

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 769

(Delegates Levi and Vallario)

Judiciary

Judicial Proceedings

Orphans' Court - Minors - Guardianship of Person

This bill allows an orphans' court to exercise jurisdiction over guardianship of the person of a minor, regardless of whether the presiding judge of the court is a member of the bar.

The bill applies only prospectively.

Fiscal Summary

State Effect: None.

Local Effect: Any increase in orphans' court cases resulting from the bill is not expected to materially affect local government finances.

Small Business Effect: None.

Analysis

Current Law/Background: Chapters 748 and 749 of 2009 established that if the presiding judge of the orphans' court is a member of the bar, an orphans' court may exercise jurisdiction over guardianship of the person of a minor, 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 counties and Baltimore City 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: The Attorney General, in a May 2009 letter to the Governor, expressed concern that SB 905 and HB 634 of 2009 (eventually enacted as Chapters 748 and 749) might be determined to unconstitutionally modify the qualifications for judges of the orphans' court, but found no clear precedential authority requiring a conclusion that the bill was clearly unconstitutional. The Attorney General was concerned that the bills "in effect, add[ed] a new qualification requirement ... before an orphan's court may exercise its full statutory jurisdiction." (Advice of counsel to Governor Martin O'Malley, May 18, 2009.)

The Attorney General's letter indicated that, based on informal investigation, only 7 of the 22 jurisdictions that have orphans' courts had orphans' court judges who were lawyers: Baltimore City and Anne Arundel, Baltimore, Howard, Prince George's, Queen Anne's, and Wicomico counties.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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a/kdm

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