

# SENATE BILL 1239

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CF HB 1613

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By: **Senator Smith**

Introduced and read first time: March 5, 2018

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Appointment or Designation of Standby Guardian – Immigration Action Against**  
3 **a Parent**

4 FOR the purpose of authorizing a parent of a minor to file a petition for the judicial  
5 appointment of a standby guardian of the person or property of the minor if there is  
6 a significant risk that the petitioner will be detained by immigration officials, be  
7 granted voluntary departure in lieu of removal under certain federal law, or be  
8 removed from the United States within a certain period of time after the filing of the  
9 petition; requiring a court to issue a certain decree for the appointment of a standby  
10 guardian of the person or property of a minor if the court finds that there is a  
11 significant risk that the petitioner will be detained by immigration officials, be  
12 granted voluntary departure in lieu of removal under certain federal law, or be  
13 removed from the United States within a certain period of time after the filing of the  
14 petition under certain circumstances; specifying certain procedures for the  
15 appointment or designation of a standby guardian of the person or property of a  
16 minor in the case of detainment by immigration officials, voluntary departure in lieu  
17 of removal under certain federal law, or removal from the United States of a parent;  
18 specifying when the authority of a standby guardian under this Act begins under  
19 certain circumstances; requiring a standby guardian to take certain actions; making  
20 certain provisions relating to the appointment or designation of a standby guardian  
21 of the person or property of a minor in cases of incapacity, debilitation, or death of a  
22 parent applicable to the appointment or designation of a standby guardian of the  
23 person or property of a minor in the case of detainment by immigration officials,  
24 voluntary departure in lieu of removal under certain federal law, or removal from  
25 the United States of a parent; authorizing a parent to designate a standby guardian  
26 by means of a written designation in the event that the parent is detained by  
27 immigration officials, granted voluntary departure in lieu of removal under certain  
28 federal law, or removed from the United States under certain circumstances;  
29 requiring the court to appoint a person to be a standby guardian if the court finds  
30 that notice of detainment by immigration officials, notice or an order of voluntary  
31 departure in lieu of removal under certain federal law, or an order of removal from

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 the United States has been issued and specified parental consent has been given;  
 2 specifying that a standby guardian's authority under certain provisions may not,  
 3 itself, divest a parent of any parental or guardianship rights; making certain  
 4 conforming changes; altering certain definitions; and generally relating to official  
 5 immigration actions taken against a parent and standby guardianship of the person  
 6 or property of a minor.

7 BY repealing and reenacting, without amendments,

8 Article – Estates and Trusts

9 Section 13–901(a) and 13–902

10 Annotated Code of Maryland

11 (2017 Replacement Volume)

12 BY repealing and reenacting, with amendments,

13 Article – Estates and Trusts

14 Section 13–901(e), 13–903, 13–904, and 13–907

15 Annotated Code of Maryland

16 (2017 Replacement Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

18 That the Laws of Maryland read as follows:

19 **Article – Estates and Trusts**

20 13–901.

21 (a) In this subtitle the following words have the meanings indicated.

22 (e) “Standby guardian” means a person:

23 (1) Appointed by a court under § 13–903 of this subtitle as standby  
 24 guardian of the person or property of a minor, whose authority becomes effective on the  
 25 incapacity, **DETAINMENT BY IMMIGRATION OFFICIALS, VOLUNTARY DEPARTURE**  
 26 **UNDER THE IMMIGRATION AND NATIONALITY ACT, REMOVAL FROM THE UNITED**  
 27 **STATES**, or death of the minor's parent, or on the consent of the parent; or

28 (2) Designated under § 13–904 of this subtitle as standby guardian of the  
 29 person or property of a minor, whose authority becomes effective on the incapacity of the  
 30 minor's parent, **[or] ON THE DETAINMENT BY IMMIGRATION OFFICIALS AND CONSENT**  
 31 **OF THE PARENT, ON THE VOLUNTARY DEPARTURE UNDER THE IMMIGRATION AND**  
 32 **NATIONALITY ACT AND CONSENT OF THE PARENT, ON THE REMOVAL FROM THE**  
 33 **UNITED STATES AND CONSENT OF THE PARENT, OR** on the debilitation and consent of  
 34 the parent.

35 13–902.

1 Except as otherwise provided in this subtitle, the provisions of this title concerning  
2 a guardian of the person or property of a minor shall apply to standby guardians.

3 13-903.

4 (a) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, a  
5 petition for the judicial appointment of a standby guardian of the person or property of a  
6 minor under this section may be filed only by a parent of the minor, and if filed, shall be  
7 joined by each person having parental rights over the minor.

8 (2) If a person who has parental rights cannot be located after reasonable  
9 efforts have been made to locate the person, the parent may file a petition for the judicial  
10 appointment of a standby guardian.

11 (3) If the petitioner submits documentation, satisfactory to the court, of the  
12 reasonable efforts to locate the person who has parental rights, the court may issue a decree  
13 under this section.

14 (b) A petition for the judicial appointment of a standby guardian shall state:

15 (1) The duties of the standby guardian;

16 (2) Whether the authority of the standby guardian is to become effective on  
17 the petitioner's incapacity, **ON THE PETITIONER'S DETAINMENT BY IMMIGRATION**  
18 **OFFICIALS, ON THE PETITIONER'S VOLUNTARY DEPARTURE UNDER THE**  
19 **IMMIGRATION AND NATIONALITY ACT, ON THE PETITIONER'S REMOVAL FROM THE**  
20 **UNITED STATES**, on the petitioner's death, or on whichever occurs first; and

21 (3) That there is a significant risk that the petitioner will become  
22 incapacitated, **BE DETAINED BY IMMIGRATION OFFICIALS, BE GRANTED VOLUNTARY**  
23 **DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND NATIONALITY**  
24 **ACT, BE REMOVED FROM THE UNITED STATES**, or die, as applicable, within 2 years of  
25 the filing of the petition, and the basis for this statement.

26 (c) If the petitioner is medically unable to appear, the petitioner's appearance in  
27 court may not be required, except on a motion and for good cause shown.

28 (d) (1) If the court finds that there is a significant risk that the petitioner will  
29 become incapacitated, **BE DETAINED BY IMMIGRATION OFFICIALS, BE GRANTED**  
30 **VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND**  
31 **NATIONALITY ACT, OR BE REMOVED FROM THE UNITED STATES**, or die within 2 years  
32 of the filing of the petition and that the interests of the minor will be promoted by the  
33 appointment of a standby guardian of the person or property of the minor, the court shall  
34 issue a decree accordingly.

35 (2) A decree under this subsection shall:

1 (i) Specify whether the authority of the standby guardian is  
2 effective on the receipt of a determination of the petitioner's incapacity, **ON THE RECEIPT**  
3 **OF OFFICIAL NOTICE OF DETAINMENT OF THE PETITIONER BY IMMIGRATION**  
4 **OFFICIALS, ON THE RECEIPT OF AN ORDER OR OTHER OFFICIAL NOTICE OF A GRANT**  
5 **OF VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND**  
6 **NATIONALITY ACT, ON THE RECEIPT OF AN ORDER OF REMOVAL FROM THE UNITED**  
7 **STATES ENTERED AGAINST THE PETITIONER**, on the receipt of the certificate of the  
8 petitioner's death, or on whichever occurs first; and

9 (ii) Provide that the authority of the standby guardian may become  
10 effective earlier on written consent of the petitioner in accordance with subsection [(e)(3)]  
11 **(E)(4)** of this section.

12 (3) If at any time before the beginning of the authority of the standby  
13 guardian the court finds that the requirements of paragraph (1) of this subsection are no  
14 longer satisfied, the court may rescind the decree.

15 (e) (1) (i) If a decree under subsection (d) of this section provides that the  
16 authority of the standby guardian is effective on receipt of a determination of the  
17 petitioner's incapacity, the standby guardian's authority shall begin on the standby  
18 guardian's receipt of a copy of a determination of incapacity made under § 13-906 of this  
19 subtitle.

20 (ii) A standby guardian shall file a copy of the determination of  
21 incapacity with the court that issued the decree within 90 days of the date of receipt of the  
22 determination.

23 (iii) If a standby guardian fails to comply with subparagraph (ii) of  
24 this paragraph, the court may rescind the standby guardian's authority.

25 (2) (i) If a decree under subsection (d) of this section provides that the  
26 authority of the standby guardian is effective on receipt of a certificate of the petitioner's  
27 death, the standby guardian's authority shall begin on the standby guardian's receipt of a  
28 certificate of death.

29 (ii) The standby guardian shall file a copy of the certificate of death  
30 with the court that issued the decree within 90 days of the date of the petitioner's death.

31 (iii) If the standby guardian fails to comply with subparagraph (ii) of  
32 this paragraph, the court may rescind the standby guardian's authority.

33 **(3) (1) IF A DECREE UNDER SUBSECTION (D) OF THIS SECTION**  
34 **PROVIDES THAT THE AUTHORITY OF THE STANDBY GUARDIAN IS EFFECTIVE ON**  
35 **RECEIPT OF OFFICIAL NOTICE OF DETAINMENT OF THE PETITIONER BY**  
36 **IMMIGRATION OFFICIALS, ON THE RECEIPT OF AN ORDER OR OTHER OFFICIAL**

1 NOTICE OF A GRANT OF VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE  
2 IMMIGRATION AND NATIONALITY ACT, ON THE RECEIPT OF AN ORDER OF REMOVAL  
3 FROM THE UNITED STATES OF THE PETITIONER, THE STANDBY GUARDIAN'S  
4 AUTHORITY SHALL BEGIN ON THE STANDBY GUARDIAN'S RECEIPT OF A COPY OF  
5 OFFICIAL NOTICE OF DETAINMENT OF THE PETITIONER BY IMMIGRATION  
6 OFFICIALS, ON THE RECEIPT OF AN ORDER OR OTHER OFFICIAL NOTICE OF A GRANT  
7 OF VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND  
8 NATIONALITY ACT, OR ON THE RECEIPT OF AN ORDER OF REMOVAL.

9 (II) THE STANDBY GUARDIAN SHALL FILE A COPY OF THE  
10 ORDER OF REMOVAL WITH THE COURT THAT ISSUED THE DECREE WITHIN 90 DAYS  
11 OF THE DATE OF RECEIPT OF THE ORDER.

12 (III) IF THE STANDBY GUARDIAN FAILS TO COMPLY WITH  
13 SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COURT MAY RESCIND THE STANDBY  
14 GUARDIAN'S AUTHORITY.

15 [(3)] (4) (i) Notwithstanding paragraphs (1) [and], (2), AND (3) of this  
16 subsection, a standby guardian's authority shall begin on the standby guardian's receipt of  
17 the petitioner's written consent to the beginning of the standby guardian's authority signed  
18 by:

19 1. The petitioner in the presence of two witnesses at least 18  
20 years of age, neither of whom may be the standby guardian; and

21 2. The standby guardian.

22 (ii) 1. If the petitioner is physically unable to sign a written  
23 consent to the beginning of the standby guardian's authority, another person may sign the  
24 consent on the petitioner's behalf and at the petitioner's direction.

25 2. A consent under this subparagraph to the beginning of the  
26 standby guardian's authority shall be signed in the presence of the petitioner and two  
27 witnesses at least 18 years of age, neither of whom may be the standby guardian.

28 3. A standby guardian also shall sign a written consent to the  
29 beginning of the standby guardian's authority under this subparagraph.

30 (iii) The standby guardian shall file the written consent with the  
31 court that issued the decree within 90 days of the date of receipt of the written consent.

32 (iv) If the standby guardian fails to comply with subparagraph (iii) of  
33 this paragraph, the court may rescind the standby guardian's authority.

34 (f) The petitioner may revoke a standby guardianship created under this section  
35 by:

- 1 (1) Executing a written revocation;
- 2 (2) Filing the revocation with the court that issued the decree; and
- 3 (3) Promptly notifying the standby guardian of the revocation.

4 (g) A person who is judicially appointed as a standby guardian under this section  
5 may at any time before the beginning of the person's authority renounce the appointment  
6 by:

- 7 (1) Executing a written renunciation;
- 8 (2) Filing the renunciation with the court that issued the decree; and
- 9 (3) Promptly notifying in writing the petitioner of the revocation.

10 13-904.

11 (a) (1) A parent may designate a standby guardian by means of a written  
12 designation:

13 (i) Signed in the presence of two witnesses, at least 18 years old,  
14 neither of whom is the standby guardian; and

15 (ii) Signed by the standby guardian.

16 (2) (i) If a parent is physically unable to sign a written designation,  
17 another person may sign the designation on the parent's behalf and at the parent's  
18 direction.

19 (ii) 1. A designation under this paragraph shall be signed in the  
20 presence of the parent and two witnesses at least 18 years of age, neither of whom may be  
21 the standby guardian.

22 2. The standby guardian also shall sign a designation under  
23 this paragraph.

24 (b) (1) A designation of a standby guardian shall identify the parent, the  
25 minor, and the person designated to be the standby guardian, state the duties of the  
26 standby guardian, and indicate that the parent intends for the standby guardian to become  
27 the minor's guardian in the event the parent [either]:

28 (i) Becomes incapacitated; [or]

29 (ii) **IS DETAINED BY IMMIGRATION OFFICIALS, IS GRANTED**  
30 **VOLUNTARY DEPARTURE, OR IS REMOVED FROM THE UNITED STATES AND**

1 **CONSENTS TO THE BEGINNING OF THE STANDBY GUARDIAN’S AUTHORITY; OR**

2 **[(ii)] (III)** Becomes debilitated and consents to the beginning of the  
3 standby guardian’s authority.

4 (2) A parent may designate an alternate standby guardian in the same  
5 writing and by the same manner as the designation of a standby guardian.

6 (3) A designation may, but need not, be in the following form:

7 **Designation of Standby Guardian**

8 I (name of parent) hereby designate (name, home address, and telephone number of  
9 standby guardian) as standby guardian of the person and property of my child(ren) (name  
10 of child(ren)).

11 (You may, if you wish, provide that the standby guardian’s authority shall extend  
12 only to the person, or only to the property, of your child, by crossing out “person” or  
13 “property”, whichever is inapplicable, above.)

14 The standby guardian’s authority shall take effect if and when **[either]**:

15 (1) My doctor concludes I am mentally incapacitated, and thus unable to care for my  
16 child(ren); **[or]**

17 (2) My doctor concludes that I am physically debilitated, and thus unable to care for  
18 my child(ren) and I consent in writing, before two witnesses, to the standby guardian’s  
19 authority taking effect; **OR**

20 **(3) I HAVE BEEN DETAINED BY IMMIGRATION OFFICIALS, GRANTED**  
21 **VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND**  
22 **NATIONALITY ACT, OR REMOVED FROM THE UNITED STATES, AND I AM THUS**  
23 **UNABLE TO CARE FOR MY CHILD(REN) AND I CONSENT IN WRITING, BEFORE TWO**  
24 **WITNESSES, TO THE STANDBY GUARDIAN’S AUTHORITY TAKING EFFECT.**

25 If the person I designate above is unable or unwilling to act as guardian for my  
26 child(ren), I hereby designate (name, home address, and telephone number of alternate  
27 standby guardian), as standby guardian of my child(ren).

28 I also understand that my standby guardian’s authority will cease 180 days after  
29 beginning unless by that date my standby guardian petitions the court for appointment  
30 as guardian.

31 I understand that I retain full parental rights even after the beginning of the  
32 standby guardian’s authority, and may revoke the standby guardianship at any time.

33 Parent’s Signature: \_\_\_\_\_

34 Address: \_\_\_\_\_

35 Date: \_\_\_\_\_

36 I declare that the person whose name appears above signed this document in my  
37 presence, or was physically unable to sign and asked another to sign this document, who  
38 did so in my presence. I further declare that I am at least 18 years old and am not the  
39 person designated as standby guardian.

40 Witness’s Signature: \_\_\_\_\_

41 Address: \_\_\_\_\_

42 Date: \_\_\_\_\_



1 and

2 (iii) A copy of the birth certificate for each child for whom the standby  
3 guardian is designated; OR

4 (3) THE STANDBY GUARDIAN'S RECEIPT OF:

5 (I) A COPY OF OFFICIAL NOTICE OF THE PARENT'S  
6 DETAINMENT BY IMMIGRATION OFFICIALS, A COPY OF AN ORDER OR OTHER  
7 OFFICIAL NOTICE GRANTING VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER  
8 THE IMMIGRATION AND NATIONALITY ACT, OR AN ORDER OF REMOVAL FROM THE  
9 UNITED STATES;

10 (II) A COPY OF THE PARENT'S WRITTEN CONSENT TO THE  
11 BEGINNING OF THE STANDBY GUARDIANSHIP, SIGNED BY THE PARENT IN THE  
12 PRESENCE OF TWO WITNESSES AT LEAST 18 YEARS OF AGE, NEITHER OF WHOM IS  
13 THE STANDBY GUARDIAN, AND SIGNED BY THE STANDBY GUARDIAN; AND

14 (III) A COPY OF THE BIRTH CERTIFICATE FOR EACH CHILD FOR  
15 WHOM THE STANDBY GUARDIAN IS DESIGNATED.

16 (d) (1) If a parent is physically unable to sign a written consent to the  
17 beginning of the standby guardianship, another person may sign the written consent to the  
18 beginning of the standby guardianship on the parent's behalf and at the parent's direction.

19 (2) A consent under this subsection to the beginning of the standby  
20 guardianship shall be signed in the presence of the parent and two witnesses at least 18  
21 years of age, neither of whom may be the standby guardian.

22 (3) The standby guardian also shall sign a consent to the beginning of the  
23 standby guardianship under this subsection.

24 (e) (1) A standby guardian shall file a petition for judicial appointment within  
25 180 days of the date of the beginning of the standby guardianship under this section.

26 (2) If the standby guardian fails to file the petition within the time specified  
27 in this subsection, the standby guardian's authority shall terminate 180 days from the date  
28 of the beginning of the standby guardianship.

29 (3) The standby guardian's authority shall begin again on the filing of the  
30 petition.

31 (f) (1) A standby guardian shall file a petition for appointment as guardian  
32 after receipt of:

33 (i) A copy of a determination of incapacity made under § 13-906 of

1 this subtitle; [or]

2 (ii) Copies of:

3 1. A determination of debilitation made under § 13–906 of

4 this subtitle; and

5 2. The parent’s written consent to the beginning of the  
6 standby guardianship under this section; **OR**

7 **(III) COPIES OF:**

8 **1. OFFICIAL NOTICE OF THE PARENT’S DETAINMENT BY**  
9 **IMMIGRATION OFFICIALS, AN ORDER OR OTHER OFFICIAL NOTICE GRANTING**  
10 **VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE IMMIGRATION AND**  
11 **NATIONALITY ACT, OR AN ORDER OF REMOVAL FROM THE UNITED STATES; AND**

12 **2. THE PARENT’S WRITTEN CONSENT TO THE**  
13 **BEGINNING OF THE STANDBY GUARDIANSHIP UNDER THIS SECTION.**

14 (2) Subject to the provisions of paragraphs (3) and (4) of this subsection,  
15 the petition shall be accompanied by:

16 (i) The written designation of the standby guardian signed, or  
17 consented to, by each person having parental rights over the child;

18 (ii) A copy of:

19 1. The determination of incapacity of the parent; [or]

20 2. The determination of debilitation and the parental  
21 consent to the beginning of the standby guardianship; **OR**

22 **3. THE OFFICIAL NOTICE OF THE PARENT’S**  
23 **DETAINMENT BY IMMIGRATION OFFICIALS, THE ORDER OR OTHER OFFICIAL NOTICE**  
24 **GRANTING VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER THE**  
25 **IMMIGRATION AND NATIONALITY ACT, OR THE ORDER OF REMOVAL FROM THE**  
26 **UNITED STATES AND THE PARENTAL CONSENT TO THE BEGINNING OF THE STANDBY**  
27 **GUARDIANSHIP; and**

28 (iii) If the petition is filed by a person designated as alternate standby  
29 guardian, a statement that the person designated as standby guardian is unwilling or  
30 unable to act as standby guardian, and the basis for the statement.

31 (3) If a person who has parental rights cannot be located after reasonable

1 efforts have been made to locate the person, the standby guardian may file a petition under  
2 this section without the consent of the person to the designation of the standby guardian.

3 (4) If the standby guardian submits documentation, satisfactory to the  
4 court, of the reasonable efforts to locate the person who has parental rights, the court may  
5 appoint a standby guardian under this section.

6 (g) The court shall appoint a person to be a standby guardian under this section  
7 if the court finds that:

8 (1) The person was duly designated as standby guardian;

9 (2) (I) A determination of incapacity, or a determination of debilitation  
10 and parental consent to the beginning of the standby guardianship, has been made under  
11 this section; OR

12 (II) NOTICE OF DETENTION BY IMMIGRATION OFFICIALS, AN  
13 ORDER OR OTHER NOTICE OF VOLUNTARY DEPARTURE IN LIEU OF REMOVAL UNDER  
14 THE IMMIGRATION AND NATIONALITY ACT, OR AN ORDER OF REMOVAL FROM THE  
15 UNITED STATES HAS BEEN ISSUED AND PARENTAL CONSENT TO THE BEGINNING OF  
16 THE STANDBY GUARDIANSHIP HAS BEEN GIVEN UNDER THIS SECTION;

17 (3) The interests of the minor will be promoted by the appointment of a  
18 standby guardian of the person or property of the minor; and

19 (4) If the petition is by a person designated as alternate standby guardian,  
20 the person designated as standby guardian is unwilling or unable to act as standby  
21 guardian.

22 (h) A parent may revoke a standby guardianship created under this section:

23 (1) Before the filing of a petition, by notifying the standby guardian  
24 verbally or in writing or by any other act that is evidence of a specific intent to revoke the  
25 standby guardianship; and

26 (2) If a petition has been filed by:

27 (i) Executing a written revocation;

28 (ii) Filing the revocation with the court in which the petition was  
29 filed; and

30 (iii) Promptly notifying the standby guardian of the revocation.

31 (i) A person who is judicially appointed as a standby guardian under this section  
32 may at any time before the beginning of the person's authority renounce the appointment

1 by:

- 2 (1) Executing a written renunciation;
- 3 (2) Filing the renunciation with the court that issued the decree; and
- 4 (3) Promptly notifying in writing the parent of the revocation.

5 13-907.

6 (a) [The beginning of a standby guardian's authority in accordance with a  
7 determination of incapacity, determination of debilitation, or consent] **A STANDBY**  
8 **GUARDIAN'S AUTHORITY UNDER THIS SUBTITLE** may not, itself, divest a parent of any  
9 parental or guardianship rights.

10 (b) The authority of a standby guardian with respect to the minor is limited to the  
11 express authority granted to the standby guardian by a court under this subtitle.

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