

SENATE BILL 90

J1, N2

5lr0471
CF HB 293

By: **Senators Kelley, Astle, Benson, Feldman, Guzzone, Klausmeier, Mathias, Montgomery, Nathan-Pulliam, Pugh, and ~~Young~~ Young, and Muse**

Introduced and read first time: January 26, 2015

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 16, 2015

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 declarant to waive certain rights when making an~~
12 ~~advance directive; making conforming changes; and generally relating to~~
13 ~~guardianship, and 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

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.



(2009 Replacement Volume and 2014 Supplement)

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

Article – Estates and Trusts

13–708.

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

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

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

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

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

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

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

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

(5) If a guardian of the estate of the disabled person has not been appointed, the right to commence proceedings to compel performance by any person of his duty to support the disabled person, and to apply the estate to the support, care, and education of the disabled person, except that the guardian of the person may not obtain funds from the estate for room and board that the guardian, his spouse, parent, or child

1 provide without a court order approving the charge, and the duty to exercise care to
2 conserve any excess estate for the needs of the disabled person;

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

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

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

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

24 (ii) Withholding medical or other professional care, counsel,
25 treatment, or service; and

26 (iii) Withdrawing medical or other professional care, counsel,
27 treatment, or service.

28 Article – Health – General

29 5-604.

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

35 ~~**(2)** A REVOCATION OF AN ADVANCE DIRECTIVE FOR MENTAL HEALTH~~
36 ~~SERVICES BY A DECLARANT WHO HAS BEEN CERTIFIED INCAPABLE OF MAKING AN~~

1 ~~INFORMED DECISION UNDER § 5-602(E) OF THIS SUBTITLE IS NOT EFFECTIVE UNTIL~~
 2 ~~72 HOURS AFTER THE REQUEST FOR REVOCATION IS MADE BY THE DECLARANT.~~

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

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

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

16 ~~5-605.~~

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

18 ~~(1) Sterilization; or~~

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.