

HOUSE BILL 1483

N2, D4

8lr0337

By: Delegates Saab, Adams, Afzali, Ali, Anderson, Anderton, Angel, Arentz, Atterbeary, Aumann, Barkley, B. Barnes, D. Barnes, Barron, Barve, Beidle, Beitzel, Branch, Bromwell, Brooks, Buckel, Carey, Carozza, Carr, Cassilly, Chang, Ciliberti, Clark, Clippinger, Cluster, Conaway, Corderman, Cullison, Davis, Ebersole, Folden, Fraser-Hidalgo, Frick, Frush, Ghrist, Gibson, Gilchrist, Glass, Glenn, Grammer, Gutierrez, Hayes, Haynes, Hettleman, Hill, Hixson, Holmes, Hornberger, C. Howard, S. Howard, Impallaria, Jackson, Jacobs, Jameson, Kelly, Kipke, Kittleman, Korman, Kramer, Krebs, Krimm, Lam, Lierman, Lisanti, Long, Luedtke, Malone, Mautz, McComas, McConkey, McCray, McDonough, McKay, McMillan, Metzgar, Miele, A. Miller, W. Miller, Moon, Morales, Morgan, Morhaim, Mosby, Otto, Pena-Melnyk, Platt, Proctor, Reilly, Rey, Robinson, Rose, Sample-Hughes, Sanchez, Shoemaker, Simonaire, Szeliga, Tarlau, Turner, Valderrama, Valentino-Smith, Vallario, Vogt, M. Washington, West, Wilson, Wivell, K. Young, ~~and P. Young~~ P. Young, and Rosenberg

Introduced and read first time: February 9, 2018

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 14, 2018

CHAPTER _____

1 AN ACT concerning

2 **Duties of a Guardian of the Person – Petition for Visitation**

3 FOR the purpose of authorizing a court to include in an order appointing a guardian of the
4 person of a disabled person the duty to foster and preserve certain family
5 relationships under certain circumstances; establishing the intent of the General
6 Assembly to ~~enforce~~ recognize the right of every adult in the State to visit with and
7 receive certain communication from whomever the adult chooses, with a certain
8 exception; establishing a rebuttable presumption in an action under this Act;
9 authorizing a certain person to petition a certain court for reasonable visitation with
10 a certain alleged incapacitated or protected person; prohibiting a certain petition
11 under certain circumstances; requiring the petition to be verified and to state certain

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 facts and include a certain statement; providing for service of process for the petition;
 2 providing for a certain shift of a certain burden of proof under certain circumstances;
 3 providing for the rebuttal of a certain presumption under this Act; requiring the
 4 court to issue a ruling in a certain manner; authorizing the court to impose certain
 5 restrictions on a certain visitation; authorizing the court to assess certain costs and
 6 sanctions against certain parties; establishing a certain immunity from civil liability
 7 under certain circumstances; requiring an authorized decision maker to provide
 8 certain notifications within a certain period of time under certain circumstances;
 9 defining certain terms; and generally relating to visitation and communications
 10 between certain family members or other interested ~~persons~~ parties.

11 BY repealing and reenacting, without amendments,
 12 Article – Estates and Trusts
 13 Section 13–708(a)
 14 Annotated Code of Maryland
 15 (2017 Replacement Volume)

16 BY repealing and reenacting, with amendments,
 17 Article – Estates and Trusts
 18 Section 13–708(b)
 19 Annotated Code of Maryland
 20 (2017 Replacement Volume)

21 BY adding to
 22 Article – Family Law
 23 Section 15–101 to be under the new title “Title 15. Visitation”
 24 Annotated Code of Maryland
 25 (2012 Replacement Volume and 2017 Supplement)

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

28 **Article – Estates and Trusts**

29 13–708.

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

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

35 (ii) The court may appoint a guardian of the person of a disabled
 36 person for a limited period of time if it appears probable that the disability will cease within
 37 1 year of the appointment of the guardian.

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

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

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

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

13 **(4) IF IT IS IN THE BEST INTEREST OF THE DISABLED PERSON, THE**
14 **DUTY TO FOSTER AND PRESERVE FAMILY RELATIONSHIPS INCLUDING, AS**
15 **APPROPRIATE, ASSISTING TO ARRANGE VISITATION AND COMMUNICATION BY**
16 **TELEPHONE CALLS, PERSONAL MAIL, AND ELECTRONIC COMMUNICATIONS;**

17 ~~[(4)]~~ **(5)** The duty to take reasonable care of the clothing, furniture,
18 vehicles, and other personal effects of the disabled person, and, if other property requires
19 protection, the power to commence protective proceedings;

20 ~~[(5)]~~ **(6)** If a guardian of the estate of the disabled person has not been
21 appointed, the right to commence proceedings to compel performance by any person of his
22 duty to support the disabled person, and to apply the estate to the support, care, and
23 education of the disabled person, except that the guardian of the person may not obtain
24 funds from the estate for room and board that the guardian, his spouse, parent, or child
25 provide without a court order approving the charge, and the duty to exercise care to
26 conserve any excess estate for the needs of the disabled person;

27 ~~[(6)]~~ **(7)** If a guardian of the estate has been appointed, the duty to control
28 the custody and care of the disabled person, to receive reasonable sums for room and board
29 provided to the disabled person, and to account to the guardian of the estate for funds
30 expended, and the right to ask the guardian of the estate to expend the estate in payment
31 of third persons for care and maintenance of the disabled person;

32 ~~[(7)]~~ **(8)** The duty to file an annual or biannual report with the court
33 indicating the present place of residence and health status of the ward, the guardian's plan
34 for preserving and maintaining the future well-being of the ward, and the need for
35 continuance or cessation of the guardianship or for any alteration in the powers of the
36 guardian. The court shall renew the appointment of the guardian if it is satisfied that the
37 grounds for the original appointment stated in § 13-705(b) of this subtitle continue to exist.
38 If the court believes such grounds may not exist, it shall hold a hearing, similar to that

1 provided for in § 13–705 of this subtitle, at which the guardian shall be required to prove
 2 that such grounds exist. If the court does not make these findings, it shall order the
 3 discontinuance of the guardianship of the person. If the guardian declines to participate in
 4 the hearing, the court may appoint another guardian to replace him pursuant to the
 5 priorities in § 13–707(a) of this subtitle; and

6 **[(8)] (9)** The power to give necessary consent or approval for:

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

10 (ii) Withholding medical or other professional care, counsel,
 11 treatment, or service; and

12 (iii) Withdrawing medical or other professional care, counsel,
 13 treatment, or service.

14 **Article – Family Law**

15 **TITLE 15. VISITATION.**

16 **15–101.**

17 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
 18 **INDICATED.**

19 **(2) “ALLEGED INCAPACITATED OR PROTECTED PERSON” MEANS THE**
 20 **PERSON THE PETITIONER SEEKS TO VISIT.**

21 ~~**(3) “INTERESTED PERSON” MEANS A PERSON WHO HAS A**~~
 22 ~~**SIGNIFICANT, ONGOING RELATIONSHIP WITH THE ALLEGED INCAPACITATED OR**~~
 23 ~~**PROTECTED PERSON THAT IS BASED ON OR A PRODUCT OF STRONG AFFECTION.**~~

24 **(3) “HEALTH CARE FACILITY” MEANS:**

25 **(I) AN ASSISTED LIVING PROGRAM;**

26 **(II) A HOSPICE;**

27 **(III) A HOSPITAL; OR**

28 **(IV) A NURSING HOME.**

29 **(4) (I) “INTERESTED PARTY” MEANS A PERSON WHO IS:**

1 **1. APPOINTED AS A GUARDIAN OF THE PERSON UNDER §**
2 **13-705 OF THE ESTATES AND TRUSTS ARTICLE;**

3 **2. APPOINTED AS A GUARDIAN OF THE PROPERTY**
4 **UNDER § 13-201 OF THE ESTATES AND TRUSTS ARTICLE;**

5 **3. AN AGENT UNDER AN ADVANCE DIRECTIVE THAT IS**
6 **VALID UNDER TITLE 5, SUBTITLE 6 OF THE HEALTH – GENERAL ARTICLE;**

7 **4. A SURROGATE DECISION MAKER UNDER § 5-605 OF**
8 **THE HEALTH – GENERAL ARTICLE; OR**

9 **5. AN ATTORNEY IN FACT UNDER A DURABLE POWER OF**
10 **ATTORNEY THAT IS VALID UNDER TITLE 17 OF THE ESTATES AND TRUSTS ARTICLE.**

11 **(II) “INTERESTED PARTY” DOES NOT INCLUDE A PERSON**
12 **DESCRIBED UNDER § 13-707(A)(10) OF THE ESTATES AND TRUSTS ARTICLE.**

13 **(5) “PETITIONER” MEANS A PERSON WHO FILES A PETITION**
14 **INDIVIDUALLY OR JOINTLY WITH ANOTHER PERSON UNDER SUBSECTION (D) OF**
15 **THIS SECTION SEEKING VISITATION WITH AN ALLEGED INCAPACITATED OR**
16 **PROTECTED PERSON.**

17 ~~**(4) (6)**~~ **“VISIT” OR “VISITATION” MEANS ANY IN-PERSON MEETING,**
18 **OR ANY TELEPHONIC, MAIL, OR ELECTRONIC COMMUNICATION, BETWEEN THE**
19 **PETITIONER AND THE ALLEGED INCAPACITATED OR PROTECTED PERSON.**

20 **(B) IT IS THE INTENT OF THE GENERAL ASSEMBLY TO ~~ENFORCE~~ RECOGNIZE**
21 **THE RIGHT OF EVERY ADULT IN THIS STATE TO ~~VISIT WITH AND RECEIVE MAIL,~~**
22 **~~TELEPHONE, AND ELECTRONIC COMMUNICATION FROM~~ HAVE VISITATION WITH**
23 **WHOMEVER THE ADULT CHOOSES, UNLESS A COURT HAS SPECIFICALLY ORDERED**
24 **OTHERWISE OR THE ADULT IS INCAPACITATED AND THE VISITATION IS NOT IN THE**
25 **ADULT’S BEST INTEREST.**

26 **(C) THERE IS A REBUTTABLE PRESUMPTION IN AN ACTION UNDER THIS**
27 **SECTION THAT IT IS IN THE BEST INTEREST OF AN ALLEGED INCAPACITATED OR**
28 **PROTECTED PERSON TO HAVE VISITATION FROM:**

29 **(1) THE SPOUSE OF THE PERSON, IF THE SPOUSE AND THE PERSON**
30 **ARE NOT LEGALLY SEPARATED;**

31 **(2) THE ADULT CHILDREN OF THE PERSON;**

32 **(3) THE ADULT GRANDCHILDREN OF THE PERSON;**

- 1 (4) THE PARENTS OF THE PERSON;
- 2 (5) THE ADULT SIBLINGS OF THE PERSON; AND
- 3 (6) OTHER INTERESTED ~~PERSONS~~ PARTIES.

4 (D) (1) A PERSON LISTED IN SUBSECTION (C) OF THIS SECTION MAY
5 PETITION THE COURT, IN THE JURISDICTION IN WHICH THE ALLEGED
6 INCAPACITATED OR PROTECTED PERSON RESIDES OR IN THE COURT THAT
7 APPOINTED A GUARDIAN OF THE PERSON FOR THAT PERSON, FOR REASONABLE
8 VISITATION BY THAT PETITIONER WITH THE ALLEGED INCAPACITATED OR
9 PROTECTED PERSON.

10 (2) A PETITION MAY NOT BE MADE UNDER PARAGRAPH (1) OF THIS
11 SUBSECTION IF THE AUTHORIZED DECISION MAKER OF THE ALLEGED
12 INCAPACITATED OR PROTECTED PERSON IS A PUBLIC GUARDIAN.

13 (E) A PETITION DESCRIBED IN SUBSECTION (D) OF THIS SECTION SHALL:

14 (1) BE VERIFIED AND STATE FACTS SHOWING:

15 ~~(1)~~ (1) THAT THE PETITIONER IS A PERSON LISTED IN SUBSECTION
16 (C) OF THIS SECTION;

17 ~~(2)~~ (II) THAT VISITATION BY THE PETITIONER WITH THE ALLEGED
18 INCAPACITATED OR PROTECTED PERSON HAS BEEN UNREASONABLY INTERFERED
19 WITH OR DENIED; AND

20 ~~(3)~~ (III) THE IDENTITY OF THE PERSON OR PERSONS WHO HAVE
21 UNREASONABLY INTERFERED WITH OR DENIED VISITATION; AND

22 (2) INCLUDE A STATEMENT BY THE PETITIONER THAT THE
23 PETITIONER AGREES TO ABIDE BY ANY ORDER OF THE COURT ISSUED AS A
24 CONDITION OF EVALUATING THE PETITION AND THE PETITIONER, INCLUDING A
25 BACKGROUND CHECK, JUDGMENT SEARCH, OR MENTAL HEALTH SCREENING OR
26 EVALUATION.

27 (F) THE PETITIONER SHALL PERSONALLY SERVE A COPY OF THE PETITION
28 ON:

29 (1) THE ALLEGED INCAPACITATED OR PROTECTED PERSON₅;

1 **(2) THE ATTORNEY FOR THE ALLEGED INCAPACITATED OR**
2 **PROTECTED PERSON;**

3 **(3) THE GUARDIAN OF THE PERSON OF THE ALLEGED**
4 **INCAPACITATED OR PROTECTED PERSON, IF ANY;**

5 **(4) THE AUTHORIZED DECISION MAKER FOR THE ALLEGED**
6 **INCAPACITATED OR PROTECTED PERSON;**

7 **(5) THE ATTENDING PHYSICIAN, NURSE PRACTITIONER, OR**
8 **PHYSICIAN ASSISTANT FOR THE ALLEGED INCAPACITATED OR PROTECTED PERSON;**

9 **(6) THE PRINCIPAL ADMINISTRATOR, OR THE ADMINISTRATOR'S**
10 **DESIGNEE, AND THE MEDICAL DIRECTOR OF A HEALTH CARE FACILITY PROVIDING**
11 **SERVICES TO THE ALLEGED INCAPACITATED OR PROTECTED PERSON, IF ANY; AND**

12 **(7) ANY PERSON ALLEGED TO HAVE INTERFERED WITH OR DENIED**
13 **VISITATION.**

14 **(G) (1) AT ~~THE~~ ANY HEARING ON THE PETITION, IF EVIDENCE IS**
15 **PRESENTED THAT THE ALLEGED INCAPACITATED OR PROTECTED PERSON OBJECTS**
16 **TO THE PETITION OR HAS IN THE PAST EXPRESSED AN OBJECTION TO VISITATION BY**
17 **THE PETITIONER, THE BURDEN OF PROOF DESCRIBED IN SUBSECTION (C) OF THIS**
18 **SECTION SHALL SHIFT TO THE PETITIONER TO PROVE, BY CLEAR AND CONVINCING**
19 **EVIDENCE, THAT THE ALLEGATION OF AN ALLEGED INCAPACITATED OR PROTECTED**
20 **PERSON'S CURRENT OR PRIOR OBJECTION WAS ~~PROCURED BY UNDUE INFLUENCE~~**
21 **NOT BASED ON RELIABLE EVIDENCE.**

22 **(2) THE PRESUMPTION DESCRIBED IN SUBSECTION (C) OF THIS**
23 **SECTION MAY BE REBUTTED BY CLEAR AND CONVINCING EVIDENCE THAT THE**
24 **VISITATION WOULD NOT BE IN THE BEST INTERESTS OF THE ALLEGED**
25 **INCAPACITATED OR PROTECTED PERSON BECAUSE:**

26 **(I) THE PETITIONER HAS COMMITTED PHYSICAL OR FINANCIAL**
27 **~~ELDER~~ ABUSE; OR OR NEGLECT OR HAS BEEN THE SUBJECT OF A PROTECTIVE**
28 **ORDER ISSUED BY A COURT THAT RESTRICTED OR PROHIBITED CONDUCT BY THE**
29 **PETITIONER;**

30 **(II) VISITATION IS CONTRARY TO THE WISHES OF THE ALLEGED**
31 **INCAPACITATED OR PROTECTED PERSON;**

32 **(III) THE AUTHORIZED DECISION MAKER IS ACTING BASED ON A**
33 **RECOMMENDATION OF AN ATTENDING PHYSICIAN OR A PROTECTIVE ORDER ISSUED**
34 **BY A COURT;**

1 **(IV) THE PETITIONER'S AFFIDAVIT DOES NOT QUALIFY THE**
 2 **PETITIONER AS AN INTERESTED PARTY;**

3 **(V) STATEMENTS, WRITINGS, OR ACTIONS BY THE ALLEGED**
 4 **INCAPACITATED OR PROTECTED PERSON DEMONSTRATE THAT THE ALLEGED**
 5 **INCAPACITATED OR PROTECTED PERSON:**

6 **1. DOES NOT WANT VISITATION WITH THE PETITIONER;**
 7 **OR**

8 **2. INTENDED TO VEST COMPLETE AUTHORITY OVER**
 9 **VISITATION WITH THE AUTHORIZED DECISION MAKER; OR**

10 **~~(H)~~ (VI) THE VISITATION WOULD BE HARMFUL TO THE**
 11 **HEALTH OR MENTAL WELL-BEING OF THE ALLEGED INCAPACITATED OR**
 12 **PROTECTED PERSON.**

13 **(H) (1) IN RULING ON A PETITION UNDER THIS SECTION, THE COURT**
 14 **SHALL ISSUE A STATEMENT OF FACTS AND LAW.**

15 **(2) THE COURT MAY IMPOSE REASONABLE RESTRICTIONS ON A**
 16 **VISITATION ORDERED UNDER THIS SECTION, INCLUDING TIME AND FREQUENCY**
 17 **LIMITATIONS AND REQUIRING THAT VISITATIONS BE MONITORED AT THE**
 18 **PETITIONER'S EXPENSE.**

19 **(I) (1) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE COURT**
 20 **MAY ASSESS COSTS OF THE PETITION OR VISITATION, INCLUDING THE COST OF**
 21 **MONITORING VISITS, TO ~~ANY PARTY TO A PROCEEDING~~ THE PETITIONER UNDER**
 22 **THIS SECTION.**

23 **(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE COURT**
 24 **MAY ASSESS SANCTIONS, IN THE AMOUNT OF THE REASONABLE ATTORNEY'S FEES**
 25 **INCURRED, AGAINST A PETITIONER WHO FILES A PETITION UNDER THIS SECTION IN**
 26 **BAD FAITH OR AGAINST A PARTY THAT IS CLAIMED TO HAVE UNJUSTIFIABLY**
 27 **~~INTERFERES~~ INTERFERED WITH OR ~~DENIES~~ DENIED VISITATION.**

28 **(3) NO COSTS OR SANCTIONS UNDER THIS SECTION MAY BE ASSESSED**
 29 **AGAINST THE ALLEGED INCAPACITATED OR PROTECTED PERSON WHO IS THE**
 30 **SUBJECT OF THE PETITION.**

31 **(4) AN AUTHORIZED DECISION MAKER, A HEALTH CARE FACILITY, OR**
 32 **AN EMPLOYEE OR AGENT OF A HEALTH CARE FACILITY WHO DENIES OR RESTRICTS**

1 A VISIT OR VISITATION SHALL BE IMMUNE FROM CIVIL LIABILITY IF THE
2 RESTRICTION OR DENIAL IS BASED ON:

3 (I) A COURT ORDER ISSUED TO DENY OR RESTRICT VISITATION;
4 OR

5 (II) A GOOD FAITH BELIEF THAT A VISIT OR VISITATION IS NOT
6 IN THE BEST INTEREST OF AN ALLEGED INCAPACITATED OR PROTECTED PERSON.

7 (J) ON WRITTEN REQUEST BY AN INTERESTED PARTY, AN AUTHORIZED
8 DECISION MAKER SHALL, WITHIN 72 HOURS AFTER RECEIPT OF THE REQUEST,
9 IDENTIFY IN WRITING OR BY ELECTRONIC COMMUNICATION:

10 (1) THE HEALTH CARE FACILITY OR OTHER LOCATION WHERE THE
11 ALLEGED INCAPACITATED OR PROTECTED PERSON IS RESIDING;

12 (2) ALL CURRENT FUNERAL ARRANGEMENTS; OR

13 (3) THE BURIAL LOCATION OR DISPOSITION OF THE BODY OF THE
14 DECEASED ALLEGED INCAPACITATED OR PROTECTED PERSON.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2018.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.