

# SENATE BILL 171

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By: **Senators Kelley, Conway, Currie, DeGrange, Jennings, Kasemeyer, Manno, McFadden, Nathan-Pulliam, Rosapepe, Salling, Waugh, and Young**

Introduced and read first time: January 18, 2016

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Guardianship of a Minor or Disabled Person – Criminal History Records Check**

3 FOR the purpose of requiring a court to apply to the Criminal Justice Information System  
4 Central Repository of the Department of Public Safety and Correctional Services for  
5 a State and national criminal history records check for a certain prospective  
6 guardian before appointing a guardian of the person of a minor or disabled person;  
7 requiring a court to submit certain materials and fees to the Central Repository as  
8 part of an application for a criminal history records check; requiring the Central  
9 Repository to forward a printed statement of a prospective guardian's criminal  
10 history record information to the prospective guardian and the court, in accordance  
11 with certain laws; authorizing the subject of a criminal history records check to  
12 contest certain information in a certain manner; providing that information obtained  
13 from the Central Repository under this Act is confidential, may not be  
14 redisseminated, and may be used only for certain purposes; providing that a criminal  
15 history records check is not required under certain circumstances; defining a certain  
16 term; and generally relating to the guardianship of a minor or disabled person.

17 BY repealing and reenacting, with amendments,  
18 Article – Estates and Trusts  
19 Section 11–114  
20 Annotated Code of Maryland  
21 (2011 Replacement Volume and 2015 Supplement)

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

24 **Article – Estates and Trusts**

25 11–114.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) Unless good cause is shown for the appointment, a court may not appoint, as  
2 a guardian of the person of a minor or disabled person, a person who has been convicted of:

3 (1) A felony;

4 (2) A crime of violence, as defined in § 14–101 of the Criminal Law Article;

5 (3) Assault in the second degree; or

6 (4) A sexual offense in the third or fourth degree or attempted rape or  
7 sexual offense in the third or fourth degree.

8 (b) Unless good cause is shown for the appointment, a court may not appoint, as  
9 a guardian of the property of a minor or disabled person, a person who has been convicted  
10 of a crime that reflects adversely on an individual's honesty, trustworthiness, or fitness to  
11 perform the duties of a guardian of the property of a minor or disabled person, including  
12 fraud, extortion, embezzlement, forgery, perjury, and theft.

13 (c) (1) **IN THIS SUBSECTION, "CENTRAL REPOSITORY" MEANS THE**  
14 **CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE**  
15 **DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES.**

16 (2) **EXCEPT AS PROVIDED IN PARAGRAPH (7) OF THIS SUBSECTION,**  
17 **BEFORE APPOINTING A GUARDIAN OF THE PERSON OF A MINOR OR DISABLED**  
18 **PERSON, THE COURT SHALL APPLY TO THE CENTRAL REPOSITORY FOR A STATE**  
19 **AND NATIONAL CRIMINAL HISTORY RECORDS CHECK FOR EACH PROSPECTIVE**  
20 **GUARDIAN.**

21 (3) **AS PART OF THE APPLICATION FOR A CRIMINAL HISTORY**  
22 **RECORDS CHECK, THE COURT SHALL SUBMIT TO THE CENTRAL REPOSITORY:**

23 (i) **TWO COMPLETE SETS OF THE PROSPECTIVE GUARDIAN'S**  
24 **LEGIBLE FINGERPRINTS TAKEN ON FORMS APPROVED BY THE DIRECTOR OF THE**  
25 **CENTRAL REPOSITORY AND THE DIRECTOR OF THE FEDERAL BUREAU OF**  
26 **INVESTIGATION;**

27 (ii) **THE FEE AUTHORIZED UNDER § 10–221(B)(7) OF THE**  
28 **CRIMINAL PROCEDURE ARTICLE FOR ACCESS TO MARYLAND CRIMINAL HISTORY**  
29 **RECORDS, TO BE PAID BY THE PROSPECTIVE GUARDIAN; AND**

30 (iii) **THE MANDATORY PROCESSING FEE REQUIRED BY THE**  
31 **FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY**  
32 **RECORDS CHECK, TO BE PAID BY THE PROSPECTIVE GUARDIAN.**

1           **(4) IN ACCORDANCE WITH §§ 10-201 THROUGH 10-234 OF THE**  
2 **CRIMINAL PROCEDURE ARTICLE, THE CENTRAL REPOSITORY SHALL FORWARD TO**  
3 **THE PROSPECTIVE GUARDIAN AND THE COURT A PRINTED STATEMENT OF THE**  
4 **PROSPECTIVE GUARDIAN'S CRIMINAL HISTORY RECORD INFORMATION.**

5           **(5) THE SUBJECT OF A CRIMINAL HISTORY RECORDS CHECK UNDER**  
6 **THIS SECTION MAY CONTEST THE CONTENTS OF THE PRINTED STATEMENT ISSUED**  
7 **BY THE CENTRAL REPOSITORY AS PROVIDED IN § 10-223 OF THE CRIMINAL**  
8 **PROCEDURE ARTICLE.**

9           **(6) INFORMATION OBTAINED FROM THE CENTRAL REPOSITORY**  
10 **UNDER THIS SECTION IS CONFIDENTIAL AND:**

11                   **(I) MAY NOT BE REDISSEMINATED; AND**

12                   **(II) MAY BE USED ONLY FOR THE PURPOSE OF SELECTING A**  
13 **GUARDIAN OF THE PERSON OF A MINOR OR DISABLED PERSON AS AUTHORIZED**  
14 **UNDER THIS SECTION.**

15           **(7) A CRIMINAL HISTORY RECORDS CHECK IS NOT REQUIRED:**

16                   **(I) FOR THE APPOINTMENT OF A GUARDIAN IN AN EMERGENCY**  
17 **ORDER UNDER § 13-709 OF THIS ARTICLE; OR**

18                   **(II) IF THE PROSPECTIVE GUARDIAN IS:**

19                           **1. A LOCAL DEPARTMENT OF SOCIAL SERVICES, LOCAL**  
20 **OFFICE ON AGING, OR THE SECRETARY OF AGING; OR**

21                           **2. AN ATTORNEY LICENSED TO PRACTICE LAW IN THE**  
22 **STATE.**

23           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
24 October 1, 2016.