

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 759 (Senators Kelly and Beidle)
Judicial Proceedings

Estates and Trusts - Guardianship of the Person of a Disabled Person - Expedited Proceedings

This bill requires the court to hear and rule on a petition for guardianship of the person of a disabled person within 10 calendar days if the purpose of the petition is to obtain consent to discharge or transfer an alleged disabled person from a hospital. The bill also establishes that (1) a hearing on a petition for guardianship of the person of a disabled person must be held virtually unless the party seeking appointment of a guardian or the alleged disabled person requests that the hearing be held in person and (2) specified statutory rights of an alleged disabled person are satisfied if the person is given the opportunity to be present, present evidence, and cross-examine witnesses virtually.

Fiscal Summary

State Effect: General fund expenditures may increase significantly, beginning in FY 2025, as discussed below. The extent of any increase in expenditures cannot be reliably estimated but may be as much as \$500,000 or more. General/special fund revenues may also increase, beginning in FY 2025, as discussed below.

Local Effect: Local government expenditures may increase, beginning in FY 2025, as discussed below. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Current Law:

Guardianship of the Person of a Disabled Person

Section 13-705 of the Estates and Trusts Article establishes the process for the appointment of a guardian of the person of a disabled person. On petition and after any notice or hearing

prescribed by law or the Maryland Rules, a circuit court may appoint a guardian of the person of a disabled person. A guardian of the person must be appointed if the court determines from clear and convincing evidence that (1) a person lacks sufficient understanding or capacity to make or communicate responsible personal decisions (including provisions for health care, food, clothing, or shelter) because of any mental disability, disease, habitual drunkenness, or addiction to drugs and (2) no less restrictive form of intervention is available that is consistent with the person's welfare and safety.

Procedures and venue in a guardianship of the person proceeding are subject to the Maryland Rules. If the alleged disabled person does not have an attorney, the court must appoint an attorney, and the State must pay a reasonable attorney's fee for a court-appointed attorney if the alleged disabled person is indigent.

The court must set the case for a jury trial unless waived beforehand by the alleged disabled person or their attorney. Pursuant to the Maryland Rules, if there is a jury trial, and the alleged disabled person cannot attend a trial at the courthouse because of his or her disability, the court may hold the trial at a place where the alleged disabled person has reasonable access.

The person alleged to be disabled is entitled to:

- be present at the hearing unless the person has knowingly and voluntarily waived the right to be present or cannot be present because of physical or mental incapacity; and
- present evidence and cross-examine witnesses.

Pursuant to the Maryland Rules, generally, a court in a guardianship proceeding may apply any of the rules governing a civil action brought in circuit court, including those relating to pleadings and motions, discovery, and trial.

Expedited Hearing/Ruling in Connection with Medical Treatment

The statute requires the court to hear and rule on a petition seeking appointment of a guardian of the person of a disabled person in connection with medical treatment on an expedited basis. The Maryland Rules specify that a request for an expedited hearing in connection with medical treatment must be verified and filed with the petition for guardianship of the person of an alleged disabled person. Pursuant to the Maryland Rules, in determining whether to expedite the hearing in connection with medical treatment, the court must consider:

- the degree to which the alleged disabled person’s current circumstances are not meeting his or her medical needs in the most appropriate manner;
- the degree to which alternative arrangements are or can be made available;
- the urgency, necessity, and gravity of the proposed medical treatment and any medical risks to the alleged disabled person if the proceedings are not expedited;
- the ability of the alleged disabled person or other legally authorized individual to provide necessary consents for services; and
- any other factor that the court considers relevant.

If the court makes a determination to expedite a hearing, the hearing must be scheduled as soon as practicable, taking into account:

- the ability of the petitioner to properly serve or notify interested persons on an expedited basis;
- the ability of the attorney for the alleged disabled person, government agencies, and court-appointed investigators to perform necessary investigations on an expedited basis; and
- any other circumstances that the court considers relevant.

Maryland Rules – Remote Electronic Participation

New Title 21 of the Maryland Rules, which took effect July 1, 2023, amended and expanded previous rules. Under the new rules, particular categories of civil, criminal, and delinquency proceedings are deemed eligible for remote participation. Civil proceedings eligible for remote participation are (1) nonjury uncontested or contested evidentiary or nonevidentiary proceedings; (2) scheduling, status, and pretrial conferences; and (3) virtual jury trials. (A committee note in the Maryland Rules indicates that virtual jury trials should be considered only in the most dire and emergent circumstances.)

In the circuit court, the county administrative judge may issue an administrative order directing specific categories of eligible proceedings under the Maryland Rules to be held remotely, in whole or in part, unless otherwise ordered, for good cause, by the presiding judge in a particular case. Objections by a party to remote participation may be made, and the court must determine whether remote participation would likely cause substantial prejudice to a party or adversely affect the fairness of the proceeding. If the court intends

to permit or require remote electronic participation on its own initiative in a proceeding that is eligible for participation but is not subject to an administrative order, the court must notify the parties in writing of its intention to do so and afford them a reasonable opportunity to object.

State Expenditures: General fund expenditures are expected to increase, beginning in fiscal 2025, to the extent the bill results in (1) an increase in petitions for guardianship of the person of a disabled person and (2) an increase in such guardianships due to the increased petitions and the potential for the expedited nature of the proceedings to provide less opportunity to contest the proposed guardianship and/or explore other alternatives. The extent of any increase in guardianship petitions and guardianships cannot be reliably estimated; however, if there is a significant increase in petitions and guardianships, general fund expenditures may increase by as much as \$500,000 or more, based on the potential magnitude of the expenditure increases described below.

- *Judiciary* – General fund expenditures may increase for the Judiciary to hire staff to handle additional work associated both with additional guardianship litigation and oversight of additional guardianships. The Judiciary expects the bill’s requirement of expedited proceedings to increase (1) the number of guardianship petitions filed and as well as appeals of those cases and (2) the overall number of guardianships the circuit courts oversee. The courts are responsible for monitoring the well-being and assets of persons subject to guardianship, which entails (1) training guardians; (2) ensuring the filing of, and tracking, annual reports, inventories, and fiduciary’s accounts; (3) reviewing reports and accountings and responding to missing, incomplete, or problematic filings; (4) holding hearings and status conferences when issues arise; and (5) identifying and taking action when guardianships need to be modified or terminated.

The Judiciary indicates that, in fiscal 2023, there were 473 petitions for guardianship of the person and 1,317 petitions for guardianship of the person and property filed in the circuit courts. There were 199 requests for expedited hearings in connection with medical treatment filed, 133 of which were in Baltimore City.

- *Maryland Department of Aging* – General fund expenditures may increase for the Maryland Department of Aging (MDOA) to provide additional funding for guardianship staff of area agencies on aging (AAAs) (agencies MDOA designates in accordance with the federal Older Americans Act of 1965, to administer services and activities for seniors). Pursuant to statute, the Secretary of Aging or the directors of AAAs serve as guardians of last resort for adults age 65 or older where no other suitable guardians are available. AAAs had 706 public guardianship cases (where the AAA is serving as guardian) in 2023, a 13% increase over 626 cases in 2022. MDOA indicates that guardianship caseloads per caseworker are significantly

higher than recommended in many AAAs. MDOA expects the number of public guardianships to increase under the bill and estimates Baltimore City's AAA needs at least one to two additional staff as a result of the bill, and at least five other large jurisdictions likely face similar staffing needs under the bill.

- *Department of Human Services* – General fund expenditures may increase for the Department of Human Services (DHS) due to (1) costs to administer additional public guardianship cases (for individuals under the age of 65) and (2) costs of attorney's fees in additional guardianship proceedings involving indigent alleged disabled persons. Similar to the Secretary of Aging and directors of AAAs, pursuant to statute, the directors of DHS's local departments of social services serve as guardians of last resort for individuals under the age of 65 and presumably may similarly require additional staff if public guardianship cases increase as a result of the bill. To the extent the bill increases the number of guardianship proceedings, including those in which the alleged disabled person is indigent, costs increase for DHS's Maryland Legal Services Program (funded primarily by general funds), which funds legal representation in the circuit courts for indigent adults in adult public guardianship cases.

State Revenues: General/special fund revenues may increase, beginning in fiscal 2025, due to increased collection of filing fees, to the extent the bill results in increased guardianship litigation. The extent of any increase cannot be reliably estimated.

Local Fiscal Effect: Similar to State general fund expenditures, local government expenditures may increase, beginning in fiscal 2025, due to an increase in petitions for guardianship and an increase in guardianships. In addition to State general fund expenditures, local government expenditures may increase to hire circuit court staff funded by the local governments to handle additional guardianship litigation and oversight. The circuit courts are funded by both the State and local governments and the Judiciary indicates that an increase in guardianship litigation and oversight likely affects both State and local government expenditures. Local governments may also bear costs associated with additional public guardianship cases handled by AAAs.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 698 (Delegates Bartlett and Pena-Melnyk) - Judiciary.

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

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