.