

SENATE BILL 77

N2

9lr0386

(PRE-FILED)

By: **Senator Lam**

Requested: August 3, 2018

Introduced and read first time: January 9, 2019

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Estates and Trusts – Protection of Minors and Disabled Persons – Guardianship**

3 FOR the purpose of altering the jurisdiction of the orphans' courts and circuit courts over
4 certain guardians of the person and guardians of the property; altering the
5 circumstances under which a guardian of the property of a person with a physical or
6 mental disability, a guardian of the property of a person with certain other
7 conditions, and a guardian of the property of a minor shall be appointed; establishing
8 certain procedures for the appointment of certain guardians of the property;
9 requiring a certain petition alleging that a person has a mental disability or disease
10 to include certain certificates of competency from certain health care professionals;
11 establishing certain rights of an alleged disabled person; authorizing a certain closed
12 hearing under certain circumstances; authorizing the court to ensure that a certain
13 disabled person has access to funds under certain circumstances; establishing
14 certain procedures for the payment of attorney's fees under certain circumstances;
15 authorizing a certain guardian to file a certain fee petition and authorizing a court
16 to order certain attorney's fees to be paid under certain circumstances; authorizing
17 the court to require the deposit of certain money into the court registry or an
18 appointed guardian's escrow account under certain circumstances; granting a person
19 filing a certain petition, participating in the making of a certain report, or
20 participating in a certain investigation or proceeding certain immunity from certain
21 civil liability or criminal penalty; establishing certain rights that a court may grant
22 to the guardian of the person of a minor; repealing a certain exception that allowed
23 certain medical care to be rendered in a certain State mental hospital; defining the
24 terms "beneficiary" and "benefit" for the purpose of making certain provisions of law
25 concerning the guardianship of certain minors and disabled persons who are
26 Veterans Administration beneficiaries applicable only to monetary benefits paid by
27 the Veterans Administration and recipients of those monetary benefits; authorizing
28 a court to order the examination of an alleged disabled person who receives medical
29 treatment at a Veterans Administration facility under certain circumstances;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 making a certain conforming change; making stylistic changes; and generally
2 relating to guardianship of minors and disabled persons.

3 BY renumbering

4 Article – Estates and Trusts

5 Section 13–801

6 to be Section 13–801.1

7 Annotated Code of Maryland

8 (2017 Replacement Volume and 2018 Supplement)

9 BY repealing and reenacting, without amendments,

10 Article – Estates and Trusts

11 Section 13–101(a)

12 Annotated Code of Maryland

13 (2017 Replacement Volume and 2018 Supplement)

14 BY repealing and reenacting, with amendments,

15 Article – Estates and Trusts

16 Section 13–101(f), 13–105, 13–201, 13–203, 13–210, 13–211, 13–212, 13–218,
17 13–704, 13–705(a), 13–709(a), and 13–802

18 Annotated Code of Maryland

19 (2017 Replacement Volume and 2018 Supplement)

20 BY adding to

21 Article – Estates and Trusts

22 Section 13–201.1, 13–201.2, 13–201.3, 13–223, 13–708.1, and 13–801

23 Annotated Code of Maryland

24 (2017 Replacement Volume and 2018 Supplement)

25 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
26 That Section(s) 13–801 of Article – Estates and Trusts of the Annotated Code of Maryland
27 be renumbered to be Section(s) 13–801.1.

28 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read
29 as follows:

30 **Article – Estates and Trusts**

31 13–101.

32 (a) In this title the following words have the meanings indicated.

33 (f) “Disabled person” means, unless the context requires otherwise, a person
34 other than a minor who:

35 (1) (i) Has been judged by a court to be unable to manage the person’s
36 property for reasons listed in [§ 13–201(c)(1)] § 13–201(B)(1) OR § 13–201.1(B)(1) of this

1 title; and

2 (ii) As a result of this inability requires a guardian of the person's
3 property; or

4 (2) (i) Has been judged by a court to be unable to provide for the
5 person's daily needs sufficiently to protect the person's health or safety for reasons listed
6 in § 13-705(b) of this title; and

7 (ii) As a result of this inability requires a guardian of the person.

8 13-105.

9 (a) (1) The orphans' courts and the circuit courts have concurrent jurisdiction
10 over guardians of the [person] **PROPERTY** of a minor [and over protective proceedings for
11 minors].

12 (2) [Upon] **ON** petition of an interested person, a matter initiated in the
13 orphans' court may be transferred to the circuit court.

14 **(3) AN ORPHANS' COURT THAT EXERCISES JURISDICTION OR IS**
15 **REQUESTED TO EXERCISE JURISDICTION OVER A MATTER UNDER THIS SUBSECTION**
16 **MAY:**

17 **(I) TRANSFER THE MATTER TO THE CIRCUIT COURT ON A**
18 **FINDING THAT THE BEST INTERESTS OF THE MINOR REQUIRE USE OF THE**
19 **EQUITABLE POWERS OF THE CIRCUIT COURT; AND**

20 **(II) WAIVE THE COSTS, IF ANY, OF A TRANSFER UNDER THIS**
21 **PARAGRAPH.**

22 (b) Subject to Title 13.5 of this article, the circuit courts have exclusive
23 jurisdiction over protective proceedings for disabled persons.

24 (c) [(1) An orphans' court may exercise jurisdiction over guardianship of the
25 person of a minor if the presiding judge of the orphans' court is a member of the bar,
26 regardless of whether the minor who is the subject of the petition for guardianship of the
27 person has property, may inherit property, or is destitute.] **THE CIRCUIT COURTS HAVE**
28 **EXCLUSIVE JURISDICTION OVER PROTECTIVE PROCEEDINGS FOR GUARDIANSHIP**
29 **OF THE PERSON OF A MINOR.**

30 [(2) An orphans' court that exercises jurisdiction or is requested to exercise
31 jurisdiction under this subsection may:

32 (i) Transfer the matter to the circuit court on a finding that the best

1 interests of the child require utilization of the equitable powers of the circuit court; and

2 (ii) Waive the costs, if any, of a transfer under this paragraph.]

3 13–201.

4 (a) [Upon] **ON** petition, and after [any] notice [or] **AND A** hearing **AS** prescribed
5 by law or the Maryland Rules, the court may appoint a guardian of the property of [a minor
6 or] a disabled person.

7 (b) [A guardian shall be appointed if the court determines that:

8 (1) A minor owns or is entitled to property that requires management or
9 protection; or

10 (2) Funds are needed for his support, care, welfare, and education and
11 protection is necessary or desirable to obtain or provide funds.

12 (c)] A guardian **OF THE PROPERTY** shall be appointed if the court determines **BY**
13 **A PREPONDERANCE OF THE EVIDENCE** that:

14 (1) The person is unable to manage [his] **EFFECTIVELY THE PERSON’S**
15 property and affairs [effectively] because of physical or mental [disability, disease, habitual
16 drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, detention by
17 a foreign power, or disappearance; and] **DISABILITY OR DISEASE;**

18 (2) The person has or may be entitled to property or benefits which require
19 proper management; **AND**

20 (3) **NO LESS RESTRICTIVE FORM OF INTERVENTION THAT IS IN THE**
21 **DISABLED PERSON’S BEST INTEREST IS AVAILABLE.**

22 (C) (1) **A PETITION FOR GUARDIANSHIP OF A DISABLED PERSON**
23 **ALLEGING THAT THE PERSON HAS A MENTAL DISABILITY OR DISEASE SHALL**
24 **INCLUDE SIGNED AND VERIFIED CERTIFICATES OF COMPETENCY FROM THE**
25 **FOLLOWING HEALTH CARE PROFESSIONALS:**

26 (I) **TWO LICENSED PHYSICIANS WHO HAVE EXAMINED THE**
27 **ALLEGED DISABLED PERSON; OR**

28 (II) 1. **ONE LICENSED PHYSICIAN WHO HAS EXAMINED THE**
29 **ALLEGED DISABLED PERSON; AND**

30 2. **A. ONE LICENSED PSYCHOLOGIST WHO HAS**
31 **EVALUATED THE ALLEGED DISABLED PERSON; OR**

1 **B. ONE LICENSED CERTIFIED SOCIAL**
2 **WORKER-CLINICAL WHO HAS EVALUATED THE ALLEGED DISABLED PERSON.**

3 **(2) AN EXAMINATION OR EVALUATION BY AT LEAST ONE OF THE**
4 **HEALTH CARE PROFESSIONALS UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL**
5 **BE CONDUCTED WITHIN 21 DAYS BEFORE FILING A PETITION FOR GUARDIANSHIP OF**
6 **A DISABLED PERSON.**

7 **(D) (1) THE ALLEGED DISABLED PERSON IS ENTITLED TO:**

8 **(I) BE PRESENT AT THE HEARING UNLESS THE PERSON HAS**
9 **KNOWINGLY AND VOLUNTARILY WAIVED THE RIGHT TO BE PRESENT OR CANNOT BE**
10 **PRESENT BECAUSE OF PHYSICAL OR MENTAL INCAPACITY; AND**

11 **(II) PRESENT EVIDENCE AND CROSS-EXAMINE WITNESSES.**

12 **(2) WAIVER OR INCAPACITY UNDER PARAGRAPH (1)(I) OF THIS**
13 **SUBSECTION MAY NOT BE PRESUMED FROM THE FAILURE OF THE PERSON TO**
14 **APPEAR BUT SHALL BE DETERMINED ON THE BASIS OF FACTUAL INFORMATION**
15 **SUPPLIED TO THE COURT BY COUNSEL OR A REPRESENTATIVE APPOINTED BY THE**
16 **COURT.**

17 **(E) (1) DETERMINATIONS UNDER SUBSECTION (B) OF THIS SECTION MAY**
18 **BE MADE AT A CLOSED HEARING ON THE REQUEST OF THE ALLEGED DISABLED**
19 **PERSON OR THE PERSON'S COUNSEL.**

20 **(2) A HEARING HELD IN ACCORDANCE WITH THIS SECTION SHALL BE**
21 **CONFIDENTIAL AND SEALED UNLESS OTHERWISE ORDERED BY A COURT OF**
22 **COMPETENT JURISDICTION FOR GOOD CAUSE SHOWN.**

23 **13-201.1.**

24 **(A) ON THE FILING OF A PETITION, AND AFTER ANY NOTICE AND HEARING**
25 **AS PRESCRIBED BY LAW OR THE MARYLAND RULES, THE COURT MAY APPOINT A**
26 **GUARDIAN OF THE PROPERTY OF AN ADULT NOT UNDER A DISABILITY.**

27 **(B) A GUARDIAN OF THE PROPERTY SHALL BE APPOINTED IF THE COURT**
28 **DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT:**

29 **(1) IF IT APPEARS FROM SPECIFIC FACTS SHOWN BY AFFIDAVIT OR**
30 **EXHIBIT IN COMPLIANCE WITH THE MARYLAND RULES, THE PERSON IS UNABLE TO**
31 **MANAGE EFFECTIVELY THE PERSON'S PROPERTY AND AFFAIRS BECAUSE OF**

1 HABITUAL DRUNKENNESS, ADDICTION TO DRUGS, IMPRISONMENT, COMPULSORY
2 HOSPITALIZATION, DETENTION BY A FOREIGN POWER, OR DISAPPEARANCE;

3 (2) THE PERSON HAS OR MAY BE ENTITLED TO PROPERTY OR
4 BENEFITS THAT REQUIRE PROPER MANAGEMENT; AND

5 (3) NO LESS RESTRICTIVE FORM OF INTERVENTION THAT IS IN THE
6 PERSON'S BEST INTEREST IS AVAILABLE.

7 **13-201.2.**

8 (A) ON THE FILING OF A PETITION, AND AFTER ANY NOTICE AND HEARING
9 AS PRESCRIBED BY LAW OR THE MARYLAND RULES, THE COURT MAY APPOINT A
10 GUARDIAN OF THE PROPERTY OF A MINOR.

11 (B) A GUARDIAN OF THE PROPERTY SHALL BE APPOINTED IF THE COURT
12 DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT:

13 (1) A MINOR OWNS OR IS ENTITLED TO PROPERTY THAT REQUIRES
14 MANAGEMENT OR PROTECTION; OR

15 (2) FUNDS ARE NEEDED FOR THE MINOR'S SUPPORT, CARE,
16 WELFARE, AND EDUCATION, AND PROTECTION IS NECESSARY OR DESIRABLE TO
17 OBTAIN OR PROVIDE FUNDS.

18 **13-201.3.**

19 (A) THE COURT MAY ENSURE THAT A DISABLED PERSON HAS ACCESS TO
20 FUNDS CONSIDERED APPROPRIATE BY THE GUARDIAN OR ORDERED BY THE COURT.

21 (B) (1) ON THE FILING OF A PETITION FOR ATTORNEY'S FEES MADE IN
22 REASONABLE DETAIL BY THE PETITIONER OR CROSS-PETITIONER, AN INTERESTED
23 PERSON, OR AN ATTORNEY EMPLOYED BY AN INTERESTED PERSON, THE COURT MAY
24 ORDER REASONABLE AND NECESSARY ATTORNEY'S FEES, AS DETERMINED BY THE
25 COURT SUBJECT TO THE MARYLAND RULES, INCURRED IN BRINGING A PETITION
26 FOR APPOINTMENT OF A GUARDIAN OF THE PROPERTY OF AN ALLEGED DISABLED
27 PERSON TO BE PAID FROM THE ESTATE OF THE ALLEGED DISABLED PERSON, BY THE
28 ALLEGED DISABLED PERSON, OR BY A FIDUCIARY FOR THE ALLEGED DISABLED
29 PERSON.

30 (2) BEFORE ORDERING THE PAYMENT OF ATTORNEY'S FEES UNDER
31 PARAGRAPH (1) OF THIS SUBSECTION, THE COURT SHALL CONSIDER:

1 **(I) THE FINANCIAL RESOURCES AND NEEDS OF THE ALLEGED**
2 **DISABLED PERSON; AND**

3 **(II) WHETHER THERE WAS SUBSTANTIAL JUSTIFICATION FOR**
4 **THE FILING OF THE PETITION FOR GUARDIANSHIP.**

5 **(3) ON A FINDING BY THE COURT OF AN ABSENCE OF SUBSTANTIAL**
6 **JUSTIFICATION FOR BRINGING THE PETITION FOR GUARDIANSHIP, THE COURT**
7 **SHALL DENY A PETITION FOR ATTORNEY'S FEES FILED UNDER PARAGRAPH (1) OF**
8 **THIS SUBSECTION.**

9 **(4) A COURT MAY NOT AWARD ATTORNEY'S FEES UNDER PARAGRAPH**
10 **(1) OF THIS SUBSECTION IF THE PETITION FOR GUARDIANSHIP IS BROUGHT BY:**

11 **(I) A GOVERNMENT AGENCY PAYING BENEFITS TO THE**
12 **ALLEGED DISABLED PERSON;**

13 **(II) A LOCAL DEPARTMENT OF SOCIAL SERVICES; OR**

14 **(III) AN AGENCY ELIGIBLE TO SERVE AS THE GUARDIAN OF THE**
15 **DISABLED PERSON UNDER § 13-707 OF THIS SUBTITLE.**

16 **(C) IF THE APPOINTED GUARDIAN OF THE PROPERTY IS AN ATTORNEY, THE**
17 **COURT MAY REQUIRE THE DEPOSIT OF AN APPROPRIATE SUM INTO THE COURT**
18 **REGISTRY OR THE APPOINTED GUARDIAN'S ESCROW ACCOUNT WITHIN 30 DAYS**
19 **AFTER THE ORDER OF APPOINTMENT HAS BEEN ENTERED, SUBJECT TO FURTHER**
20 **ORDER OF THE COURT.**

21 13-203.

22 **(a) (1) While a petition for appointment of a guardian or other protective order**
23 **is pending, the court may preserve and apply the property of the alleged disabled person or**
24 **minor as may be required.**

25 **(2) The court [need not] IS NOT REQUIRED TO give notice OF ITS**
26 **ACTIONS UNDER THIS SUBSECTION to other persons, INCLUDING THE ALLEGED**
27 **DISABLED PERSON.**

28 **(b) (1) The court may not exercise the power conferred by subsection (a) of this**
29 **section unless it appears from specific facts shown by affidavit that immediate, substantial,**
30 **and irreparable injury will result to the applicant or to the minor or disabled person before**
31 **an adversary hearing can be held.**

32 **(2) The court may communicate informally with the minor or disabled**

1 person [prior to] **BEFORE** taking action.

2 **(3)** Any order shall be served immediately on the minor or disabled person.

3 (c) (1) Except for the limitations contained in § 13–106 of this title, after
4 appointment of the guardian, the court has all the powers over the property of the minor or
5 disabled person that the person could exercise if not disabled or a minor.

6 (2) The powers that a circuit court has under paragraph (1) of this
7 subsection include the power to [authorize]:

8 **(I) AUTHORIZE** or direct the guardian to:

9 [(i)] **1.** Make gifts from the principal and income of the estate; and

10 [(ii)] **2.** Disclaim on behalf of the minor or disabled person, in
11 whole or in part, the right of succession or transfer to that person of any property or interest
12 in any property; **AND**

13 **(II) IF THE APPOINTED GUARDIAN OF THE PROPERTY IS AN**
14 **ATTORNEY, REQUIRE THE DEPOSIT OF AN APPROPRIATE SUM INTO THE COURT**
15 **REGISTRY OR THE APPOINTED GUARDIAN’S ESCROW ACCOUNT WITHIN 30 DAYS**
16 **AFTER THE ORDER OF APPOINTMENT HAS BEEN ENTERED, SUBJECT TO FURTHER**
17 **ORDER OF THE COURT.**

18 (3) The powers that a circuit court has under paragraph (2) of this
19 subsection are in addition to and may not limit the power:

20 (i) Conferred [upon] **ON** the guardian to make distributions under
21 § 13–214 of this subtitle; and

22 (ii) Conferred [upon] **ON** the guardian or the circuit court, without
23 appointing a guardian, to disclaim or authorize or direct a disclaimer on behalf of a minor
24 or disabled person under § 9–201(c) of this article.

25 (d) A guardian or any other interested person may invoke the jurisdiction of the
26 court at any time to resolve questions concerning the estate or its administration.

27 13–210.

28 (a) An interested person may file a petition for an order:

29 (1) Requiring bond, security, additional bond, or security in an estate
30 where bond can be required;

31 (2) Requiring an accounting of the administration of the estate;

1 (3) Directing distribution;

2 (4) Removing the guardian and appointing a successor guardian; or

3 (5) Granting other appropriate relief.

4 (b) A guardian may petition the appointing court for permission to act in any
5 matter relating to the administration of the estate.

6 (c) [Upon] **ON** hearing after notice and [upon] **ON** good cause shown, the court
7 may issue an appropriate order.

8 **(D) IF THE APPOINTED GUARDIAN OF THE PERSON IS AN ATTORNEY, AND ON**
9 **PETITION BY THE APPOINTED GUARDIAN OF THE PROPERTY, THE COURT MAY**
10 **REQUIRE THE DEPOSIT OF AN APPROPRIATE SUM INTO THE COURT REGISTRY OR**
11 **THE APPOINTED GUARDIAN'S ESCROW ACCOUNT WITHIN 30 DAYS AFTER THE ORDER**
12 **OF APPOINTMENT HAS BEEN ENTERED, SUBJECT TO FURTHER ORDER OF THE**
13 **COURT.**

14 13-211.

15 (a) **(1)** There shall be no jury trial in protective proceedings.

16 **(2)** Procedures for notice to interested persons, the forms of petitions, and
17 the conduct of and requirements at hearings are as provided in the Maryland Rules.

18 (b) Unless the alleged disabled person has **CHOSEN** counsel [of his own choice],
19 the court [shall]:

20 **(1) SHALL** appoint an attorney to represent [him] **THE PERSON** in the
21 proceeding; **AND**

22 **(2) MAY REQUIRE THE DEPOSIT OF AN APPROPRIATE SUM INTO THE**
23 **COURT REGISTRY OR THE APPOINTED ATTORNEY'S ESCROW ACCOUNT WITHIN 30**
24 **DAYS AFTER THE ORDER OF APPOINTMENT HAS BEEN ENTERED, SUBJECT TO**
25 **FURTHER ORDER OF THE COURT.**

26 13-212.

27 [In the administration of the estate and the exercise of his powers, a] **A** guardian
28 shall exercise the care and skill of [a man] **A PERSON** of ordinary prudence dealing with
29 [his] **THE PERSON'S** own property **IN THE ADMINISTRATION OF THE ESTATE AND THE**
30 **EXERCISE OF THE GUARDIAN'S POWERS.**

1 13-218.

2 (a) (1) Except in unusual circumstances and as provided in subsection (b) of
3 this section, the guardian is entitled to the same compensation and reimbursement for
4 actual and necessary expenses as the trustee of a trust.

5 (2) No petition or hearing is required to entitle the guardian to
6 compensation and expenses.

7 (3) [Upon] ON the petition of any interested person and [upon] ON a
8 finding by the court that unusual circumstances exist, the court may increase or decrease
9 compensation.

10 (b) If the guardian is appointed as the guardian of a disabled person who is a
11 recipient of long-term care services and supports under the Maryland Medical Assistance
12 Program and whose income is subject to § 15-122.3 of the Health – General Article, the
13 guardian is not entitled to receive more than \$50 per month in compensation unless the
14 court makes a finding that unusual circumstances exist.

15 (c) (1) IF THE APPOINTED GUARDIAN IS AN ATTORNEY, THE ATTORNEY
16 MAY FILE A FEE PETITION TO BE COMPENSATED AT THE ATTORNEY'S CUSTOMARY
17 HOURLY RATE IF THE GUARDIAN:

18 (i) IS PROVIDING LEGAL SERVICES; AND

19 (ii) WOULD OTHERWISE NEED TO HIRE AN ATTORNEY TO
20 PROVIDE THE LEGAL SERVICES.

21 (2) ON THE FILING OF A PETITION FOR ATTORNEY'S FEES MADE IN
22 REASONABLE DETAIL BY THE GUARDIAN, THE COURT MAY ORDER REASONABLE AND
23 NECESSARY ATTORNEY'S FEES, AS DETERMINED BY THE COURT SUBJECT TO THE
24 MARYLAND RULES, TO BE PAID FROM THE ESTATE OF THE DISABLED PERSON.

25 (3) BEFORE ORDERING THE PAYMENT OF ATTORNEY'S FEES UNDER
26 PARAGRAPH (2) OF THIS SUBSECTION, THE COURT SHALL CONSIDER THE FINANCIAL
27 RESOURCES AND NEEDS OF THE DISABLED PERSON.

28 13-223.

29 A PERSON FILING A PETITION, PARTICIPATING IN THE MAKING OF A
30 GOOD-FAITH REPORT, OR PARTICIPATING IN AN INVESTIGATION OR JUDICIAL
31 PROCEEDING RESULTING FROM AN INVESTIGATION UNDER § 13-201, § 13-203, OR
32 § 13-220 OF THIS SUBTITLE, SHALL HAVE THE IMMUNITY FROM CIVIL LIABILITY OR
33 CRIMINAL PENALTY DESCRIBED UNDER § 5-618(A) OF THE COURTS ARTICLE.

1 13-704.

2 (a) The court may:

3 (1) Superintend and direct the care of a disabled person;

4 (2) Appoint a guardian of the person; and

5 (3) Pass orders and decrees respecting the person as seems proper,
6 including an order directing the disabled person to be sent to a hospital.

7 (b) Procedures in these cases shall be as prescribed by the Maryland Rules and
8 in accordance with the provisions of this subtitle and Title 13.5 of this article.

9 (c) (1) On the filing of a petition for attorney's fees made in reasonable detail
10 by **THE PETITIONER OR CROSS-PETITIONER**, an interested person, or an attorney
11 employed by [the] AN interested person, the court may order reasonable and necessary
12 attorney's fees, **AS DETERMINED BY THE COURT SUBJECT TO THE MARYLAND RULES**,
13 incurred in bringing a petition for appointment of a guardian of the person of [a] AN
14 **ALLEGED** disabled person to be paid from the estate of the **ALLEGED** disabled person, **BY**
15 **THE ALLEGED DISABLED PERSON, OR BY A FIDUCIARY FOR THE ALLEGED DISABLED**
16 **PERSON**.

17 (2) Before ordering the payment of attorney's fees under paragraph (1) of
18 this subsection, the court shall consider:

19 (i) The financial resources and needs of the **ALLEGED** disabled
20 person; and

21 (ii) Whether there was substantial justification for the filing of the
22 petition for guardianship.

23 (3) On a finding by the court of an absence of substantial justification for
24 bringing the petition for guardianship, the court shall deny a petition for attorney's fees
25 filed under paragraph (1) of this subsection.

26 (4) The court may not award attorney's fees under paragraph (1) of this
27 subsection if the petition for guardianship is brought by:

28 (i) A government agency paying benefits to the **ALLEGED** disabled
29 person;

30 (ii) A local department of social services; or

31 (iii) An agency eligible to serve as the guardian of the disabled person
32 under § 13-707 of this subtitle.

1 13-705.

2 (a) On petition and after any notice [or] AND hearing prescribed by law or the
3 Maryland Rules, a court may appoint a guardian of the person of a disabled person.

4 **13-708.1.**

5 **THE COURT MAY GRANT THE GUARDIAN OF THE PERSON OF A MINOR THE**
6 **RIGHT TO:**

7 (1) **TAKE CUSTODY OF AND DESIGNATE THE PRIMARY RESIDENCE OF**
8 **THE MINOR;**

9 (2) **CONSENT TO MEDICAL, DENTAL, AND SURGICAL TREATMENT**
10 **INVOLVING INVASIVE PROCEDURES, AND TO CONSENT TO PSYCHIATRIC AND**
11 **PSYCHOLOGICAL TREATMENT;**

12 (3) **RECEIVE AND GIVE RECEIPT FOR PERIODIC PAYMENTS FOR THE**
13 **SUPPORT OF THE MINOR AND TO HOLD OR DISBURSE THESE FUNDS FOR THE**
14 **BENEFIT OF THE MINOR;**

15 (4) **REPRESENT THE MINOR IN LEGAL ACTION AND MAKE OTHER**
16 **DECISIONS OF SUBSTANTIAL LEGAL SIGNIFICANCE CONCERNING THE MINOR;**

17 (5) **MAKE DECISIONS CONCERNING THE MINOR'S EDUCATION; AND**

18 (6) **EXERCISE ANY OTHER POWER CONSIDERED APPROPRIATE BY**
19 **THE COURT.**

20 13-709.

21 (a) (1) [When] **A LAW ENFORCEMENT OFFICER SHALL TRANSPORT AN**
22 **ADULT TO AN APPROPRIATE MEDICAL FACILITY WHICH SHALL IMMEDIATELY**
23 **NOTIFY THE NEXT OF KIN AND THE DIRECTOR IF,** from personal observation of [a law
24 enforcement] **THE officer, it appears probable that [an]:**

25 (I) **THE adult will suffer immediate and serious physical injury or**
26 **death if not immediately placed in a health care facility[, that the];**

27 (II) **THE adult is incapable of giving consent[.]; and [that it]**

28 (III) **IT is not possible to follow the procedures of this section[, the**
29 **officer shall transport the person to an appropriate medical facility which shall immediately**

1 notify the next of kin and the director].

2 **(2)** [This medical] **MEDICAL** care **PROVIDED UNDER PARAGRAPH (1)**
3 **OF THIS SUBSECTION** may not be rendered in a State mental hospital [other than, in an
4 appropriate case, the Walter P. Carter Community Mental Health and Retardation Center
5 and the Highland Health Facility] unless authorized by the courts in a civil commitment
6 proceeding.

7 **(3) (I)** The director **OF A MEDICAL FACILITY TO WHICH A PERSON**
8 **HAS BEEN TRANSPORTED UNDER PARAGRAPH (1) OF THIS SUBSECTION** shall file a
9 petition pursuant to subsection (b) of this section within 24 hours after the transfer of the
10 person has taken place.

11 **(II)** The court shall hold a hearing on the petition and render its
12 decision within 48 hours after [the] A transfer [has occurred] **MADE UNDER THIS**
13 **SUBSECTION.**

14 **13-801.**

15 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
16 **INDICATED.**

17 **(B) “BENEFICIARY” MEANS A PERSON RECEIVING A MONETARY BENEFIT.**

18 **(C) (1) “BENEFIT” MEANS A MONETARY PAYMENT.**

19 **(2) “BENEFIT” DOES NOT INCLUDE A PENSION PLAN OR HEALTH**
20 **CARE.**

21 **13-802.**

22 **(A)** If a petition is filed for the appointment of a guardian for a minor who is a
23 Veterans Administration beneficiary, a certificate of the Administrator or [his] **THE**
24 **ADMINISTRATOR’S** authorized representative, setting forth the age of the minor as shown
25 by the records of the Veterans Administration and the fact that appointment of a guardian
26 is a condition precedent to the payment of any money due the minor from the Veterans
27 Administration shall be prima facie evidence of the necessity for the appointment.

28 **(B) THE COURT MAY, IN ACCORDANCE WITH THE MARYLAND RULES,**
29 **ORDER THE EXAMINATION OF AN ALLEGED DISABLED PERSON WHO RECEIVES**
30 **MEDICAL TREATMENT AT A VETERANS ADMINISTRATION FACILITY IF:**

31 **(1) THE PETITION FOR THE APPOINTMENT OF A GUARDIAN FOR THE**
32 **PERSON DOES NOT INCLUDE TWO CERTIFICATES OF COMPETENCY IN ACCORDANCE**

1 WITH § 13-201 OF THIS TITLE; AND

2 (2) THE REASON FOR THE FAILURE TO INCLUDE THE CERTIFICATES
3 IS THAT THE FACILITY IS PROHIBITED FROM DISCLOSING RECORDS UNDER 5 U.S.C.
4 § 552A.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2019.