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**By: Chairman, Judiciary Committee (Departmental - Aging, Office on)**

Introduced and read first time: February 6, 1997

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts - Protection of Minors and Disabled Persons**

3 FOR the purpose of revising provisions of law concerning guardianship of the person of  
4 disabled persons.

5 BY repealing and reenacting, with amendments,

6 Article - Estates and Trusts

7 Section 13-101, 13-705, 13-706, 13-707, 13-708, 13-709, and 13-710

8 Annotated Code of Maryland

9 (1991 Replacement Volume and 1996 Supplement)

10 BY adding to

11 Article - Estates and Trusts

12 Section 13-705.1, 13-709.1, 13-709.2, and 13-709.3

13 Annotated Code of Maryland

14 (1991 Replacement Volume and 1996 Supplement)

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

17 **Article - Estates and Trusts**

18 13-101.

19 (a) In this title the following words have the meanings indicated.

20 [(b) "Classification of abode" means one of the following types of abode licensed  
21 or certified by a State agency:

22 (1) Related institutions under § 19-101 of the Health - General Article;

23 (2) Private or public group homes under § 7-601 of the Health - General  
24 Article;

25 (3) Care homes under Article 88A, § 138 of the Code;

26 (4) Adult foster care homes under Article 88A, §§ 3(a) and 5 of the Code;

27 or

2

1 (5) Senior assisted housing facilities under Article 70B, § 4(a)(1) of the  
2 Code.]

3 [(c)] (B) "Court" means the court having jurisdiction under § 13-105.

4 [(d)] (C) "Director" means the director of the local department of social services  
5 in the political subdivision where the adult requiring protective services lives.

6 [(e)] (D) "Disabled person" means a person other than a minor who:

7 (1) (i) Has been judged by a court to be unable to manage his property  
8 for reasons listed in § 13-201(c)(1) of this title; and

9 (ii) As a result of this inability requires a guardian of his property; or

10 (2) (i) Has been judged by a court to be unable to provide for his daily  
11 needs sufficiently to protect his health or safety for reasons listed in § 13-705(b) of this  
12 title; and

13 (ii) As a result of this inability requires a guardian of the person.

14 [(f)] (E) "Emergency" means that a person is living in conditions which present a  
15 substantial risk of death or immediate and serious physical harm to himself or others.

16 [(g)] (F) "Estate" is the property of a disabled person or minor which is subject to  
17 a protective proceeding.

18 [(h)] (G) "Guardian" means a guardian of an estate appointed by a court under  
19 Subtitle 2 of this title to manage the property of a disabled person or minor or a guardian  
20 of a person appointed by a court under Subtitle 7 of this title, according to the context in  
21 which it is used.

22 [(i)] (H) "Heirs" denotes those persons entitled under the laws of Maryland to  
23 the property of a protected person, as if he had died intestate at the applicable time.

24 [(j)] (I) "Interested person" means the guardian, THE PROPOSED GUARDIAN,  
25 the heirs of the minor or disabled person, any governmental agency paying benefits to the  
26 minor or disabled person, or any person or agency eligible to serve as guardian of the  
27 disabled person under § 13-707 of this title. If an interested person is also a minor or a  
28 disabled person, interested person also includes a judicially appointed guardian,  
29 committee, conservator, or trustee for that person, or, if none, the parent or other person  
30 having assumed responsibility for him.

31 [(k)] (J) "Maryland Rules" has the meaning stated in § 1-101(n) of this article.

32 [(l)] (K) "Mental facility" means any place providing a clinic, hospital, day  
33 residential or other programs, public or private, other than a veterans' hospital, which  
34 purports to or does provide treatment for persons suffering from mental disorders as  
35 defined in § 10-101(f) or § 12-101(f) of the Health - General Article, mental retardation  
36 as defined in § 7-101(l) of the Health - General Article, or drug addiction or for chronic  
37 alcoholics.

38 [(m)] (L) A "minor" is a person who has not reached the age of 18.

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1 [(n)] (M) "Property" includes both real and personal property.

2 [(o)] (N) "Protective proceeding" is a proceeding to protect an estate in  
3 accordance with Subtitle 2 of this title or a proceeding to appoint a guardian of the  
4 person brought pursuant to Subtitle 7 of this title.

5 [(p)] (O) "Trust company" has the meaning stated in § 1-101 of this article.

6 13-705.

7 (a) On petition and after any notice or hearing prescribed by law or the Maryland  
8 Rules, a court may appoint a guardian of the person of a disabled person.

9 (b) A guardian of the person shall be appointed if the court determines from clear  
10 and convincing evidence that a person lacks sufficient understanding or capacity to make  
11 or communicate responsible decisions concerning his person, including provisions for  
12 health care, food, clothing, or shelter, because of any mental disability[,] OR disease,  
13 [habitual drunkenness, or] INCLUDING addiction to drugs, OR ALCOHOL, and that no  
14 less restrictive form of intervention is available which is consistent with the person's  
15 welfare and safety.

16 (c) Procedures and venue in these cases shall be as described by [Chapter 1100,  
17 Subtitle R] RULE 10-201(B) of the Maryland Rules.

18 (d) (1) Subject to paragraph (2) of this subsection, unless the alleged disabled  
19 person has counsel of his own choice, the court shall appoint an attorney to represent him  
20 in the proceeding. If the person is indigent, the State shall pay a reasonable attorney's  
21 fee.

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

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

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

33 (E) (1) THE COURT SHALL HOLD A HEARING ON THE RECORD AND SHALL  
34 TAKE EVIDENCE FOR ALL COMPLAINTS FOR APPOINTMENT OF THE GUARDIAN OF  
35 THE DISABLED PERSON.

36 (2) UPON REQUEST OF THE DISABLED PERSON, GUARDIANSHIP  
37 HEARINGS SHALL BE CLOSED AND THE RECORD SEALED. RECORDS OF CLOSED  
38 HEARINGS SHALL REMAIN SEALED UNLESS OTHERWISE ORDERED BY A COURT OF  
39 COMPETENT JURISDICTION FOR GOOD CAUSE SHOWN.

40 (3) THE DEFENDANT IS ENTITLED TO A JURY TRIAL, UPON REQUEST.

1 [(e)] (F) The person alleged to be disabled [is entitled to] SHALL be present at  
2 the hearing [unless he has knowingly and voluntarily waived the right to be present or  
3 cannot be present because of physical or mental incapacity. Waiver or incapacity may]  
4 AND ALL OTHER STAGES OF THE PROCEEDING UNLESS THE DISABLED PERSON,  
5 AFTER BEING ADVISED TO BE PRESENT, IS UNWILLING TO ATTEND, OR UNLESS  
6 GOOD CAUSE CAN BE SHOWN FOR ABSENCE. UNWILLINGNESS OR GOOD CAUSE MAY  
7 not be presumed from nonappearance but shall be determined on the basis of factual  
8 information supplied to the court by counsel [or a representative appointed by the court.  
9 The person alleged to be disabled is also entitled to present evidence and to  
10 cross-examine witnesses. The issue may be determined at a closed hearing without a jury  
11 if the person alleged to be disabled or his counsel so requests and all hearings herein shall  
12 be confidential and sealed unless otherwise ordered by a court of competent jurisdiction  
13 for good cause shown] FOR THE DISABLED PERSON. THIS INFORMATION MAY NOT BE  
14 CONSIDERED AS EVIDENCE OF DISABILITY OR THE NEED FOR A GUARDIANSHIP.  
15 WHEN NECESSARY TO ENABLE THE DISABLED PERSON TO PARTICIPATE FULLY IN A  
16 HEARING OR OTHER COURT PROCESS, THE COURT SHALL MAKE REASONABLE  
17 ACCOMMODATIONS TO PERMIT PARTICIPATION INCLUDING CONDUCTING THE  
18 HEARING AT A LOCATION READILY ACCESSIBLE TO THE DISABLED PERSON.

19 (G) THE PARTIES SHALL BE ENTITLED TO PRESENT EVIDENCE, COMPEL THE  
20 ATTENDANCE OF WITNESSES, AND CROSS-EXAMINE WITNESSES.

21 [(f) The court shall hear and rule on a petition seeking appointment of a guardian  
22 of the person of a disabled person in connection with medical treatment on an expedited  
23 basis.]

24 13-705.1.

25 (A) UPON THE FILING OF A PETITION FOR APPOINTMENT OF GUARDIANSHIP  
26 OR MOTION TO TERMINATE OR MODIFY THE GUARDIANSHIP ORDER, THE COURT  
27 SHALL APPOINT AN ATTORNEY TO REPRESENT THE ALLEGED DISABLED PERSON OR  
28 THE DISABLED PERSON, UNLESS THE ALLEGED DISABLED PERSON OR THE  
29 DISABLED PERSON ALREADY HAS COUNSEL, IN ACCORDANCE WITH RULE 10-106(A)  
30 AND (B) OF THE MARYLAND RULES.

31 (B) (1) THE ATTORNEY FOR THE ALLEGED DISABLED PERSON OR THE  
32 DISABLED PERSON SHALL REPRESENT THE RIGHTS AND INTERESTS OF THE  
33 ALLEGED DISABLED PERSON OR THE DISABLED PERSON AND MAY NOT ACT AS A  
34 GUARDIAN AD LITEM.

35 (2) THE ATTORNEY SHALL SECURE AND PRESENT EVIDENCE AND  
36 TESTIMONY, AND OTHER ARGUMENTS ON BEHALF OF THE ALLEGED DISABLED  
37 PERSON'S POSITION OR THE DISABLED PERSON'S POSITION CONCERNING THE  
38 GUARDIANSHIP AND PROTECT THE RIGHTS OF THE ALLEGED DISABLED PERSON OR  
39 THE DISABLED PERSON.

40 (3) THE COURT MAY NOT APPOINT AS GUARDIAN THE ATTORNEY  
41 REPRESENTING THE ALLEGED DISABLED PERSON OR THE DISABLED PERSON IN THE  
42 GUARDIANSHIP PROCEEDINGS.

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1 (C) (1) UNLESS THE ALLEGED DISABLED PERSON OR DISABLED PERSON  
2 HAS COUNSEL OF HIS OWN CHOICE, THE COURT SHALL APPOINT AN ATTORNEY TO  
3 REPRESENT HIM IN THE PROCEEDING. IF THE PERSON IS INDIGENT, THE STATE  
4 SHALL PAY A REASONABLE ATTORNEY'S FEE.

5 (2) IN ANY ACTION IN WHICH PAYMENT FOR THE SERVICES OF A  
6 COURT-APPOINTED ATTORNEY FOR THE ALLEGED DISABLED PERSON IS THE  
7 RESPONSIBILITY OF THE LOCAL DEPARTMENT OF SOCIAL SERVICES, UNLESS THE  
8 COURT FINDS THAT IT WOULD NOT BE IN THE BEST INTEREST OF THE ALLEGED  
9 DISABLED PERSON, THE COURT SHALL:

10 (I) APPOINT AN ATTORNEY WHO HAS CONTRACTED WITH THE  
11 DEPARTMENT OF HUMAN RESOURCES TO PROVIDE THOSE SERVICES, IN  
12 ACCORDANCE WITH THE TERMS OF THE CONTRACT; AND

13 (II) IN AN ACTION IN WHICH AN ATTORNEY HAS PREVIOUSLY  
14 BEEN APPOINTED, STRIKE THE APPEARANCE OF THE ATTORNEY PREVIOUSLY  
15 APPOINTED AND APPOINT THE ATTORNEY WHO IS CURRENTLY UNDER CONTRACT  
16 WITH THE DEPARTMENT OF HUMAN RESOURCES, IN ACCORDANCE WITH THE  
17 TERMS OF THE CONTRACT.

18 13-706.

19 (a) An adjudication of a disability for purposes of appointing a guardian of a  
20 person may not be the basis for commitment of the disabled person to a mental  
21 institution.

22 (b) Appointment of a guardian of the person:

23 (1) Is not evidence of incompetency of the disabled person; and

24 (2) Does not modify any civil right of the disabled person unless the court  
25 orders, including any civil service ranking, appointment, and rights relating to licensure,  
26 permit, privilege, or benefit under any law.

27 (C) A DISABLED PERSON MAINTAINS THE RIGHT TO PETITION THE COURT TO  
28 APPOINT COUNSEL FOR THE PURPOSE OF MODIFYING OR TERMINATING THE  
29 GUARDIANSHIP.

30 13-707.

31 (a) THE COURT SHALL CONSIDER THE WISHES EXPRESSED BY THE DISABLED  
32 PERSON AS TO WHO SHOULD BE APPOINTED GUARDIAN OF THE PERSON.

33 (B) Persons are entitled to appointment as guardian of the person according to  
34 the following priorities:

35 (1) A person, agency, or corporation [nominated] NAMED by the disabled  
36 person if the disabled person was 16 years old or older when the disabled person signed  
37 the designation and, in the opinion of the court, the disabled person had sufficient mental  
38 capacity to make an intelligent choice at the time the disabled person executed the  
39 designation;

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1 (2) A health care agent appointed by the disabled person in accordance with  
2 Title 5, Subtitle 6 of the Health - General Article;

3 (3) The disabled person's spouse;

4 (4) [The disabled person's parents] ADULT CHILDREN OF THE DISABLED  
5 PERSON;

6 (5) PARENTS OF THE DISABLED PERSON;

7 (6) A person, agency, or corporation nominated by the will of a deceased  
8 parent;

9 [(6) The disabled person's children;

10 (7) Adult persons who would be the disabled person's heirs if the disabled  
11 person were dead;

12 (8) A person, agency, or corporation nominated by a person caring for the  
13 disabled person;]

14 (7) ADULT SIBLINGS OF THE DISABLED PERSON;

15 (8) OTHER RELATIVES, CLOSE FRIENDS, OR CARETAKERS OF THE  
16 DISABLED PERSON;

17 (9) Any other person, agency, or corporation considered appropriate by the  
18 court; AND

19 (10) [For adults less than 65 years old, the director of the local department  
20 of social services or, for adults 65 years old or older, the director of the State Office on  
21 Aging or area agency on aging, except in those cases where the department of social  
22 services has been appointed guardian of the person prior to age 65. Directors of area  
23 agencies on aging, upon appointment as guardian, may delegate responsibilities of  
24 guardianship to staff persons whose names and positions have been registered with the  
25 court] PUBLIC GUARDIANS AS PROVIDED FOR IN § 13-709.3 OF THIS SUBTITLE.

26 [(b) A person specified in a priority in subsection (a)(2), (3), (5), or (6) may waive  
27 and nominate in writing a person, agency or corporation to serve in his stead. A nominee  
28 of a person holding priority has the same priority as the person making the nomination.]

29 (c) (1) Among persons with equal priority the court shall select the one best  
30 qualified of those willing to serve. For good cause, the court may pass over a person with  
31 priority and appoint a person with a lower priority.

32 (2) [If a guardian of the estate has been appointed, the court may select  
33 him to be guardian of the person, regardless of priority.] FOR GOOD CAUSE, THE  
34 COURT MAY PASS OVER A PERSON WITH PRIORITY AND APPOINT A PERSON WITH A  
35 LOWER PRIORITY.

36 (d) [Nonresidence does not disqualify any] A person MAY NOT BE  
37 DISQUALIFIED from serving as guardian of the person SOLELY BECAUSE THE PERSON  
38 RESIDES OUTSIDE OF THE STATE. However, a nonresident who is appointed MUST FILE  
39 WITH THE COURT [may not qualify until he has on file with the register or clerk] an

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1 irrevocable designation by him of an appropriate person who resides in the State on  
 2 whom service of process may be made in the same manner and with the same effect as if  
 3 it were served personally in the State on the nonresident.

4 (e) A local department of social services, local [office] AREA AGENCY on aging,  
 5 or the director of the State Office on Aging, may be appointed as a guardian of a person  
 6 regardless of whether that person resides in a State or private residential facility.

7 13-708.

8 (a) (1) The court may grant to a guardian of a person only those powers  
 9 PROVEN necessary, to provide for the demonstrated [need] NEEDS of the disabled  
 10 person.

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

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

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

19 (2) The [right to custody of the disabled person and] AUTHORITY to  
 20 establish his place of abode within [and without] the State, provided [there is court  
 21 authorization for any change in the classification of abode,] THAT IN THE ABSENCE OF  
 22 AN EMERGENCY THE COURT IS NOTIFIED OF ANY PROPOSED CHANGE IN ABODE AT  
 23 LEAST 10 DAYS BEFORE ANY SUCH CHANGE IS MADE, except that no one may be  
 24 committed to a mental facility without an involuntary commitment proceeding as  
 25 provided by law;

26 [(3)] (2) The duty to provide for care, comfort, and maintenance, including  
 27 social, recreational, and friendship requirements, and, if appropriate, for training and  
 28 education of the disabled person;

29 [(4)] (3) The duty to take reasonable care of the clothing, furniture,  
 30 vehicles, and other personal effects of the disabled person, and, if other property requires  
 31 protection, the power to commence protective proceedings;

32 [(5)] (4) If a guardian of the estate of the disabled person has not been  
 33 appointed[, the right to commence proceedings to compel performance by any person of  
 34 his duty to support the disabled person, and to apply the estate to the support, care, and  
 35 education of the disabled person, except that the guardian of the person may not obtain  
 36 funds from the estate for room and board that the guardian, his spouse, parent, or child  
 37 provide without a court order approving the charge, and the duty to exercise care to  
 38 conserve any excess estate for the needs of the disabled person;];

39 (I) THE AUTHORITY TO COMMENCE PROCEEDINGS TO ENFORCE  
 40 ANY INTEREST OF THE DISABLED PERSON;

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1 (II) THE AUTHORITY TO APPLY FOR PUBLIC AND OTHER BENEFITS,  
2 INCLUDING MEDICAL ASSISTANCE, TO WHICH THE DISABLED PERSON IS ENTITLED;

3 (III) THE AUTHORITY TO APPLY THE ESTATE TO THE SUPPORT,  
4 CARE, AND EDUCATION OF THE DISABLED PERSON, EXCEPT THAT THE GUARDIAN  
5 OF THE PERSON MAY NOT OBTAIN FUNDS FROM THE ESTATE FOR ROOM AND  
6 BOARD THAT THE GUARDIAN, THE GUARDIAN'S SPOUSE, PARENT, OR CHILD  
7 PROVIDE WITHOUT A COURT ORDER APPROVING THE CHARGE; AND

8 (IV) THE DUTY TO EXERCISE CARE TO CONSERVE ANY EXCESS  
9 ESTATE FOR THE NEEDS OF THE DISABLED PERSON;

10 [(6)] (5) If a guardian of the estate has been appointed, the duty to control  
11 the custody and care of the disabled person, TO PLAN FOR THE CARE AND  
12 MAINTENANCE OF THE DISABLED PERSON to receive reasonable sums for [room and  
13 board] SERVICES provided DIRECTLY BY THE GUARDIAN OF THE PERSON to the  
14 disabled person, [and] to account to the guardian of the estate for funds expended, and  
15 the right to ask the guardian of the estate to expend the estate in payment of third  
16 persons for care and maintenance of the disabled person;

17 [(7)] (6) The duty to file an annual report [with the court indicating the  
18 present place of residence and health status of the ward, the guardian's plan for  
19 preserving and maintaining the future well-being of the ward, and the need for  
20 continuance or cessation of the guardianship or for any alteration in the powers of the  
21 guardian. The court shall renew the appointment of the guardian if it is satisfied that the  
22 grounds for the original appointment stated in § 13-705(b) above continue to exist. If the  
23 court believes such grounds may not exist, it shall hold a hearing, similar to that provided  
24 for in § 13-705 above, at which the guardian shall be required to prove that such grounds  
25 exist. If the court does not make these findings, it shall order the discontinuance of the  
26 guardianship of the person. If the guardian declines to participate in the hearing, the  
27 court may appoint another guardian to replace him pursuant to the priorities in §  
28 13-707(a)] ON THE FORM SET FORTH IN THE MARYLAND RULES; and

29 [(8)] (7) The [power] AUTHORITY to [give necessary consent or approval  
30 for];

31 [(i) Medical or other professional care, counsel, treatment, or service,  
32 including admission to a hospital or nursing home or transfer from one medical facility to  
33 another;

34 [(ii) Withholding medical or other professional care, counsel,  
35 treatment, or service; and

36 [(iii) Withdrawing medical or other professional care, counsel,  
37 treatment, or service.]

38 (I) GIVE NECESSARY CONSENT OR APPROVAL FOR MEDICAL OR  
39 OTHER PROFESSIONAL CARE, COUNSEL, TREATMENT OR SERVICE, INCLUDING  
40 ADMISSION TO A HOSPITAL OR TRANSFER FROM ONE MEDICAL FACILITY TO  
41 ANOTHER;



1 (II) REQUEST, RECEIVE, AND REVIEW ANY INFORMATION, ORAL  
2 OR WRITTEN, REGARDING THE DISABLED PERSON'S PHYSICAL OR MENTAL HEALTH,  
3 INCLUDING, BUT NOT LIMITED TO, MEDICAL AND HOSPITAL RECORDS, AND  
4 CONSENT TO DISCLOSURE OF THIS INFORMATION;

5 (III) EMPLOY AND DISCHARGE THE DISABLED PERSON'S HEALTH  
6 CARE PROVIDERS; AND

7 (IV) CONSENT TO THE PROVISION, WITHHOLDING, OR  
8 WITHDRAWAL OF MEDICAL OR OTHER CARE, INCLUDING LIFE-SUSTAINING  
9 PROCEDURES PURSUANT TO SUBSECTION (C) OF THIS SECTION.

10 (C) THE GUARDIAN, IN EXERCISING AUTHORITY UNDER THIS SECTION,  
11 SHALL CONSULT WITH THE DISABLED PERSON ON ALL DECISIONS, IF POSSIBLE.

12 [(c)] (D) (1) Notwithstanding the powers conferred to a guardian under  
13 subsection (b)[(8)] (7) of this section, and except as provided in paragraph (2) of this  
14 subsection, where a medical procedure involves, or would involve, a substantial risk to the  
15 life of a disabled person, the court must authorize a guardian's consent or approval for:

16 (i) The medical procedure;

17 (ii) Withholding the medical procedure; or

18 (iii) Withdrawing the medical procedure that involves, or would  
19 involve, a substantial risk to the life of the disabled person.

20 (2) The court may, upon such conditions as the court considers appropriate,  
21 authorize a guardian to make a decision regarding medical procedures that involve a  
22 substantial risk to life without further court authorization, if:

23 (i) The disabled person has executed an advance directive in  
24 accordance with Title 5, Subtitle 6 of the Health - General Article that authorizes the  
25 guardian to consent to the provision, withholding or withdrawal of a medical procedure  
26 that involves a substantial risk to life but does not appoint a health care agent; or

27 (ii) The guardian is also the disabled person's spouse, adult child,  
28 parent, adult brother or sister, or adult grandchild.

29 (3) A petition seeking the authorization of a court that a life-sustaining  
30 procedure be withheld or withdrawn is subject to the provisions of §§ 13-711 through  
31 13-713 of this subtitle.

32 [(d) (1) Notwithstanding subsection (a) of this section, and in addition to the  
33 rights, duties, and powers which the court may order under subsection (b) of this section,  
34 the court may order the relief provided under this subsection.

35 (2) (i) If a guardian of the estate has been appointed, a guardian of the  
36 person may ask the guardian of the estate to expend the estate in payment of care and  
37 maintenance services provided directly to the disabled person by the guardian of the  
38 person at the rate of reimbursement established under this subsection.

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1 (ii) The guardian of the person shall maintain appropriate records to  
2 document the care and maintenance services provided directly to the disabled person to  
3 receive any payment under this subsection.

4 (3) To implement the provisions of this subsection, the court may:

5 (i) Adopt guidelines for the rate of reimbursement for care and  
6 maintenance services provided directly by the guardian of the person to a disabled  
7 person;

8 (ii) Establish appropriate procedures for records, inspections, audits,  
9 or other requirements to monitor care and maintenance services provided directly by the  
10 guardian of the person for which the guardian of the person is reimbursed; and

11 (iii) Order any act necessary for the best interests of the disabled  
12 person.]

13 13-709.

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

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

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

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

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

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

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

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

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

7 (4) In its order the court shall appoint the petitioner, another interested  
8 person, the director, or the State Director on Aging as temporary guardian of the person  
9 with responsibility for the person's welfare and authority to give consent for the person  
10 for the approved protective services until the expiration of the order;

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

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

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

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

39 (e) Notice of the filing of such petition shall be given as required in the Maryland  
40 Rules and to the director. Such notice shall be given in language reasonably  
41 understandable by the intended recipients at least 24 hours prior to the hearing for  
42 emergency intervention. The court may waive the 24-hour notice requirement upon a  
43 showing that (1) immediate and reasonably foreseeable physical harm to the person or

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1 others will result from the 24-hour delay, and (2) reasonable attempts have been made to  
2 give such notice. Notice of the court's final order shall be given to the same parties.

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

5 (i) The person shall be present unless he has knowingly and  
6 voluntarily waived the right to be present or cannot be present because of physical or  
7 mental incapacity. Waiver or incapacity may not be presumed from nonappearance but  
8 shall be determined on the basis of factual information supplied to the court by counsel or  
9 a representative appointed by the court.

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

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

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

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

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

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

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

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

37 (j) The person or the guardian of the person may appeal any findings of a court  
38 under [§ 13-709(b)] SUBSECTION (B) of this [subtitle] SECTION. Such appeal shall be  
39 handled on an expedited basis by the appellate court.

13

1 13-709.1.

2 (A) (1) THE DISABLED PERSON OR AN INTERESTED PERSON MAY REQUEST  
3 AT ANY TIME THAT THE COURT TERMINATE OR MODIFY THE GUARDIANSHIP  
4 ORDER.

5 (2) THE DISABLED PERSON RETAINS THE RIGHT TO PETITION THE  
6 COURT TO APPOINT COUNSEL OR TO HIRE COUNSEL OF HIS OWN CHOOSING FOR  
7 THE PURPOSE OF MODIFYING OR TERMINATING THE GUARDIANSHIP.

8 (B) UPON REVIEW OF THE REPORTS OF THE ADULT PUBLIC GUARDIANSHIP  
9 REVIEW BOARD OR THE GUARDIAN OF THE PERSON, THE COURT, ON ITS OWN  
10 MOTION, SHALL HOLD A HEARING IF IT HAS REASON TO BELIEVE THE  
11 GUARDIANSHIP ORDER SHOULD BE MODIFIED OR TERMINATED.

12 13-709.2.

13 THE DISABLED PERSON, OR ANY PERSON WITH STANDING, MAY RETAIN  
14 COUNSEL AND MAY APPEAL ANY FINAL ORDER OF A COURT UNDER THIS SUBTITLE.  
15 THE APPEAL MAY BE HANDLED ON AN EXPEDITED BASIS BY THE APPELLATE  
16 COURT.

17 13-709.3.

18 (A) (1) THE PURPOSE OF THE PUBLIC GUARDIANSHIP PROGRAMS  
19 ESTABLISHED WITHIN THE STATE OFFICE ON AGING, AREA AGENCIES ON AGING  
20 AND DEPARTMENTS OF SOCIAL SERVICES IS TO AID VULNERABLE ADULTS WHO  
21 HAVE NO OTHER PERSON OR AGENCY WHO IS WILLING AND ABLE TO SERVE AS  
22 GUARDIAN.

23 (2) THE STATE DIRECTOR ON AGING AND DIRECTORS OF AREA  
24 AGENCIES ON AGING SHALL BE PUBLIC GUARDIANS OF PERSONS AGE 65 AND  
25 OLDER. THE DIRECTORS OF DEPARTMENTS OF SOCIAL SERVICES SHALL BE PUBLIC  
26 GUARDIANS OF PERSONS UNDER AGE 65. THE DEPARTMENTS OF SOCIAL SERVICES  
27 SHALL RETAIN GUARDIANSHIP OF SUCH PERSONS EVEN AFTER THE DISABLED  
28 PERSON BECOMES 65, UNLESS THE COURT DECIDES OTHERWISE.

29 (3) UPON APPOINTMENT, THE GUARDIAN MAY DELEGATE  
30 RESPONSIBILITY OF GUARDIANSHIP TO STAFF PERSONS WHOSE NAMES AND  
31 POSITIONS HAVE BEEN REGISTERED WITH THE COURT.

32 (4) THE GENERAL ASSEMBLY INTENDS THAT THE PROVISION FOR  
33 APPOINTMENT OF PUBLIC OFFICIALS AS GUARDIANS OF THE PERSON BE USED  
34 SPARINGLY AND WITH UTMOST CAUTION AND ONLY IF AN ALTERNATIVE DOES NOT  
35 EXIST.

36 (B) (1) PUBLIC GUARDIANS SHALL SERVE AS GUARDIAN WITHOUT  
37 REGARD TO THE DISABLED PERSON'S INCOME AND ASSETS.

38 (2) PUBLIC GUARDIANS MAY BE REIMBURSED FOR THE COSTS OF CARE  
39 AND MAINTENANCE SERVICES PROVIDED TO THE DISABLED PERSON PURSUANT TO  
40 § 13-708(B)(4) OF THIS SUBTITLE.

14

1 (C) A LOCAL DEPARTMENT OF SOCIAL SERVICES, LOCAL AREA AGENCY ON  
2 AGING, OR THE DIRECTOR OF THE STATE OFFICE ON AGING, MAY BE APPOINTED AS  
3 A GUARDIAN OF A DISABLED PERSON REGARDLESS OF WHETHER THAT DISABLED  
4 PERSON RESIDES IN A STATE OR PRIVATE RESIDENTIAL FACILITY.

5 13-710.

6 (a) [Any] THE PETITIONER OR ANY INTERESTED person filing a petition,  
7 participating in the making of a good-faith report, or participating in an investigation or  
8 in a judicial proceeding resulting therefrom, pursuant to § 13-705 or § 13-709 of this  
9 article or Title 14, Subtitle 3 of the Family Law Article, shall have the immunity from civil  
10 liability or criminal penalty described under § 5-359(a) of the Courts and Judicial  
11 Proceedings Article.

12 (b) (1) ANY GUARDIAN WHO ACTS IN ACCORDANCE WITH THE  
13 GUARDIANSHIP ORDER SHALL NOT BE SUBJECT TO CIVIL LIABILITY OR CRIMINAL  
14 PROSECUTION SOLELY BY REASON OF THE GUARDIANSHIP, TO ANY PERSON FOR AN  
15 ACT OF THE DISABLED PERSON OR FOR A DECISION BY THE GUARDIAN OF THE  
16 DISABLED PERSON WHICH IS MADE WITHOUT MALICE OR GROSS NEGLIGENCE.

17 (2) A GUARDIAN OF THE PERSON MAY NOT BE HELD PERSONALLY  
18 LIABLE, SOLELY ON THE BASIS OF THE GUARDIANSHIP, FOR THE COST OF CARE AND  
19 SERVICES PROVIDED TO THE DISABLED PERSON.

20 (C) A law enforcement officer who transports an adult to an appropriate medical  
21 facility under § 13-709 of this article shall have the immunity from civil or criminal  
22 liability described under § 5-359(b) of the Courts and Judicial Proceedings Article.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 1997.