

HOUSE BILL 1483

N2, D4

8lr0337

By: **Delegates Saab, Adams, Afzali, Ali, Anderson, Anderton, Angel, Arentz, Atterbeary, Aumann, Barkley, B. Barnes, D. Barnes, Barron, Barve, Beidle, Beitzel, Branch, Bromwell, Brooks, Buckel, Carey, Carozza, Carr, Cassilly, Chang, Ciliberti, Clark, Clippinger, Cluster, Conaway, Corderman, Cullison, Davis, Ebersole, Folden, Fraser-Hidalgo, Frick, Frush, Ghrist, Gibson, Gilchrist, Glass, Glenn, Grammer, Gutierrez, Hayes, Haynes, Hettleman, Hill, Hixson, Holmes, Hornberger, C. Howard, S. Howard, Impallaria, Jackson, Jacobs, Jameson, Kelly, Kipke, Kittleman, Korman, Kramer, Krebs, Krimm, Lam, Lierman, Lisanti, Long, Luedtke, Malone, Mautz, McComas, McConkey, McCray, McDonough, McKay, McMillan, Metzgar, Miele, A. Miller, W. Miller, Moon, Morales, Morgan, Morhaim, Mosby, Otto, Pena-Melnyk, Platt, Proctor, Reilly, Rey, Robinson, Rose, Sample-Hughes, Sanchez, Shoemaker, Simonaire, Szeliga, Tarlau, Turner, Valderrama, Valentino-Smith, Vallario, Vogt, M. Washington, West, Wilson, Wivell, K. Young, and P. Young**

Introduced and read first time: February 9, 2018

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **Duties of a Guardian of the Person – Petition for Visitation**

3 FOR the purpose of authorizing a court to include in an order appointing a guardian of the
4 person of a disabled person the duty to foster and preserve certain family
5 relationships under certain circumstances; establishing the intent of the General
6 Assembly to enforce the right of every adult in the State to visit with and receive
7 certain communication from whomever the adult chooses, with a certain exception;
8 establishing a rebuttable presumption in an action under this Act; authorizing a
9 certain person to petition a certain court for reasonable visitation with a certain
10 alleged incapacitated or protected person; requiring the petition to be verified and to
11 state certain facts; providing for service of process for the petition; providing for a
12 certain shift of a certain burden of proof under certain circumstances; providing for
13 the rebuttal of a certain presumption under this Act; requiring the court to issue a
14 ruling in a certain manner; authorizing the court to impose certain restrictions on a
15 certain visitation; authorizing the court to assess certain costs and sanctions against
16 certain parties; defining certain terms; and generally relating to visitation and
17 communications between certain family members or other interested persons.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, without amendments,
2 Article – Estates and Trusts
3 Section 13–708(a)
4 Annotated Code of Maryland
5 (2017 Replacement Volume)

6 BY repealing and reenacting, with amendments,
7 Article – Estates and Trusts
8 Section 13–708(b)
9 Annotated Code of Maryland
10 (2017 Replacement Volume)

11 BY adding to
12 Article – Family Law
13 Section 15–101 to be under the new title “Title 15. Visitation”
14 Annotated Code of Maryland
15 (2012 Replacement Volume and 2017 Supplement)

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

18 **Article – Estates and Trusts**

19 13–708.

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

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

25 (ii) The court may appoint a guardian of the person of a disabled
26 person for a limited period of time if it appears probable that the disability will cease within
27 1 year of the appointment of the guardian.

28 (b) Subject to subsection (a) of this section, the rights, duties, and powers which
29 the court may order include, but are not limited to:

30 (1) The same rights, powers, and duties that a parent has with respect to
31 an unemancipated minor child, except that the guardian is not liable solely by reason of the
32 guardianship to third persons for any act of the disabled person;

33 (2) The right to custody of the disabled person and to establish his place of
34 abode within and without the State, provided there is court authorization for any change
35 in the classification of abode, except that no one may be committed to a mental facility

1 without an involuntary commitment proceeding as provided by law;

2 (3) The duty to provide for care, comfort, and maintenance, including
3 social, recreational, and friendship requirements, and, if appropriate, for training and
4 education of the disabled person;

5 (4) **IF IT IS IN THE BEST INTEREST OF THE DISABLED PERSON, THE**
6 **DUTY TO FOSTER AND PRESERVE FAMILY RELATIONSHIPS INCLUDING, AS**
7 **APPROPRIATE, ASSISTING TO ARRANGE VISITATION AND COMMUNICATION BY**
8 **TELEPHONE CALLS, PERSONAL MAIL, AND ELECTRONIC COMMUNICATIONS;**

9 [(4)] (5) The duty to take reasonable care of the clothing, furniture,
10 vehicles, and other personal effects of the disabled person, and, if other property requires
11 protection, the power to commence protective proceedings;

12 [(5)] (6) If a guardian of the estate of the disabled person has not been
13 appointed, the right to commence proceedings to compel performance by any person of his
14 duty to support the disabled person, and to apply the estate to the support, care, and
15 education of the disabled person, except that the guardian of the person may not obtain
16 funds from the estate for room and board that the guardian, his spouse, parent, or child
17 provide without a court order approving the charge, and the duty to exercise care to
18 conserve any excess estate for the needs of the disabled person;

19 [(6)] (7) If a guardian of the estate has been appointed, the duty to control
20 the custody and care of the disabled person, to receive reasonable sums for room and board
21 provided to the disabled person, and to account to the guardian of the estate for funds
22 expended, and the right to ask the guardian of the estate to expend the estate in payment
23 of third persons for care and maintenance of the disabled person;

24 [(7)] (8) The duty to file an annual or biannual report with the court
25 indicating the present place of residence and health status of the ward, the guardian's plan
26 for preserving and maintaining the future well-being of the ward, and the need for
27 continuance or cessation of the guardianship or for any alteration in the powers of the
28 guardian. The court shall renew the appointment of the guardian if it is satisfied that the
29 grounds for the original appointment stated in § 13-705(b) of this subtitle continue to exist.
30 If the court believes such grounds may not exist, it shall hold a hearing, similar to that
31 provided for in § 13-705 of this subtitle, at which the guardian shall be required to prove
32 that such grounds exist. If the court does not make these findings, it shall order the
33 discontinuance of the guardianship of the person. If the guardian declines to participate in
34 the hearing, the court may appoint another guardian to replace him pursuant to the
35 priorities in § 13-707(a) of this subtitle; and

36 [(8)] (9) The power to give necessary consent or approval for:

37 (i) Medical or other professional care, counsel, treatment, or service,
38 including admission to a hospital or nursing home or transfer from one medical facility to

1 another;

2 (ii) Withholding medical or other professional care, counsel,
3 treatment, or service; and

4 (iii) Withdrawing medical or other professional care, counsel,
5 treatment, or service.

6 **Article – Family Law**

7 **TITLE 15. VISITATION.**

8 **15-101.**

9 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
10 INDICATED.

11 (2) “ALLEGED INCAPACITATED OR PROTECTED PERSON” MEANS THE
12 PERSON THE PETITIONER SEEKS TO VISIT.

13 (3) “INTERESTED PERSON” MEANS A PERSON WHO HAS A
14 SIGNIFICANT, ONGOING RELATIONSHIP WITH THE ALLEGED INCAPACITATED OR
15 PROTECTED PERSON THAT IS BASED ON OR A PRODUCT OF STRONG AFFECTION.

16 (4) “VISIT” OR “VISITATION” MEANS ANY IN-PERSON MEETING, OR
17 ANY TELEPHONIC, MAIL, OR ELECTRONIC COMMUNICATION, BETWEEN THE
18 PETITIONER AND THE ALLEGED INCAPACITATED OR PROTECTED PERSON.

19 (B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO ENFORCE THE RIGHT
20 OF EVERY ADULT IN THIS STATE TO VISIT WITH AND RECEIVE MAIL, TELEPHONE,
21 AND ELECTRONIC COMMUNICATION FROM WHOMEVER THE ADULT CHOOSES,
22 UNLESS A COURT HAS SPECIFICALLY ORDERED OTHERWISE.

23 (C) THERE IS A REBUTTABLE PRESUMPTION IN AN ACTION UNDER THIS
24 SECTION THAT IT IS IN THE BEST INTEREST OF AN ALLEGED INCAPACITATED OR
25 PROTECTED PERSON TO HAVE VISITATION FROM:

26 (1) THE SPOUSE OF THE PERSON;

27 (2) THE ADULT CHILDREN OF THE PERSON;

28 (3) THE ADULT GRANDCHILDREN OF THE PERSON;

29 (4) THE PARENTS OF THE PERSON;

1 **(5) THE ADULT SIBLINGS OF THE PERSON; AND**

2 **(6) OTHER INTERESTED PERSONS.**

3 **(D) A PERSON LISTED IN SUBSECTION (C) OF THIS SECTION MAY PETITION**
4 **THE COURT, IN THE JURISDICTION IN WHICH THE ALLEGED INCAPACITATED OR**
5 **PROTECTED PERSON RESIDES OR IN THE COURT THAT APPOINTED A GUARDIAN OF**
6 **THE PERSON FOR THAT PERSON, FOR REASONABLE VISITATION WITH THE ALLEGED**
7 **INCAPACITATED OR PROTECTED PERSON.**

8 **(E) A PETITION DESCRIBED IN SUBSECTION (D) OF THIS SECTION SHALL BE**
9 **VERIFIED AND STATE FACTS SHOWING:**

10 **(1) THAT THE PETITIONER IS A PERSON LISTED IN SUBSECTION (C) OF**
11 **THIS SECTION;**

12 **(2) THAT VISITATION BY THE PETITIONER WITH THE ALLEGED**
13 **INCAPACITATED OR PROTECTED PERSON HAS BEEN UNREASONABLY INTERFERED**
14 **WITH OR DENIED; AND**

15 **(3) THE IDENTITY OF THE PERSON OR PERSONS WHO HAVE**
16 **UNREASONABLY INTERFERED WITH OR DENIED VISITATION.**

17 **(F) THE PETITIONER SHALL PERSONALLY SERVE A COPY OF THE PETITION**
18 **ON THE ALLEGED INCAPACITATED OR PROTECTED PERSON, THE ATTORNEY FOR**
19 **THE ALLEGED INCAPACITATED OR PROTECTED PERSON, THE GUARDIAN OF THE**
20 **PERSON OF THE ALLEGED INCAPACITATED OR PROTECTED PERSON, IF ANY, AND**
21 **ANY PERSON ALLEGED TO HAVE INTERFERED WITH OR DENIED VISITATION.**

22 **(G) (1) AT THE HEARING ON THE PETITION, IF EVIDENCE IS PRESENTED**
23 **THAT THE ALLEGED INCAPACITATED OR PROTECTED PERSON OBJECTS TO THE**
24 **PETITION, THE BURDEN OF PROOF DESCRIBED IN SUBSECTION (C) OF THIS SECTION**
25 **SHALL SHIFT TO THE PETITIONER TO PROVE, BY CLEAR AND CONVINCING**
26 **EVIDENCE, THAT THE ALLEGED INCAPACITATED OR PROTECTED PERSON'S**
27 **OBJECTION WAS PROCURED BY UNDUE INFLUENCE.**

28 **(2) THE PRESUMPTION DESCRIBED IN SUBSECTION (C) OF THIS**
29 **SECTION MAY BE REBUTTED BY CLEAR AND CONVINCING EVIDENCE THAT THE**
30 **VISITATION WOULD NOT BE IN THE BEST INTERESTS OF THE ALLEGED**
31 **INCAPACITATED OR PROTECTED PERSON BECAUSE:**

32 **(I) THE PETITIONER HAS COMMITTED PHYSICAL OR FINANCIAL**

1 ELDER ABUSE; OR

2 (II) THE VISITATION WOULD BE HARMFUL TO THE HEALTH OR
3 MENTAL WELL-BEING OF THE ALLEGED INCAPACITATED OR PROTECTED PERSON.

4 (H) (1) IN RULING ON A PETITION UNDER THIS SECTION, THE COURT
5 SHALL ISSUE A STATEMENT OF FACTS AND LAW.

6 (2) THE COURT MAY IMPOSE REASONABLE RESTRICTIONS ON A
7 VISITATION ORDERED UNDER THIS SECTION, INCLUDING TIME AND FREQUENCY
8 LIMITATIONS AND REQUIRING THAT VISITATIONS BE MONITORED.

9 (I) (1) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE COURT
10 MAY ASSESS COSTS OF THE PETITION OR VISITATION, INCLUDING THE COST OF
11 MONITORING VISITS, TO ANY PARTY TO A PROCEEDING UNDER THIS SECTION.

12 (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE COURT
13 MAY ASSESS SANCTIONS, IN THE AMOUNT OF THE REASONABLE ATTORNEY'S FEES
14 INCURRED, AGAINST A PETITIONER WHO FILES A PETITION UNDER THIS SECTION IN
15 BAD FAITH OR AGAINST A PARTY THAT UNJUSTIFIABLY INTERFERES WITH OR
16 DENIES VISITATION.

17 (3) NO COSTS OR SANCTIONS UNDER THIS SECTION MAY BE ASSESSED
18 AGAINST THE ALLEGED INCAPACITATED OR PROTECTED PERSON WHO IS THE
19 SUBJECT OF THE PETITION.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2018.