

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 324
Judiciary

(Delegate Rosenberg, *et al.*)

Removal of Religious Barriers to Remarriage

This bill requires parties to an action for absolute divorce or annulment to affirm that steps have been taken to remove all religious barriers to remarriage under certain circumstances.

The bill applies to cases pending or filed on or after the bill's October 1, 2007 date.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's penalty provision. Otherwise, the bill's requirements could be handled with existing resources.

Local Effect: Potential minimal increase in expenditures due to the bill's penalty provision. Otherwise, the bill's requirements could be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: This bill provides that a party who files or does not contest a complaint or countercomplaint for an absolute divorce or annulment must file, on request of the other party, an affidavit stating, under penalty of perjury, that the affiant has taken all steps solely within the affiant's control to remove all religious barriers to remarriage by the other party. If such an affidavit is requested, the court may not enter a decree for an absolute divorce or annulment until the affidavit is filed. The court is also prohibited

from entering a decree for absolute divorce or annulment if the court determines that the affiant submitted the affidavit with the knowledge that it was false.

This bill may not be construed to: • authorize a court to order a party to remove a religious barrier to remarriage; • inhibit or restrain an individual from taking part in ecclesiastical tribunal proceedings for a decree of matrimonial nullity or dissolution according to religious tenets; or • inhibit or restrain a religious body from adhering to its ecclesiastical tenets governing marriage.

Current Law: Parties to absolute divorce or annulment proceedings are not required to take steps to remove religious barriers to remarriage by the other party.

A person may not willfully and falsely make an oath or affirmation: • if the false swearing is perjury at common law; • in an affidavit required by law; • in an affidavit made to induce a court or officer to pass an account or other claim; or • as otherwise specified in statute. A violator is guilty of the misdemeanor of perjury and is subject to imprisonment for up to 10 years. The State may institute a prosecution for this misdemeanor at any time.

Background: Based on a 1983 New York statute, the bill seeks to address a problem for people who obtain a civil divorce, but still face religious barriers to remarriage if the party wishes to remarry within the faith.

For example, under traditional Jewish law, a civil divorce does not dissolve the marriage. Only a religious divorce, provided by a signed writ of divorce called a “*get*,” completely dissolves the marriage for a person who wishes to remarry within the Orthodox Jewish religion. By tradition, only the husband has the power to grant or withhold the *get*. The rabbinic authorities may not compel the husband to grant the *get* if he does not wish to do so. Until a woman receives a *get*, she may not remarry within her religion. If she does remarry without the *get*, the new marriage is not considered valid. The woman is considered an adulterer, and any children from the new marriage are considered illegitimate.

As a result, remarriage is not a practical option for these women. They have been referred to as “*agunah*” or “chained wives,” a term that comes from the Hebrew word for women without a *get*. Because the husband has the sole power to grant a *get*, Orthodox Jewish women who want the option to remarry in the faith at a future time could be forced to give up property rights, alimony, and child custody by their husbands. Two Baltimore women have received media coverage for their efforts to force their husbands to provide a *get*.

State and Local Fiscal Effect: The Administrative Office of the Courts advises that this bill could require the filing of additional documents with the courts and may result in delay of the final judgment. When requested, the party must file an affidavit, even if the party chooses not to answer the divorce complaint. More cases could become contested. However, because of the relatively limited situations to which this bill would apply, it is anticipated that the Judiciary could meet the requirements of this bill using existing resources.

State Expenditures: General fund expenditures could increase minimally as a result of the bill's incarceration penalty due to more people being committed to Division of Correction (DOC) facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of this proposed crime is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,300 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$465 per month. Excluding medical care, the average variable costs total \$134 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2008 are estimated to range from \$21 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Expenditures: Expenditures could increase minimally as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$42 to \$120 per inmate in fiscal 2008.

Additional Information

Prior Introductions: This bill is similar to a reintroduction of SB 374/HB 1099 of 2000. SB 374 passed the Senate, as amended, but received an unfavorable report from the House Judiciary Committee. HB 1099 received an unfavorable report from the House Judiciary Committee. Similar bills were introduced during the 1999, 1998, and 1997 sessions.

Cross File: SB 533 (Senator Gladden, *et al.*) – Judicial Proceedings is listed as a cross file, but it is not identical

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General, *Maryland Daily Record*, *Baltimore Jewish Times*, Maryland Jewish Alliance, Department of Legislative Services

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