

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 81 (Delegate Morhaim, *et al.*)  
Health and Government Operations

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Estates and Trusts - Conditions of Disability and Incapacity - Confinement

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This bill alters the definition of “incapacity” as defined under the Maryland Trust Act and modifies the conditions under which a court must appoint a guardian of the property of a minor or a disabled person. Specifically, the bill repeals the condition of “confinement” as one of the circumstances in which a court must appoint a guardian of the property of a minor or disabled person and also repeals “confinement” as an element of the definition of incapacity under the Act. Accordingly, under the bill, even if a person is unable to manage his or her property and affairs effectively due to “confinement,” that person is no longer considered incapacitated under the Act and a court is not required to appoint a guardian of the property in cases of a “confined” minor or disabled person.

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Fiscal Summary

**State Effect:** The bill does not affect State operations or finances.

**Local Effect:** The bill does not affect local government operations or finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** A court must appoint a guardian with respect to the estate of a person if the court determines that the person is unable to manage his property and affairs effectively because of physical or mental disability, disease, habitual drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, confinement, detention by a foreign power, or disappearance and the person has or may be entitled to property or benefits which require proper management.

Chapter 450 of 2015 defined “incapacity” under the Maryland Trust Act to mean the inability of an individual to manage the individual’s property or financial affairs effectively due to:

- physical or mental disability;
- disease or illness;
- habitual drunkenness;
- drug addiction;
- imprisonment;
- compulsory hospitalization;
- confinement;
- detention by a foreign power; or
- disappearance.

The Act does not specifically define these terms; however, definitions for some of these terms may be in other provisions of the Annotated Code.

The terms “incapacitated” and “incapacity” appear in five separate provisions of the Maryland Trust Act. Under these provisions, the use of the terms “incapacity” or “incapacitated” in these sections seemingly refers to the ability of an individual to manage property and financial affairs rather than the individual’s competency to make a will. These provisions are as follows:

- A parent is authorized to represent and bind an incapacitated child in the same manner as for a minor, unborn, or unknown child of the parent or a child of the parent whose location is unknown and not reasonably ascertainable, under specified circumstances.
- A court is authorized to appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of an incapacitated individual in the same manner as for a minor or unborn individual or an individual whose identity or location is unknown, under specified circumstances.
- A cotrustee is required to participate in the function of a trustee unless the cotrustee is unavailable because of absence, illness, disqualification under other law, or “other temporary incapacity.”
- The remaining cotrustee or cotrustees are authorized to act for the trust if a cotrustee is unavailable because of absence, illness, disqualification under other law, or “other temporary incapacity.”
- Specified income beneficiaries who have not attained majority or who are “otherwise incapacitated” are excluded as parties for specified purposes.

**Background:** Chapter 585 of 2014 established the Maryland Trust Act. The Act applies to express charitable or noncharitable trusts and trusts created by State law (including the Maryland Discretionary Trust Act, unless otherwise specified by statute), judgment, or decree that requires a trust to be administered in the manner of an express trust.

*Black's Law Dictionary* defines "confinement" as a condition which may be either a moral or a physical restraint, by threats of violence with a present force, or by physical restraint of the person.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Department of Disabilities; *Black's Law Dictionary*; Department of Legislative Services

**Fiscal Note History:** First Reader - February 21, 2017  
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