

# SENATE BILL 649

N2

3lr1322

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By: **Senators Getty and Frosh**

Introduced and read first time: February 1, 2013

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Personal Representatives and Guardians – Standards**

3 FOR the purpose of defining “serious crime” for purposes of a certain prohibition  
4 against a register or court granting letters of representation to a person  
5 convicted of a serious crime; prohibiting a court from appointing, as a guardian  
6 of a minor or disabled person, a person who has been convicted of a certain  
7 crime; prohibiting the court from appointing, as a guardian of the property of a  
8 minor or disabled person, a person who has been convicted of a certain crime;  
9 providing for the application of this Act; and generally relating to personal  
10 representatives or guardians of persons or property.

11 BY repealing and reenacting, with amendments,  
12 Article – Estates and Trusts  
13 Section 5–105  
14 Annotated Code of Maryland  
15 (2011 Replacement Volume and 2012 Supplement)

16 BY adding to  
17 Article – Estates and Trusts  
18 Section 11–112  
19 Annotated Code of Maryland  
20 (2011 Replacement Volume and 2012 Supplement)

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

23 **Article – Estates and Trusts**

24 5–105.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           (a)   **(1)**   **IN THIS SECTION, “SERIOUS CRIME” MEANS A CRIME THAT**  
2 **REFLECTS ADVERSELY ON AN INDIVIDUAL’S HONESTY, TRUSTWORTHINESS, OR**  
3 **FITNESS TO PERFORM THE DUTIES OF A PERSONAL REPRESENTATIVE.**

4           **(2)**   **“SERIOUS CRIME” INCLUDES FRAUD, EXTORTION,**  
5 **EMBEZZLEMENT, FORGERY, PERJURY, AND THEFT.**

6           **(B)**   Subject to § 5–104 of this subtitle, the register or court may grant letters  
7 to:

8           (1)   A trust company;

9           (2)   Any other corporation authorized by law to be a personal  
10 representative; or

11          (3)   Subject to subsection **[(b)] (C)** of this section, any individual.

12          **[(b)] (C)**   Letters may not be granted to a person who, at the time a  
13 determination of priority is made, has filed with the register a declaration in writing  
14 that the person renounces the right to administer or is:

15          (1)   Under the age of 18 years;

16          (2)   Mentally incompetent;

17          (3)   Convicted of a serious crime;

18          (4)   Not a citizen of the United States unless the person is a permanent  
19 resident of the United States and is:

20               (i)   The spouse of the decedent;

21               (ii)   An ancestor of the decedent;

22               (iii)   A descendant of the decedent; or

23               (iv)   A sibling of the decedent;

24          (5)   A full-time judge of a court established under the laws of  
25 Maryland or the United States including, a judge of an orphans’ or probate court, or a  
26 clerk of court, or a register, unless the person is the surviving spouse or is related to  
27 the decedent within the third degree; or

28          (6)   A nonresident of the State, unless there shall be on file with the  
29 register an irrevocable designation by the nonresident of an appropriate person who

1 resides in the State on whom service of process may be made in the same manner and  
2 with the effect as if it were served personally in the State on the nonresident.

3 **11-112.**

4 **(A) A COURT MAY NOT APPOINT, AS A GUARDIAN OF A MINOR OR**  
5 **DISABLED PERSON, A PERSON WHO HAS BEEN CONVICTED OF:**

6 **(1) ASSAULT IN ANY DEGREE;**

7 **(2) RAPE OR A SEXUAL OFFENSE UNDER §§ 3-303 THROUGH**  
8 **3-308 OF THE CRIMINAL LAW ARTICLE OR ATTEMPTED RAPE OR SEXUAL**  
9 **OFFENSE IN ANY DEGREE;**

10 **(3) FALSE IMPRISONMENT; OR**

11 **(4) KIDNAPPING.**

12 **(B) A COURT MAY NOT APPOINT, AS A GUARDIAN OF THE PROPERTY OF**  
13 **A MINOR OR DISABLED PERSON, A PERSON WHO HAS BEEN CONVICTED OF A**  
14 **CRIME THAT REFLECTS ADVERSELY ON AN INDIVIDUAL'S HONESTY,**  
15 **TRUSTWORTHINESS, OR FITNESS TO PERFORM THE DUTIES OF A GUARDIAN OF**  
16 **THE PROPERTY OF A MINOR OR DISABLED PERSON, INCLUDING FRAUD,**  
17 **EXTORTION, EMBEZZLEMENT, FORGERY, PERJURY, AND THEFT.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
19 construed to apply only prospectively and may not be applied or interpreted to have  
20 any effect on or application to any letters of representation granted before the effective  
21 date of this Act.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall be  
23 construed to apply only prospectively and may not be applied or interpreted to have  
24 any effect on or application to any guardian of a minor or disabled person or guardian  
25 of the property of a minor or disabled person appointed before the effective date of this  
26 Act.

27 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 October 1, 2013.