

# HOUSE BILL 1613

N2

8lr3858  
CF 8lr1033

---

By: **Delegate Sanchez**

Introduced and read first time: February 9, 2018

Assigned to: Judiciary

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Appointment or Designation of Standby Guardian – Removal From the United**  
3 **States**

4 FOR the purpose of authorizing a parent of a minor to file a petition for the judicial  
5 appointment of a standby guardian of the person or property of the minor if there is  
6 a significant risk that the petitioner will be removed from the United States within  
7 a certain period of time after the filing of the petition; requiring a court to issue a  
8 certain decree for the appointment of a standby guardian of the person or property  
9 of a minor if the court finds that there is a significant risk that the petitioner will be  
10 removed from the United States within a certain period of time after the filing of the  
11 petition under certain circumstances; specifying certain procedures for the  
12 appointment or designation of a standby guardian of the person or property of a  
13 minor in the case of removal from the United States of a parent; specifying when the  
14 authority of a standby guardian under this Act begins under certain circumstances;  
15 requiring a standby guardian to take certain actions; making certain provisions  
16 relating to the appointment or designation of a standby guardian of the person or  
17 property of a minor in cases of incapacity, debilitation, or death of a parent applicable  
18 to the appointment or designation of a standby guardian of the person or property of  
19 a minor in the case of removal from the United States of a parent; authorizing a  
20 parent to designate a standby guardian by means of a written designation in the  
21 event that the parent is removed from the United States under certain  
22 circumstances; requiring the court to appoint a person to be a standby guardian if  
23 the court finds that an order of removal from the United States has been issued and  
24 specified parental consent has been given; specifying that a standby guardian's  
25 authority under certain provisions may not, itself, divest a parent of any parental or  
26 guardianship rights; making certain conforming changes; altering certain  
27 definitions; and generally relating to removal from the United States and standby  
28 guardianship of the person or property of a minor.

29 BY repealing and reenacting, without amendments,  
30 Article – Estates and Trusts

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 13–901(a) and 13–902  
2 Annotated Code of Maryland  
3 (2017 Replacement Volume)

4 BY repealing and reenacting, with amendments,  
5 Article – Estates and Trusts  
6 Section 13–901(e), 13–903, 13–904, and 13–907  
7 Annotated Code of Maryland  
8 (2017 Replacement Volume)

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

11 **Article – Estates and Trusts**

12 13–901.

13 (a) In this subtitle the following words have the meanings indicated.

14 (e) “Standby guardian” means a person:

15 (1) Appointed by a court under § 13–903 of this subtitle as standby  
16 guardian of the person or property of a minor, whose authority becomes effective on the  
17 incapacity, **REMOVAL FROM THE UNITED STATES**, or death of the minor’s parent, or on  
18 the consent of the parent; or

19 (2) Designated under § 13–904 of this subtitle as standby guardian of the  
20 person or property of a minor, whose authority becomes effective on the incapacity of the  
21 minor’s parent, **[or] ON THE REMOVAL FROM THE UNITED STATES AND CONSENT OF**  
22 **THE PARENT, OR** on the debilitation and consent of the parent.

23 13–902.

24 Except as otherwise provided in this subtitle, the provisions of this title concerning  
25 a guardian of the person or property of a minor shall apply to standby guardians.

26 13–903.

27 (a) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection, a  
28 petition for the judicial appointment of a standby guardian of the person or property of a  
29 minor under this section may be filed only by a parent of the minor, and if filed, shall be  
30 joined by each person having parental rights over the minor.

31 (2) If a person who has parental rights cannot be located after reasonable  
32 efforts have been made to locate the person, the parent may file a petition for the judicial  
33 appointment of a standby guardian.

1           (3) If the petitioner submits documentation, satisfactory to the court, of the  
2 reasonable efforts to locate the person who has parental rights, the court may issue a decree  
3 under this section.

4           (b) A petition for the judicial appointment of a standby guardian shall state:

5           (1) The duties of the standby guardian;

6           (2) Whether the authority of the standby guardian is to become effective on  
7 the petitioner's incapacity, **ON THE PETITIONER'S REMOVAL FROM THE UNITED**  
8 **STATES**, on the petitioner's death, or on whichever occurs first; and

9           (3) That there is a significant risk that the petitioner will become  
10 incapacitated, **BE REMOVED FROM THE UNITED STATES**, or die, as applicable, within 2  
11 years of the filing of the petition, and the basis for this statement.

12           (c) If the petitioner is medically unable to appear, the petitioner's appearance in  
13 court may not be required, except on a motion and for good cause shown.

14           (d) (1) If the court finds that there is a significant risk that the petitioner will  
15 become incapacitated, **BE REMOVED FROM THE UNITED STATES**, or die within 2 years  
16 of the filing of the petition and that the interests of the minor will be promoted by the  
17 appointment of a standby guardian of the person or property of the minor, the court shall  
18 issue a decree accordingly.

19           (2) A decree under this subsection shall:

20           (i) Specify whether the authority of the standby guardian is  
21 effective on the receipt of a determination of the petitioner's incapacity, **ON THE RECEIPT**  
22 **OF AN ORDER OF REMOVAL FROM THE UNITED STATES**, on the receipt of the certificate  
23 of the petitioner's death, or on whichever occurs first; and

24           (ii) Provide that the authority of the standby guardian may become  
25 effective earlier on written consent of the petitioner in accordance with subsection [(e)(3)]  
26 **(E)(4)** of this section.

27           (3) If at any time before the beginning of the authority of the standby  
28 guardian the court finds that the requirements of paragraph (1) of this subsection are no  
29 longer satisfied, the court may rescind the decree.

30           (e) (1) (i) If a decree under subsection (d) of this section provides that the  
31 authority of the standby guardian is effective on receipt of a determination of the  
32 petitioner's incapacity, the standby guardian's authority shall begin on the standby  
33 guardian's receipt of a copy of a determination of incapacity made under § 13-906 of this  
34 subtitle.

1 (ii) A standby guardian shall file a copy of the determination of  
2 incapacity with the court that issued the decree within 90 days of the date of receipt of the  
3 determination.

4 (iii) If a standby guardian fails to comply with subparagraph (ii) of  
5 this paragraph, the court may rescind the standby guardian's authority.

6 (2) (i) If a decree under subsection (d) of this section provides that the  
7 authority of the standby guardian is effective on receipt of a certificate of the petitioner's  
8 death, the standby guardian's authority shall begin on the standby guardian's receipt of a  
9 certificate of death.

10 (ii) The standby guardian shall file a copy of the certificate of death  
11 with the court that issued the decree within 90 days of the date of the petitioner's death.

12 (iii) If the standby guardian fails to comply with subparagraph (ii) of  
13 this paragraph, the court may rescind the standby guardian's authority.

14 **(3) (I) IF A DECREE UNDER SUBSECTION (D) OF THIS SECTION**  
15 **PROVIDES THAT THE AUTHORITY OF THE STANDBY GUARDIAN IS EFFECTIVE ON**  
16 **RECEIPT OF AN ORDER OF REMOVAL FROM THE UNITED STATES OF THE**  
17 **PETITIONER, THE STANDBY GUARDIAN'S AUTHORITY SHALL BEGIN ON THE STANDBY**  
18 **GUARDIAN'S RECEIPT OF A COPY OF AN ORDER OF REMOVAL.**

19 **(II) THE STANDBY GUARDIAN SHALL FILE A COPY OF THE**  
20 **ORDER OF REMOVAL WITH THE COURT THAT ISSUED THE DECREE WITHIN 90 DAYS**  
21 **OF THE DATE OF RECEIPT OF THE ORDER.**

22 **(III) IF THE STANDBY GUARDIAN FAILS TO COMPLY WITH**  
23 **SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE COURT MAY RESCIND THE STANDBY**  
24 **GUARDIAN'S AUTHORITY.**

25 **[(3)] (4)** (i) Notwithstanding paragraphs (1) [and], (2), **AND (3)** of this  
26 subsection, a standby guardian's authority shall begin on the standby guardian's receipt of  
27 the petitioner's written consent to the beginning of the standby guardian's authority signed  
28 by:

29 1. The petitioner in the presence of two witnesses at least 18  
30 years of age, neither of whom may be the standby guardian; and

31 2. The standby guardian.

32 (ii) 1. If the petitioner is physically unable to sign a written  
33 consent to the beginning of the standby guardian's authority, another person may sign the  
34 consent on the petitioner's behalf and at the petitioner's direction.

1                   2.     A consent under this subparagraph to the beginning of the  
2 standby guardian's authority shall be signed in the presence of the petitioner and two  
3 witnesses at least 18 years of age, neither of whom may be the standby guardian.

4                   3.     A standby guardian also shall sign a written consent to the  
5 beginning of the standby guardian's authority under this subparagraph.

6                   (iii)   The standby guardian shall file the written consent with the  
7 court that issued the decree within 90 days of the date of receipt of the written consent.

8                   (iv)   If the standby guardian fails to comply with subparagraph (iii) of  
9 this paragraph, the court may rescind the standby guardian's authority.

10           (f)     The petitioner may revoke a standby guardianship created under this section  
11 by:

12                   (1)     Executing a written revocation;

13                   (2)     Filing the revocation with the court that issued the decree; and

14                   (3)     Promptly notifying the standby guardian of the revocation.

15           (g)     A person who is judicially appointed as a standby guardian under this section  
16 may at any time before the beginning of the person's authority renounce the appointment  
17 by:

18                   (1)     Executing a written renunciation;

19                   (2)     Filing the renunciation with the court that issued the decree; and

20                   (3)     Promptly notifying in writing the petitioner of the revocation.

21 13-904.

22           (a)     (1)     A parent may designate a standby guardian by means of a written  
23 designation:

24                   (i)     Signed in the presence of two witnesses, at least 18 years old,  
25 neither of whom is the standby guardian; and

26                   (ii)    Signed by the standby guardian.

27                   (2)     (i)     If a parent is physically unable to sign a written designation,  
28 another person may sign the designation on the parent's behalf and at the parent's  
29 direction.

30                   (ii)    1.     A designation under this paragraph shall be signed in the



1 I understand that I retain full parental rights even after the beginning of the  
2 standby guardian's authority, and may revoke the standby guardianship at any time.

3 Parent's Signature: \_\_\_\_\_

4 Address: \_\_\_\_\_

5 Date: \_\_\_\_\_

6 I declare that the person whose name appears above signed this document in my  
7 presence, or was physically unable to sign and asked another to sign this document, who  
8 did so in my presence. I further declare that I am at least 18 years old and am not the  
9 person designated as standby guardian.

10 Witness's Signature: \_\_\_\_\_

11 Address: \_\_\_\_\_

12 Date: \_\_\_\_\_

13 Witness's Signature: \_\_\_\_\_

14 Address: \_\_\_\_\_

15 Date: \_\_\_\_\_

16 Standby Guardian's Signature: \_\_\_\_\_

17 Address: \_\_\_\_\_

18 Date: \_\_\_\_\_

19 (4) A consent by another person with parental rights to a designation of a  
20 standby guardian by a parent may, but need not be, in the following form:

21 Consent to Designation of Standby Guardian

22 I (name of person with parental rights) agree with the designation by (name of  
23 parent) of (name, home address, and telephone number of standby guardian) as standby  
24 guardian of the person and property of my child(ren) (name of child(ren)).

25 I agree also to the terms stated above and understand that I retain full parental  
26 rights even after the beginning of the standby guardian's authority, and may revoke my  
27 consent to the standby guardianship at any time.

28 Signature of Person with Parental Rights: \_\_\_\_\_

29 Address: \_\_\_\_\_

30 Date: \_\_\_\_\_

31 I declare that the person whose name appears above signed this document in my  
32 presence, or was physically unable to sign and asked another to sign this document, who  
33 did so in my presence. I further declare that I am at least 18 years old and am not the  
34 person designated as standby guardian.

35 Witness's Signature: \_\_\_\_\_

36 Address: \_\_\_\_\_

37 Date: \_\_\_\_\_

38 Witness's Signature: \_\_\_\_\_

39 Address: \_\_\_\_\_

40 Date: \_\_\_\_\_

41 Standby Guardian's Signature: \_\_\_\_\_

42 Address: \_\_\_\_\_

43 Date: \_\_\_\_\_

44 (c) The authority of the standby guardian under a designation shall begin on:

1 (1) The standby guardian's receipt of a copy of a determination of  
2 incapacity under § 13-906 of this subtitle; [or]

3 (2) The standby guardian's receipt of:

4 (i) A copy of a determination of debilitation under § 13-906 of this  
5 subtitle;

6 (ii) A copy of the parent's written consent to the beginning of the  
7 standby guardianship, signed by the parent in the presence of two witnesses at least 18  
8 years of age, neither of whom is the standby guardian, and signed by the standby guardian;  
9 and

10 (iii) A copy of the birth certificate for each child for whom the standby  
11 guardian is designated; **OR**

12 **(3) THE STANDBY GUARDIAN'S RECEIPT OF:**

13 **(I) A COPY OF AN ORDER OF REMOVAL FROM THE UNITED**  
14 **STATES;**

15 **(II) A COPY OF THE PARENT'S WRITTEN CONSENT TO THE**  
16 **BEGINNING OF THE STANDBY GUARDIANSHIP, SIGNED BY THE PARENT IN THE**  
17 **PRESENCE OF TWO WITNESSES AT LEAST 18 YEARS OF AGE, NEITHER OF WHOM IS**  
18 **THE STANDBY GUARDIAN, AND SIGNED BY THE STANDBY GUARDIAN; AND**

19 **(III) A COPY OF THE BIRTH CERTIFICATE FOR EACH CHILD FOR**  
20 **WHOM THE STANDBY GUARDIAN IS DESIGNATED.**

21 (d) (1) If a parent is physically unable to sign a written consent to the  
22 beginning of the standby guardianship, another person may sign the written consent to the  
23 beginning of the standby guardianship on the parent's behalf and at the parent's direction.

24 (2) A consent under this subsection to the beginning of the standby  
25 guardianship shall be signed in the presence of the parent and two witnesses at least 18  
26 years of age, neither of whom may be the standby guardian.

27 (3) The standby guardian also shall sign a consent to the beginning of the  
28 standby guardianship under this subsection.

29 (e) (1) A standby guardian shall file a petition for judicial appointment within  
30 180 days of the date of the beginning of the standby guardianship under this section.

31 (2) If the standby guardian fails to file the petition within the time specified  
32 in this subsection, the standby guardian's authority shall terminate 180 days from the date



1 of the beginning of the standby guardianship.

2 (3) The standby guardian's authority shall begin again on the filing of the  
3 petition.

4 (f) (1) A standby guardian shall file a petition for appointment as guardian  
5 after receipt of:

6 (i) A copy of a determination of incapacity made under § 13-906 of  
7 this subtitle; [or]

8 (ii) Copies of:

9 1. A determination of debilitation made under § 13-906 of  
10 this subtitle; and

11 2. The parent's written consent to the beginning of the  
12 standby guardianship under this section; **OR**

13 **(III) COPIES OF:**

14 **1. AN ORDER OF REMOVAL FROM THE UNITED STATES;**  
15 **AND**

16 **2. THE PARENT'S WRITTEN CONSENT TO THE**  
17 **BEGINNING OF THE STANDBY GUARDIANSHIP UNDER THIS SECTION.**

18 (2) Subject to the provisions of paragraphs (3) and (4) of this subsection,  
19 the petition shall be accompanied by:

20 (i) The written designation of the standby guardian signed, or  
21 consented to, by each person having parental rights over the child;

22 (ii) A copy of:

23 1. The determination of incapacity of the parent; [or]

24 2. The determination of debilitation and the parental  
25 consent to the beginning of the standby guardianship; **OR**

26 **3. THE ORDER OF REMOVAL FROM THE UNITED STATES**  
27 **AND THE PARENTAL CONSENT TO THE BEGINNING OF THE STANDBY GUARDIANSHIP;**  
28 **and**

29 (iii) If the petition is filed by a person designated as alternate standby  
30 guardian, a statement that the person designated as standby guardian is unwilling or

1 unable to act as standby guardian, and the basis for the statement.

2 (3) If a person who has parental rights cannot be located after reasonable  
3 efforts have been made to locate the person, the standby guardian may file a petition under  
4 this section without the consent of the person to the designation of the standby guardian.

5 (4) If the standby guardian submits documentation, satisfactory to the  
6 court, of the reasonable efforts to locate the person who has parental rights, the court may  
7 appoint a standby guardian under this section.

8 (g) The court shall appoint a person to be a standby guardian under this section  
9 if the court finds that:

10 (1) The person was duly designated as standby guardian;

11 (2) **(I)** A determination of incapacity, or a determination of debilitation  
12 and parental consent to the beginning of the standby guardianship, has been made under  
13 this section; **OR**

14 **(II) AN ORDER OF REMOVAL FROM THE UNITED STATES HAS**  
15 **BEEN ISSUED AND PARENTAL CONSENT TO THE BEGINNING OF THE STANDBY**  
16 **GUARDIANSHIP HAS BEEN GIVEN UNDER THIS SECTION;**

17 (3) The interests of the minor will be promoted by the appointment of a  
18 standby guardian of the person or property of the minor; and

19 (4) If the petition is by a person designated as alternate standby guardian,  
20 the person designated as standby guardian is unwilling or unable to act as standby  
21 guardian.

22 (h) A parent may revoke a standby guardianship created under this section:

23 (1) Before the filing of a petition, by notifying the standby guardian  
24 verbally or in writing or by any other act that is evidence of a specific intent to revoke the  
25 standby guardianship; and

26 (2) If a petition has been filed by:

27 (i) Executing a written revocation;

28 (ii) Filing the revocation with the court in which the petition was  
29 filed; and

30 (iii) Promptly notifying the standby guardian of the revocation.

31 (i) A person who is judicially appointed as a standby guardian under this section  
32 may at any time before the beginning of the person's authority renounce the appointment

1 by:

- 2 (1) Executing a written renunciation;
- 3 (2) Filing the renunciation with the court that issued the decree; and
- 4 (3) Promptly notifying in writing the parent of the revocation.

5 13-907.

6 (a) [The beginning of a standby guardian's authority in accordance with a  
7 determination of incapacity, determination of debilitation, or consent] **A STANDBY**  
8 **GUARDIAN'S AUTHORITY UNDER THIS SUBTITLE** may not, itself, divest a parent of any  
9 parental or guardianship rights.

10 (b) The authority of a standby guardian with respect to the minor is limited to the  
11 express authority granted to the standby guardian by a court under this subtitle.

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