

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

House Bill 1101 (Chairman, Judiciary Committee)
(Departmental - Office on Aging)

Judiciary

Estates and Trusts - Protection of Minors and Disabled Persons

This departmental bill revises provisions of law concerning guardianship of the person of a “disabled person.” The bill (1) requires hearings on the record; (2) provides for a jury trial if requested by the disabled person; (3) requires the court to make reasonable accommodations to allow participation of the disabled person, including conducting the hearing at a location accessible to the disabled person; (4) clarifies the person’s rights to appoint counsel; (5) reorders the priority list for who can be considered a potential guardian; (6) clarifies the purpose of public guardianship programs; (7) authorizes the disabled person or an “interested person” to request that the court terminate or modify the guardianship order; and (8) provides guardians with immunity from civil liability or criminal penalty under certain circumstances.

Fiscal Summary

State Effect: None. The bill’s requirements could be handled with existing budgeted resources as discussed below.

Local Effect: None.

Small Business Effect: The Office on Aging has determined that this bill has minimal or no impact on small businesses (attached). Fiscal Services concurs with this assessment.

Fiscal Analysis

State Expenditures: The Department of Human Resources (DHR) advises that general fund expenditures could increase by an estimated \$321,500 in fiscal 1998, which accounts for the bill's October 1, 1997 effective date. This estimate reflects the cost of contractual legal services for disabled persons. Unless the disabled person has retained an attorney, the court appoints an attorney; those costs are paid by the State (DHR). This estimate assumes that the following provisions of the bill will increase the number and length of hearings: (1) the court is required to hold a hearing on the record and take evidence for all complaints for appointment of the guardian of the disabled person; (2) the disabled person is entitled to a jury trial; (3) the court is required to make reasonable accommodations to allow participation of the disabled person, including conducting the hearing at a location accessible to the disabled person; (4) the attorney for the disabled person is required to represent the rights and interests of the disabled person and may not act as a guardian ad litem; (5) the disabled person or interested person may request a termination or modification of the guardianship order; (6) the disabled person retains the right to petition the court to appoint counsel or to hire counsel of his own choosing for a termination or modification of the guardianship order; and (7) the disabled person may retain counsel and appeal any final court order.

The Department of Fiscal Services advises, however, that the bill's provisions relating to jury trials, termination/modification of a guardianship order, appeals, and accessibility of hearings for disabled persons are already included in the Maryland Rules that are promulgated by the Court of Appeals. Therefore, these provisions should not result in new expenditures.

DHR advises that the provision requiring the court to take evidence for all complaints would lead to additional hearings. Although taking evidence for all complaints may lengthen the duration of a hearing, Fiscal Services notes that it should not lead to additional hearings. Therefore, it is assumed that any costs associated with longer hearings would be minimal and could be absorbed with existing budgeted resources. The provision that the attorney for the disabled person is required to represent the rights and interests of the disabled person and may not act as a guardian ad litem appears to require nothing more than is already required, i.e., that an attorney should act as an advocate. The provision that the disabled person retains the right to petition the court to appoint counsel or to hire counsel of his own choosing merely allows an individual to petition the court and does not require that the court grant the request. If the court did grant such a request, expenditures could increase because DHR can control attorney costs through the use of contracted legal service providers, whereas it would have no control over the cost for an attorney of the disabled person's choice. However, current law requires that, for State-funded hearings, the court appoint an attorney who has contracted with DHR rather than one who has been appointed by the court. Therefore, it does not seem likely that the court would grant a disabled person the right to a State-funded attorney of his own choosing in many instances.

Information Source(s): Office on Aging, Department of Health and Mental Hygiene (Mental Health Administration, Developmental Disabilities Administration); Department of Human Resources; Judiciary (Administrative Office of the Courts); Department of Fiscal Services

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