

# HOUSE BILL 864

D4

9lr2871  
CF SB 675

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By: **Delegates Saab, Anderton, Arikan, Bagnall, B. Barnes, Barron, Beitzel, Boteler, Buckel, Cassilly, Charles, Chisholm, Corderman, Cox, Fennell, Glenn, Grammer, Hornberger, Howard, Jalisi, Johnson, Kelly, Kittleman, Korman, Krebs, R. Lewis, Lisanti, Long, Malone, Mautz, McComas, McKay, Metzgar, Mosby, Pena–Melnyk, Proctor, Qi, Reilly, Reznik, Rose, Sample–Hughes, Shoemaker, Szeliga, and Wivell**

Introduced and read first time: February 8, 2019

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

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

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

16 BY adding to

17 Article – Family Law

18 Section 15–101 and 15–102 to be under the new title “Title 15. Visitation”

19 Annotated Code of Maryland

20 (2012 Replacement Volume and 2018 Supplement)

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

23 **Article – Family Law**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **TITLE 15. VISITATION.**2 **15-101.**

3 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
4 INDICATED.

5 (B) "ALLEGED INCAPACITATED OR PROTECTED PERSON" MEANS THE  
6 PERSON THE PETITIONER SEEKS TO VISIT.

7 (C) "INTERESTED PERSON" MEANS A PERSON WHO HAS A SIGNIFICANT,  
8 ONGOING RELATIONSHIP WITH THE ALLEGED INCAPACITATED OR PROTECTED  
9 PERSON THAT IS BASED ON OR A PRODUCT OF STRONG AFFECTION.

10 (D) "VISIT" OR "VISITATION" MEANS ANY IN-PERSON MEETING, OR ANY  
11 TELEPHONIC, MAIL, OR ELECTRONIC COMMUNICATION, BETWEEN THE PETITIONER  
12 AND THE ALLEGED INCAPACITATED OR PROTECTED PERSON.

13 **15-102.**

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

18 (B) THERE IS A REBUTTABLE PRESUMPTION IN AN ACTION UNDER THIS  
19 SECTION THAT IT IS IN THE BEST INTEREST OF AN ALLEGED INCAPACITATED OR  
20 PROTECTED PERSON TO HAVE VISITATION FROM:

- 21 (1) THE SPOUSE OF THE PERSON;
- 22 (2) THE ADULT CHILDREN OF THE PERSON;
- 23 (3) THE ADULT GRANDCHILDREN OF THE PERSON;
- 24 (4) THE PARENTS OF THE PERSON;
- 25 (5) THE ADULT SIBLINGS OF THE PERSON; AND
- 26 (6) OTHER INTERESTED PERSONS.

27 (C) A PERSON LISTED IN SUBSECTION (B) OF THIS SECTION MAY PETITION

1 THE COURT, IN THE JURISDICTION IN WHICH THE ALLEGED INCAPACITATED OR  
2 PROTECTED PERSON RESIDES OR IN THE COURT THAT APPOINTED A GUARDIAN OF  
3 THE PERSON FOR THAT PERSON, FOR REASONABLE VISITATION WITH THE ALLEGED  
4 INCAPACITATED OR PROTECTED PERSON.

5 (D) A PETITION DESCRIBED IN SUBSECTION (C) OF THIS SECTION SHALL BE  
6 VERIFIED AND STATE FACTS SHOWING:

7 (1) THAT THE PETITIONER IS A PERSON LISTED IN SUBSECTION (B) OF  
8 THIS SECTION;

9 (2) THAT VISITATION BY THE PETITIONER WITH THE ALLEGED  
10 INCAPACITATED OR PROTECTED PERSON HAS BEEN UNREASONABLY INTERFERED  
11 WITH OR DENIED; AND

12 (3) THE IDENTITY OF THE PERSON OR PERSONS WHO HAVE  
13 UNREASONABLY INTERFERED WITH OR DENIED VISITATION.

14 (E) THE PETITIONER SHALL PERSONALLY SERVE A COPY OF THE PETITION  
15 ON THE ALLEGED INCAPACITATED OR PROTECTED PERSON, THE ATTORNEY FOR  
16 THE ALLEGED INCAPACITATED OR PROTECTED PERSON, THE GUARDIAN OF THE  
17 PERSON OF THE ALLEGED INCAPACITATED OR PROTECTED PERSON, IF ANY, AND  
18 ANY PERSON ALLEGED TO HAVE INTERFERED WITH OR DENIED VISITATION.

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

25 (2) THE PRESUMPTION DESCRIBED IN SUBSECTION (B) OF THIS  
26 SECTION MAY BE REBUTTED BY CLEAR AND CONVINCING EVIDENCE THAT THE  
27 VISITATION WOULD NOT BE IN THE BEST INTERESTS OF THE ALLEGED  
28 INCAPACITATED OR PROTECTED PERSON BECAUSE:

29 (I) THE PETITIONER HAS COMMITTED PHYSICAL OR FINANCIAL  
30 ELDER ABUSE; OR

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

33 (G) (1) IN RULING ON A PETITION UNDER THIS SECTION, THE COURT

1 SHALL ISSUE A STATEMENT OF FACTS AND LAW.

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

5           **(H) (1) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE COURT**  
6 **MAY ASSESS COSTS OF THE PETITION OR VISITATION, INCLUDING THE COST OF**  
7 **MONITORING VISITS, TO ANY PARTY TO A PROCEEDING UNDER THIS SECTION.**

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

13           **(3) NO COSTS OR SANCTIONS UNDER THIS SECTION MAY BE ASSESSED**  
14 **AGAINST THE ALLEGED INCAPACITATED OR PROTECTED PERSON WHO IS THE**  
15 **SUBJECT OF THE PETITION.**

16           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 2019.