

SENATE BILL 90

J1, N2

5lr0471
CF 5lr1592

By: **Senators Kelley, Astle, Benson, Feldman, Guzzone, Klausmeier, Mathias,
Montgomery, Nathan-Pulliam, Pugh, and Young**

Introduced and read first time: January 26, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Guardianship, Advance Directives, and Surrogates – Disabled Persons and**
3 **Mental Health Services**

4 FOR the purpose of authorizing a court to appoint a guardian of the person of a disabled
5 person for a limited period of time under certain circumstances; specifying that
6 certain rights, duties, and powers that a court may order include the duty to file a
7 certain report; providing that a revocation of an advance directive for mental health
8 services by a certain declarant is not effective until a certain period of time after the
9 request for revocation is made by the declarant; repealing the prohibition against
10 certain surrogate decision makers authorizing treatment for a mental disorder; and
11 generally relating to guardianship, advance directives, and surrogate decision
12 making.

13 BY repealing and reenacting, with amendments,
14 Article – Estates and Trusts
15 Section 13–708(a) and (b)
16 Annotated Code of Maryland
17 (2011 Replacement Volume and 2014 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article – Health – General
20 Section 5–604 and 5–605(d)
21 Annotated Code of Maryland
22 (2009 Replacement Volume and 2014 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
24 That the Laws of Maryland read as follows:

25 **Article – Estates and Trusts**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 13-708.

2 (a) (1) The court may grant to a guardian of a person only those powers
3 necessary to provide for the demonstrated need of the disabled person.

4 (2) (I) The court may appoint a guardian of the person of a disabled
5 person for the limited purpose of making one or more decisions related to the health care
6 of that person.

7 (II) **THE COURT MAY APPOINT A GUARDIAN OF THE PERSON OF**
8 **A DISABLED PERSON FOR A LIMITED PERIOD OF TIME IF IT APPEARS PROBABLE**
9 **THAT THE DISABILITY WILL CEASE WITHIN 1 YEAR OF THE APPOINTMENT OF THE**
10 **GUARDIAN.**

11 (b) Subject to subsection (a) of this section, the rights, duties, and powers which
12 the court may order include, but are not limited to:

13 (1) The same rights, powers, and duties that a parent has with respect to
14 an unemancipated minor child, except that the guardian is not liable solely by reason of the
15 guardianship to third persons for any act of the disabled person;

16 (2) The right to custody of the disabled person and to establish his place of
17 abode within and without the State, provided there is court authorization for any change
18 in the classification of abode, except that no one may be committed to a mental facility
19 without an involuntary commitment proceeding as provided by law;

20 (3) The duty to provide for care, comfort, and maintenance, including
21 social, recreational, and friendship requirements, and, if appropriate, for training and
22 education of the disabled person;

23 (4) The duty to take reasonable care of the clothing, furniture, vehicles, and
24 other personal effects of the disabled person, and, if other property requires protection, the
25 power to commence protective proceedings;

26 (5) If a guardian of the estate of the disabled person has not been
27 appointed, the right to commence proceedings to compel performance by any person of his
28 duty to support the disabled person, and to apply the estate to the support, care, and
29 education of the disabled person, except that the guardian of the person may not obtain
30 funds from the estate for room and board that the guardian, his spouse, parent, or child
31 provide without a court order approving the charge, and the duty to exercise care to
32 conserve any excess estate for the needs of the disabled person;

33 (6) If a guardian of the estate has been appointed, the duty to control the
34 custody and care of the disabled person, to receive reasonable sums for room and board
35 provided to the disabled person, and to account to the guardian of the estate for funds
36 expended, and the right to ask the guardian of the estate to expend the estate in payment
37 of third persons for care and maintenance of the disabled person;

1 (7) The duty to file an annual **OR BIENNIAL** report with the court
2 indicating the present place of residence and health status of the ward, the guardian's plan
3 for preserving and maintaining the future well-being of the ward, and the need for
4 continuance or cessation of the guardianship or for any alteration in the powers of the
5 guardian. The court shall renew the appointment of the guardian if it is satisfied that the
6 grounds for the original appointment stated in § 13-705(b) of this subtitle continue to exist.
7 If the court believes such grounds may not exist, it shall hold a hearing, similar to that
8 provided for in § 13-705 of this subtitle, at which the guardian shall be required to prove
9 that such grounds exist. If the court does not make these findings, it shall order the
10 discontinuance of the guardianship of the person. If the guardian declines to participate in
11 the hearing, the court may appoint another guardian to replace him pursuant to the
12 priorities in § 13-707(a) of this subtitle; and

13 (8) The power to give necessary consent or approval for:

14 (i) Medical or other professional care, counsel, treatment, or service,
15 including admission to a hospital or nursing home or transfer from one medical facility to
16 another;

17 (ii) Withholding medical or other professional care, counsel,
18 treatment, or service; and

19 (iii) Withdrawing medical or other professional care, counsel,
20 treatment, or service.

21 **Article – Health – General**

22 5-604.

23 (a) **(1) [An] SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN**
24 advance directive may be revoked at any time by a declarant by a signed and dated written
25 or electronic document, by physical cancellation or destruction, by an oral statement to a
26 health care practitioner or by the execution of a subsequent directive.

27 **(2) A REVOCATION OF AN ADVANCE DIRECTIVE FOR MENTAL HEALTH**
28 **SERVICES BY A DECLARANT WHO HAS BEEN CERTIFIED INCAPABLE OF MAKING AN**
29 **INFORMED DECISION UNDER § 5-602(E) OF THIS SUBTITLE IS NOT EFFECTIVE UNTIL**
30 **72 HOURS AFTER THE REQUEST FOR REVOCATION IS MADE BY THE DECLARANT.**

31 (b) If a declarant revokes an advance directive by an oral statement to a health
32 care practitioner, the practitioner and a witness to the oral revocation shall document the
33 substance of the oral revocation in the declarant's medical record.

34 (c) It shall be the responsibility of the declarant, to the extent reasonably
35 possible, to notify any person to whom the declarant has provided a copy of the directive.

1 5-605.

2 (d) A surrogate may not authorize[:

3 (1) Sterilization; or

4 (2) Treatment for a mental disorder] **STERILIZATION.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2015.