

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 508

(Senator West)

Judicial Proceedings

Judiciary

Estates and Trusts - Guardianship of Minors - Appointment by Court

This bill, under the Estates and Trusts Article, alters the circumstances under which a court may appoint a guardian of the person for an unmarried minor by requiring the court to find, by a preponderance of the evidence, that the appointment is in the best interests of the minor, that no testamentary appointment has been made, and that (1) no parent is willing or able to serve as the guardian of the person of the minor; (2) each parent consents to the appointment of the guardian of the person; or (3) no parent objects to the appointment of the guardian of the person. The bill clarifies that the appointment of a guardian of the person of a minor may not be construed to require the termination of any parental rights with respect to the minor under Title 5 of the Family Law Article.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances.

Local Effect: The bill is not anticipated to materially affect local government finances.

Small Business Effect: None.

Analysis

Current Law:

Estates and Trusts Article – Guardianship

The Estates and Trusts Article establishes circumstances under which an individual may be appointed as a guardian of the person and/or as a guardian of the property of a minor. The orphans' courts and the circuit courts have specified concurrent jurisdiction over

guardians of the person of a minor and proceedings to appoint a guardian of the person of a minor.

Unless prohibited by agreement or court order, the surviving parent of a minor may appoint by will one or more guardians and successor guardians of the person of an unmarried minor. The guardian does not need to be approved or qualify in court.

A guardian of the person of an unmarried minor may be appointed by a court, after notice and hearing, if any person interested in the welfare of the minor petitions the court and neither parent is serving as guardian of the person and no testamentary appointment has been made. Unless a person is not qualified or the appointment is not in the best interests of the minor, the court shall appoint a person designated by the minor if the minor is at least age 14. The court is not required to appoint a guardian of the person of a minor if there is no good reason (such as a dispute) for court appointment.

A guardian of the person of a minor cannot be required to post a bond or file any accounts and is not entitled to any compensation for serving as guardian of the person (unless provided for in the will appointing the guardian).

Family Law Article – Guardianship

Under provisions of Title 5 of the Family Law Article that address guardianship proceedings involving an individual who is committed to a local department of social services as a child in need of assistance and guardianship by a child placement agency of a child other than a child in need of assistance, an order for guardianship of an individual results in specified termination of a parent's duties, obligations, and rights toward the individual.

Additional Comments: The Judiciary notes that some courts have interpreted current law to mean that a court cannot appoint a guardian of the person of a minor if the minor's parent is still alive, even if the parent consents to the appointment.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 808 (Delegate Crutchfield) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Register of Wills; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2022
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