

# SENATE BILL 649

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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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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 2013

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## CHAPTER \_\_\_\_\_

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 of wills or court granting letters of ~~representation~~  
5 administration to a person convicted of a serious crime; providing a certain  
6 exception to the prohibition; prohibiting a court, unless good cause is shown,  
7 from appointing, as a guardian of the person of a minor or disabled person, a  
8 person who has been convicted of a certain crime; prohibiting ~~the~~ a court, unless  
9 good cause is shown, from appointing, as a guardian of the property of a minor  
10 or disabled person, a person who has been convicted of a certain crime;  
11 providing for the application of this Act; and generally relating to personal  
12 representatives or guardians of persons or property.

13 BY repealing and reenacting, with amendments,  
14 Article – Estates and Trusts  
15 Section 5–105  
16 Annotated Code of Maryland  
17 (2011 Replacement Volume and 2012 Supplement)

18 BY adding to  
19 Article – Estates and Trusts  
20 Section 11–112  
21 Annotated Code of Maryland  
22 (2011 Replacement Volume and 2012 Supplement)

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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.



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

3 **Article – Estates and Trusts**

4 5–105.

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

8 (2) “SERIOUS CRIME” INCLUDES FRAUD, EXTORTION,  
9 EMBEZZLEMENT, FORGERY, PERJURY, AND THEFT.

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

12 (1) A trust company;

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

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

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

19 (1) Under the age of 18 years;

20 (2) Mentally incompetent;

21 (3) Convicted of a serious crime, UNLESS THE PERSON SHOWS GOOD  
22 CAUSE FOR THE GRANTING OF LETTERS;

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

25 (i) The spouse of the decedent;

26 (ii) An ancestor of the decedent;

27 (iii) A descendant of the decedent; or

28 (iv) A sibling of the decedent;

1 (5) A full-time judge of a court established under the laws of  
 2 Maryland or the United States including, a judge of an orphans' or probate court, or a  
 3 clerk of court, or a register, unless the person is the surviving spouse or is related to  
 4 the decedent within the third degree; or

5 (6) A nonresident of the State, unless there shall be on file with the  
 6 register an irrevocable designation by the nonresident of an appropriate person who  
 7 resides in the State on whom service of process may be made in the same manner and  
 8 with the effect as if it were served personally in the State on the nonresident.

9 **11-112.**

10 (A) ~~A~~ UNLESS GOOD CAUSE IS SHOWN FOR THE APPOINTMENT, A  
 11 COURT MAY NOT APPOINT, AS A GUARDIAN OF THE PERSON OF A MINOR OR  
 12 DISABLED PERSON, A PERSON WHO HAS BEEN CONVICTED OF:

13 (1) A FELONY;

14 (2) A CRIME OF VIOLENCE, AS DEFINED IN § 14-101 OF THE  
 15 CRIMINAL LAW ARTICLE;

16 (3) ASSAULT IN ~~ANY~~ THE SECOND DEGREE; OR

17 ~~(2) (4)~~ RAPE OR A A SEXUAL OFFENSE UNDER §§ 3-303  
 18 THROUGH 3-308 OF THE CRIMINAL LAW ARTICLE IN THE THIRD OR FOURTH  
 19 DEGREE OR ATTEMPTED RAPE OR SEXUAL OFFENSE IN ~~ANY~~ THE THIRD OR  
 20 FOURTH DEGREE;

21 ~~(3)~~ FALSE IMPRISONMENT; OR

22 ~~(4)~~ KIDNAPPING.

23 (B) ~~A~~ UNLESS GOOD CAUSE IS SHOWN FOR THE APPOINTMENT, A  
 24 COURT MAY NOT APPOINT, AS A GUARDIAN OF THE PROPERTY OF A MINOR OR  
 25 DISABLED PERSON, A PERSON WHO HAS BEEN CONVICTED OF A CRIME THAT  
 26 REFLECTS ADVERSELY ON AN INDIVIDUAL'S HONESTY, TRUSTWORTHINESS, OR  
 27 FITNESS TO PERFORM THE DUTIES OF A GUARDIAN OF THE PROPERTY OF A  
 28 MINOR OR DISABLED PERSON, INCLUDING FRAUD, EXTORTION,  
 29 EMBEZZLEMENT, FORGERY, PERJURY, AND THEFT.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
 31 construed to apply only prospectively and may not be applied or interpreted to have  
 32 any effect on or application to any letters of ~~representation~~ administration granted  
 33 before the effective date of this Act.

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.