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MARYLAND JUDICIAL COUNCIL LEGISLATIVE COMMITTEE

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 1553
Estates and Trusts – Guardianship of the Person of a Disabled
Person – Emergency and Temporary Guardianship Petitions
DATE: March 4, 2026
(3/11)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 1553.

This bill appears to be designed to address situations in which 1) family members are unable to visit with a person under guardianship, and 2) a guardian of the person may be medically or physically neglecting a person under guardianship. The Judiciary appreciates the seriousness of these situations. This bill, however, would be difficult to implement and conflict with current protections provided in the guardianship process.

First, the proposed amendments to Estates and Trusts § 13-705 would establish a rebuttable presumption that it is in the best interest of a disabled person that the order appointing a guardian of the person include an access schedule for individuals related to the disabled by blood or marriage. Individuals who are related to the disabled person by marriage may not be interested persons by law entitled to notice and the opportunity to participate in the guardianship case. At the time a guardian is appointed, it is highly unlikely that the court will have adequate information to determine what access schedule

would be in the best interest of a disabled person. Acquiring this information would require additional proceedings or investigations and place an additional burden on the parties to identify relatives and gather evidence to rebut the presumption or propose an access schedule. Certain access schedules may interfere with a guardian's ability to find an appropriate placement for the disabled person. Some nursing homes and assisted living facilities may have visitation policies that may conflict with an access schedule. Imposing an access schedule before the guardian has an opportunity to explore options may limit where the disabled person can be placed.

The Judiciary also has concerns with the proposed amendments to Estates & Trusts § 13-709, which would expand the court's authority to order emergency protective services (i.e., the appointment of an "emergency" guardian) when an appointed guardian is suspected of medically or physically neglecting a person under guardianship. This seems to be an attempt to create a new process to remove and replace a guardian within a statute that is designed to establish the basis for guardianship. It would also significantly alter the emergency protective proceeding process in a way that would be difficult to implement and would undermine the rights of alleged disabled persons.

Specifically, lowering the evidentiary standard for any emergency protective services from "clear and convincing" to "preponderance of the evidence" would create a conflict within the statute (as the court would still need to find that an alleged disabled person "lacks capacity under the standards enumerated in § 13-705(b)," which sets a clear and convincing standard) and would make it easier for interested persons, including those who are not acting in the best interest of the alleged disabled person, to interfere with that person's rights and liberties.

Further, proposed § 13-709(c) would require a court to hear and rule on a petition within one (1) business day of the filing of a petition by an interested person. This timeline is unworkable and would be impossible in contested cases. The timeline does not recognize the demands of other pending cases or required notice and due process requirements. The Judiciary is in the best position to schedule the matters before it, and any attempt to mandate the docket structure runs afoul of the separation of powers doctrine. This timeline would also render the provisions of this statute designed to protect the rights of the (alleged) disabled person meaningless. The abbreviated timeline would not allow for proper service of parties and would severely limit the ability of attorneys for (alleged) disabled persons to represent their clients effectively. There would be no time for investigations or discovery to occur, and the court would not have enough time or information to determine whether the petitioner or anyone else in the case is a bad actor seeking to control or take advantage of an (alleged) disabled person. It would be nearly impossible for the court to develop an access schedule as contemplated in proposed § 13-709(d)(8).

Finally, proposed new statute § 13-709.1 would provide for the appointment of a "temporary" guardian and is largely duplicative of § 13-709 as drafted in both language and problems.

The Judiciary notes that there are currently mechanisms for interested persons to invoke the court's jurisdiction to address visitation issues and to remove and replace a guardian. Courts take allegations of abuse, neglect, and exploitation seriously and will take steps to ensure the safety and well-being of persons under guardianship.

cc. Hon. Tiffany Alston
Judicial Council
Legislative Committee
Kelley O'Connor