

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

House Bill 351  
Judiciary

(Delegate Carter, *et al.*)

Judicial Proceedings

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Orphans' Court - Minors - Guardianship of Person

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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.

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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.

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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 the 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. Pursuant to Chapter 481 of 2010 (adopted by the voters of the State and Baltimore City at the November 2010 general election), judges of the Orphans' Court for Baltimore City also must be admitted to practice law in the State and be members in good standing of the Maryland Bar. (See Maryland Constitution, Art. IV, § 40.) The Court of Appeals has held (prior to the adoption of Chapter 481) 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 (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 an informal investigation, at that time 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. The Maryland Orphans' Court website indicates that approximately one-third of the orphans' court judges are attorneys and two-thirds are lay judges.

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### Additional Information

**Prior Introductions:** HB 769 of 2010 passed the House and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 21, 2011  
mc/kdm

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