

## Article - Estates and Trusts

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§13-709.

(a) When, from personal observation of a law enforcement officer, it appears probable that an adult will suffer immediate and serious physical injury or death if not immediately placed in a health care facility, that the adult is incapable of giving consent, and that it is not possible to follow the procedures of this section, the officer shall transport the person to an appropriate medical facility which shall immediately notify the next of kin and the director. This medical care may not be rendered in a State mental hospital other than, in an appropriate case, the Walter P. Carter Community Mental Health and Retardation Center and the Highland Health Facility unless authorized by the courts in a civil commitment proceeding. The director shall file a petition pursuant to subsection (b) of this section within 24 hours after the transfer of the person has taken place. The court shall hold a hearing on the petition and render its decision within 48 hours after the transfer has occurred.

(b) Upon petition by an interested person, a court may issue an order authorizing the provision of protective services on an emergency basis to an adult after finding on the record, based on clear and convincing evidence, that:

(1) For the purpose of this section the person lacks capacity under the standards enumerated in § 13-705(b) of this subtitle;

(2) An emergency exists, as defined in § 13-101 of this title; and

(3) No person authorized by law or court order to give consent for the person is available to consent to emergency services.

(c) In issuing an emergency order, the court shall adhere to the following limitations:

(1) Only such protective services as are necessary to remove the conditions creating the emergency shall be ordered; the court shall specifically designate the approved services in its order;

(2) Protective services authorized by an emergency order shall not include hospitalization or a change of residence unless the court specifically finds such action is necessary and gives specific approval for such action in its order;

(3) Protective services may be provided under an initial emergency order for not more than 144 hours, and the initial order may be renewed as provided in paragraph (5) of this subsection;

(4) In its order the court shall appoint the petitioner, another interested person, the director, or the Secretary of Aging as temporary guardian of the person with responsibility for the person's welfare and authority to give consent for the person for

the approved protective services until the expiration of the order;

(5) Notwithstanding the provisions of paragraphs (3) and (4) of this subsection, the court may extend the terms of the emergency order and the appointment of the temporary guardian until appointment of a guardian of the person pursuant to § 13-705 of this subtitle, upon petition of the temporary guardian, the director, or the Secretary of Aging, as appropriate, and after a showing that the conditions found to exist in subsection (b) of this section will probably continue beyond the expiration of the extended emergency order. Such petition shall be filed before the expiration of the six-day period provided for in paragraph (3) of this subsection and shall be accompanied by a petition for appointment of a guardian of the person pursuant to § 13-705 of this subtitle. Such petition for appointment of a guardian of the person shall be heard on an expedited basis no more than 60 days after the filing of the petition;

(6) The issuance of an emergency order and the appointment of a temporary guardian shall not deprive the person of any rights except to the extent provided for in the order or appointment; and

(7) To implement an emergency order, the court may authorize forcible entry of the premises of the person for the purpose of rendering protective services or transporting the person to another location for the provision of such services only after a showing to the court that attempts to gain voluntary access to the premises have failed and forcible entry is necessary. Persons making authorized forcible entry shall be accompanied by a law enforcement officer, the director or his representative, and if appropriate, a representative of the local department of health.

(d) The petition for an emergency order shall set forth the name, address, and interest of the petitioner; the name, age, and address of the person in need of protective services; the nature of the person's disability, if determinable; the proposed protective services; the petitioner's reasonable belief, together with facts supportive thereof, as to the existence of the facts stated in subsection (b)(1) through (3) of this section; and facts showing petitioner's attempts to obtain the person's consent to the services and the outcomes of such attempts.

(e) Notice of the filing of such petition shall be given as required in the Maryland Rules and to the director. Such notice shall be given in language reasonably understandable by the intended recipients at least 24 hours prior to the hearing for emergency intervention. The court may waive the 24-hour notice requirement upon a showing that (1) immediate and reasonably foreseeable physical harm to the person or others will result from the 24-hour delay, and (2) reasonable attempts have been made to give such notice. Notice of the court's final order shall be given to the same parties.

(f) (1) The hearing on a petition for an emergency order for protective services shall be held under the following conditions:

(i) The person shall be present unless he has knowingly and

voluntarily waived the right to be present or cannot be present because of physical or mental incapacity. Waiver or incapacity may not be presumed from nonappearance but shall be determined on the basis of factual information supplied to the court by counsel or a representative appointed by the court.

(ii) The person has the right to counsel whether or not he is present at the hearing. Subject to paragraph (2) of this subsection, if the person is indigent or lacks the capacity to waive counsel, the court shall appoint counsel. Where the person is indigent, the State shall pay reasonable attorney's fees.

(iii) The person may present evidence and cross-examine witnesses. This hearing shall be held no earlier than 24 hours after the notice required in subsection (e) of this section has been given, unless such notice has been waived by the court.

(2) In any action in which payment for the services of a court-appointed attorney for the person is the responsibility of the local department of social services, unless the court finds that it would not be in the best interests of the person, the court shall:

(i) Appoint an attorney who has contracted with the Department of Human Resources to provide those services, in accordance with the terms of the contract; and

(ii) In an action in which an attorney has previously been appointed, strike the appearance of the attorney previously appointed and appoint the attorney who is currently under contract with the Department of Human Resources, in accordance with the terms of the contract.

(g) The court shall issue for the record a statement of its findings in support of any order for emergency protective services.

(h) The person, the temporary guardian, or any interested person may petition the court to have the emergency order set aside or modified at any time, notwithstanding any prior findings by the court that the person is disabled.

(i) Where protective services are rendered on the basis of an emergency order, the temporary guardian shall submit a report describing the circumstances including the name, place, date, and nature of the services, and the use of forcible entry, if any, to the court and the director. This report shall become part of the court record.

(j) The person or the guardian of the person may appeal any findings of a court under subsection (b) of this section. Such appeal shall be handled on an expedited basis by the appellate court.

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