

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 905

(Senator Muse)

Judicial Proceedings

Judiciary

Orphans' Court - Minors - Guardianship of Person

This bill specifies that an orphans' court may exercise jurisdiction over guardianship of the person of a minor if the presiding judge of the orphans' court is a member of the bar, regardless of whether the minor has property, may inherit property, or is destitute. An orphans' court that exercises, or is requested to exercise, such jurisdiction may transfer the matter to circuit court, on a finding that the best interests of the child require utilization of the equitable powers of the circuit court, and may waive the costs, if any, of the transfer. The bill only applies prospectively.

Fiscal Summary

State Effect: The bill is not expected to directly affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Under the Estates and Trusts Article, the orphans' courts and the circuit courts have concurrent jurisdiction over guardians of the person of a minor and protective proceedings for minors, including guardianship of the property of a minor.

A 1992 Attorney General opinion, however, indicated that orphans' courts "have jurisdiction to appoint a guardian of the person of a minor only in those instances when neither parent is serving as guardian and no testamentary [by will] appointment has been made," as authorized under the Estates and Trusts Article. The opinion indicated that the

jurisdiction of circuit courts extends further, to appointment of guardians in other circumstances, under authority elsewhere in the law.

Upon petition of an interested person, a matter initiated in the orphans' court may be transferred to the circuit court.

The counties and City of Baltimore each elect three judges to the orphans' court of their respective jurisdictions, with the exception of Montgomery and Harford counties where a circuit court judge sits as the orphans' court. The judges must be citizens of the State, and residents, for the preceding 12 months, in the jurisdiction in which they may be elected. (*See* Maryland Constitution, Art. IV, §40.)

The Court of Appeals has held that orphans' court judges are not required to be members of the bar. (*See Kadan, et al. v. Board of Supervisors of Elections of Baltimore County, et al.*, 273 Md. 406 (1974).)

Background: In addition to having concurrent jurisdiction with the circuit courts in the guardianship of minors and their property, an orphans' court is a probate court and hears all contested matters regarding a decedent's estate, including validity of wills and legal questions involving transfers of property. The court also supervises estates that are probated judicially and approves accounts, awards of personal representatives' commissions, and attorney's fees in all estates.

Additional Information

Prior Introductions: None.

Cross File: HB 634 (Delegates Levi and Vallario) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Register of Wills, Office of the Attorney General, Department of Legislative Services

Fiscal Note History: First Reader - March 10, 2009
ncs/kdm

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