

# HOUSE BILL 293

J1, N2

5lr1592  
CF SB 90

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By: **Delegate Morhaim**

Introduced and read first time: February 4, 2015

Assigned to: Health and Government Operations

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2015

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

1 AN ACT concerning

2 **Guardianship, of Disabled Persons and Revocation of Advance Directives, and**  
3 **~~Surrogates – Disabled Persons and Mental Health Services~~**

4 FOR the purpose of authorizing a court to appoint a guardian of the person of a disabled  
5 person for a limited period of time under certain circumstances; specifying that  
6 certain rights, duties, and powers that a court may order include the duty to file a  
7 certain report; ~~providing that a revocation of an advance directive for mental health~~  
8 ~~services by a certain declarant is not effective until a certain period of time after the~~  
9 ~~request for revocation is made by the declarant; repealing the prohibition against~~  
10 ~~certain surrogate decision makers authorizing treatment for a mental disorder~~  
11 authorizing a certain individual to waive certain rights when making an advance  
12 directive; making conforming changes; and generally relating to guardianship, and  
13 advance directives, and surrogate decision making.

14 BY repealing and reenacting, with amendments,  
15 Article – Estates and Trusts  
16 Section 13–708(a) and (b)  
17 Annotated Code of Maryland  
18 (2011 Replacement Volume and 2014 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – Health – General  
21 Section 5–604 ~~and 5–605(d)~~  
22 Annotated Code of Maryland  
23 (2009 Replacement Volume and 2014 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 MARYLAND,  
2 That the Laws of Maryland read as follows:

3 **Article – Estates and Trusts**

4 13–708.

5 (a) (1) The court may grant to a guardian of a person only those powers  
6 necessary to provide for the demonstrated need of the disabled person.

7 (2) (I) The court may appoint a guardian of the person of a disabled  
8 person for the limited purpose of making one or more decisions related to the health care  
9 of that person.

10 (II) **THE COURT MAY APPOINT A GUARDIAN OF THE PERSON OF**  
11 **A DISABLED PERSON FOR A LIMITED PERIOD OF TIME IF IT APPEARS PROBABLE**  
12 **THAT THE DISABILITY WILL CEASE WITHIN 1 YEAR OF THE APPOINTMENT OF THE**  
13 **GUARDIAN.**

14 (b) Subject to subsection (a) of this section, the rights, duties, and powers which  
15 the court may order include, but are not limited to:

16 (1) The same rights, powers, and duties that a parent has with respect to  
17 an unemancipated minor child, except that the guardian is not liable solely by reason of the  
18 guardianship to third persons for any act of the disabled person;

19 (2) The right to custody of the disabled person and to establish his place of  
20 abode within and without the State, provided there is court authorization for any change  
21 in the classification of abode, except that no one may be committed to a mental facility  
22 without an involuntary commitment proceeding as provided by law;

23 (3) The duty to provide for care, comfort, and maintenance, including  
24 social, recreational, and friendship requirements, and, if appropriate, for training and  
25 education of the disabled person;

26 (4) The duty to take reasonable care of the clothing, furniture, vehicles, and  
27 other personal effects of the disabled person, and, if other property requires protection, the  
28 power to commence protective proceedings;

29 (5) If a guardian of the estate of the disabled person has not been  
30 appointed, the right to commence proceedings to compel performance by any person of his  
31 duty to support the disabled person, and to apply the estate to the support, care, and  
32 education of the disabled person, except that the guardian of the person may not obtain  
33 funds from the estate for room and board that the guardian, his spouse, parent, or child  
34 provide without a court order approving the charge, and the duty to exercise care to  
35 conserve any excess estate for the needs of the disabled person;

1 (6) If a guardian of the estate has been appointed, the duty to control the  
 2 custody and care of the disabled person, to receive reasonable sums for room and board  
 3 provided to the disabled person, and to account to the guardian of the estate for funds  
 4 expended, and the right to ask the guardian of the estate to expend the estate in payment  
 5 of third persons for care and maintenance of the disabled person;

6 (7) The duty to file an annual **OR BIANNUAL** report with the court  
 7 indicating the present place of residence and health status of the ward, the guardian's plan  
 8 for preserving and maintaining the future well-being of the ward, and the need for  
 9 continuance or cessation of the guardianship or for any alteration in the powers of the  
 10 guardian. The court shall renew the appointment of the guardian if it is satisfied that the  
 11 grounds for the original appointment stated in § 13-705(b) of this subtitle continue to exist.  
 12 If the court believes such grounds may not exist, it shall hold a hearing, similar to that  
 13 provided for in § 13-705 of this subtitle, at which the guardian shall be required to prove  
 14 that such grounds exist. If the court does not make these findings, it shall order the  
 15 discontinuance of the guardianship of the person. If the guardian declines to participate in  
 16 the hearing, the court may appoint another guardian to replace him pursuant to the  
 17 priorities in § 13-707(a) of this subtitle; and

18 (8) The power to give necessary consent or approval for:

19 (i) Medical or other professional care, counsel, treatment, or service,  
 20 including admission to a hospital or nursing home or transfer from one medical facility to  
 21 another;

22 (ii) Withholding medical or other professional care, counsel,  
 23 treatment, or service; and

24 (iii) Withdrawing medical or other professional care, counsel,  
 25 treatment, or service.

## 26 Article – Health – General

27 5-604.

28 (a) **(1) [An] ~~SUBJECT TO~~ EXCEPT AS PROVIDED IN PARAGRAPH (2) OF**  
 29 **THIS SUBSECTION, AN advance directive may be revoked at any time by a declarant THE**  
 30 **INDIVIDUAL WHO MADE THE ADVANCE DIRECTIVE by a signed and dated written or**  
 31 **electronic document, by physical cancellation or destruction, by an oral statement to a**  
 32 **health care practitioner or by the execution of a subsequent directive.**

33 ~~**(2) A REVOCATION OF AN ADVANCE DIRECTIVE FOR MENTAL HEALTH**~~  
 34 ~~**SERVICES BY A DECLARANT WHO HAS BEEN CERTIFIED INCAPABLE OF MAKING AN**~~  
 35 ~~**INFORMED DECISION UNDER § 5-602(E) OF THIS SUBTITLE IS NOT EFFECTIVE UNTH**~~  
 36 ~~**72 HOURS AFTER THE REQUEST FOR REVOCATION IS MADE BY THE DECLARANT.**~~

1           **(2) A COMPETENT INDIVIDUAL, KNOWINGLY AND VOLUNTARILY, MAY**  
 2 **ELECT IN AN ADVANCE DIRECTIVE TO WAIVE THE RIGHT UNDER PARAGRAPH (1) OF**  
 3 **THIS SUBSECTION TO REVOKE ANY PART OR ALL OF THE ADVANCE DIRECTIVE,**  
 4 **INCLUDING THE APPOINTMENT OF AN AGENT, DURING A PERIOD IN WHICH THE**  
 5 **INDIVIDUAL HAS BEEN CERTIFIED INCAPABLE OF MAKING AN INFORMED DECISION**  
 6 **UNDER § 5-602(E) OF THIS SUBTITLE.**

7           (b) If ~~a declarant~~ **AN INDIVIDUAL** revokes an advance directive by an oral  
 8 statement to a health care practitioner, the practitioner and a witness to the oral revocation  
 9 shall document the substance of the oral revocation in the ~~declarant's~~ **INDIVIDUAL'S**  
 10 medical record.

11           (c) It shall be the responsibility of the ~~declarant~~ **INDIVIDUAL**, to the extent  
 12 reasonably possible, to notify any person to whom the ~~declarant~~ **INDIVIDUAL** has provided  
 13 a copy of the directive.

14 ~~5-605.~~

15           ~~(d) A surrogate may not authorize:~~

16           ~~(1) Sterilization; or~~

17           ~~(2) Treatment for a mental disorder.] STERILIZATION.~~

18           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 19 October 1, 2015.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.