

HOUSE BILL 672

N2

(71r0457)

ENROLLED BILL

— *Judiciary/Judicial Proceedings* —

Introduced by **Delegates McComas, Aumann, Bartlett, Braveboy, Elmore, McConkey, Shewell, Sossi, Stocksdale, Stull, and Walkup**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Petition for Guardianship of Disabled Person - Certificate of Competency by**
3 **Licensed Certified Social Worker-Clinical**

4 FOR the purpose of authorizing a petition for guardianship of a disabled person to
5 include signed and verified certificates of competency by a certain licensed
6 physician and a certain licensed certified social worker-clinical; and generally
7 relating to petitions for guardianship of disabled persons.

8 BY repealing and reenacting, with amendments,
9 Article - Estates and Trusts

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



1 Section 13-705
 2 Annotated Code of Maryland
 3 (2001 Replacement Volume and 2006 Supplement)

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

6 **Article - Estates and Trusts**

7 13-705.

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

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

16 (c) (1) Procedures and venue in these cases shall be as described by Title
 17 10, Chapters 100 and 200 of the Maryland Rules.

18 (2) Notwithstanding the provisions of paragraph (1) of this subsection,
 19 a petition for guardianship of a disabled person shall include signed and verified
 20 certificates of competency from the following health care professionals:

21 (i) Two licensed physicians who have examined the disabled
 22 person; or

23 (ii) 1. One licensed physician who has examined the
 24 disabled person; and

25 2. A. [one] ONE licensed psychologist who has
 26 evaluated the disabled person[.]; OR

27 B. ONE LICENSED CERTIFIED SOCIAL
 28 WORKER-CLINICAL WHO HAS EVALUATED THE DISABLED PERSON.

1 (3) An examination or evaluation by at least one of the health care
2 professionals under paragraph (2) of this subsection shall occur within 21 days before
3 filing a petition for guardianship of a disabled person.

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

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

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

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

19 (e) The person alleged to be disabled is entitled to be present at the hearing
20 unless he has knowingly and voluntarily waived the right to be present or cannot be
21 present because of physical or mental incapacity. Waiver or incapacity may not be
22 presumed from nonappearance but shall be determined on the basis of factual
23 information supplied to the court by counsel or a representative appointed by the
24 court. The person alleged to be disabled is also entitled to present evidence and to
25 cross-examine witnesses. The issue may be determined at a closed hearing without a
26 jury if the person alleged to be disabled or his counsel so requests and all hearings
27 herein shall be confidential and sealed unless otherwise ordered by a court of
28 competent jurisdiction for good cause shown.

29 (f) The court shall hear and rule on a petition seeking appointment of a
30 guardian of the person of a disabled person in connection with medical treatment on
31 an expedited basis.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2007.