

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 321

(Senator Getty)

Judicial Proceedings

Judiciary

Estates and Trusts - Personal Representatives and Guardians - Standards

This bill defines “serious crime” with regard to an existing prohibition against letters of administration being granted to a person who is convicted of a serious crime. The bill also provides for an exception from the existing prohibition if a person shows good cause for the granting of letters. The bill prohibits a court from appointing a person as a guardian of the person of a minor or disabled person or guardian of the property of a minor or disabled person based on conviction of specified crimes, unless good cause is shown for the appointment. The bill applies only prospectively, to letters granted and guardians appointed after the bill’s October 1, 2014 effective date.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill defines “serious crime” as a crime that reflects adversely on an individual’s honesty, trustworthiness, or fitness to perform the duties of a personal representative. “Serious crime” includes fraud, extortion, embezzlement, forgery, perjury, and theft.

Unless good cause is shown for the appointment, the bill prohibits a court from appointing, as a guardian of the person of a minor or disabled person, a person who has been convicted of (1) a felony; (2) a crime of violence; (3) assault in the second degree;

or (4) a sexual offense in the third or fourth degree or attempted rape or sexual offense in the third or fourth degree.

Unless good cause is shown for the appointment, the bill also prohibits a court from appointing, as a guardian of the property of a minor or disabled person, a person who has been convicted of a crime that reflects adversely on an individual's honesty, trustworthiness, or fitness to perform the duties of a guardian of the property of a minor or disabled person, including fraud, extortion, embezzlement, forgery, perjury, and theft.

Current Law:

Granting of Letters

In granting letters of administration, which appoint a personal representative to administer a decedent's estate, the orphans' court and register of wills must observe a specified priority of persons who may be granted letters, beginning with the personal representatives named in a will admitted to probate. Letters granted to a personal representative of an estate, may not be granted to a person who is:

- younger than age 18;
- mentally incompetent;
- convicted of a serious crime;
- not a U.S. citizen, unless the person is a permanent resident of the United States and is the spouse, an ancestor, a descendant, or a sibling of the decedent;
- a full-time judge of a court established under the laws of Maryland or the United States including, a judge of an orphans' or probate court, or a clerk of court, or a register, unless the person is the surviving spouse or is related to the decedent within the third degree; or
- a nonresident of the State, unless there is on file with the register of wills an irrevocable designation by the nonresident of an appropriate person who resides in the State on whom service of process may be made in the same manner and with the effect as if it were served personally in the State on the nonresident.

“Serious crime” is not defined. The Maryland Court of Special Appeals has addressed the meaning of serious crime with respect to granting of letters in one instance, in *Lagrange v. Hinton*, 91 Md. App. 294 (1992), holding that a specified sexual crime was considered a serious crime, preventing a person listed in a will as personal representative from serving as personal representative.

Appointment of a Guardian

A guardian of the person of an unmarried minor may be appointed by a court, after notice and hearing, if any person interested in the welfare of the minor petitions the court and neither parent is serving as guardian of the person and no testamentary appointment has been made. On petition and after any required notice or hearing, a guardian of the person of a disabled person is appointed if the court determines from clear and convincing evidence that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person, including provisions for health care, food, clothing, or shelter, because of any mental disability, disease, habitual drunkenness, or addiction to drugs, and that no less restrictive form of intervention is available which is consistent with the person's welfare and safety.

A court may appoint a guardian of the property of a minor or a disabled person upon petition and after any required notice or hearing. A guardian of the property of a minor is appointed if the court determines that (1) a minor owns or is entitled to property that requires management or protection or (2) funds are needed for the minor's support, care, welfare, and education, and protection is necessary or desirable to obtain or provide funds. A guardian of the property of a disabled person is appointed if the court determines that (1) the person is unable to manage his or her property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance and (2) the person has or may be entitled to property or benefits which require proper management.

There do not appear to be limitations in statute with regard to who may be appointed as a guardian based on whether a person has been convicted of a crime.

Additional Information

Prior Introductions: SB 649 of 2013, a similar bill, passed the Senate as amended, and was heard by the House Judiciary Committee, but received no further action.

Cross File: HB 656 (Delegate Ready, *et al.*) - Judiciary.

Information Source(s): Register of Wills, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2014
mc/kdm

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