

Department of Legislative Services  
 Maryland General Assembly  
 2015 Session

FISCAL AND POLICY NOTE

House Bill 348 (Delegates Rosenberg and Dumais)  
 Judiciary

Civil Right to Counsel - Implementation

This bill requires the Governor, beginning in fiscal 2017, to include specified appropriations to provide legal representation to individuals who meet income eligibility requirements established by the Maryland Legal Services Corporation (MLSC) in protective order and contested custody and visitation proceedings. The bill also establishes the Judicare Pilot Program and the Workgroup to Monitor Implementation of a Civil Right to Counsel.

The bill takes effect June 1, 2015.

Fiscal Summary

**State Effect:** General fund expenditures increase by at least \$3.2 million beginning in FY 2017, which represents the minimum mandated appropriation required by the bill, to fund legal representation in specified civil cases. By FY 2020, general fund expenditures increase by at least \$9.1 million annually. The bill may increase operational efficiency for the Judiciary by decreasing the number of *pro se* litigants. **This bill establishes a mandated appropriation beginning in FY 2017.**

(\$ in millions)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	0	3.2	5.2	7.2	9.1
Net Effect	\$0	(\$3.2)	(\$5.2)	(\$7.2)	(\$9.1)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

**Local Effect:** The bill may increase operational efficiency in the circuit courts by decreasing the number of *pro se* litigants.

**Small Business Effect:** Potential meaningful impact for a law firm that is awarded State funding to represent a party in a civil proceeding as authorized by the bill.

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## Analysis

**Bill Summary:** Exhibit 1 shows the minimum appropriations that the Governor must include in the budget bill each fiscal year to provide legal representation in protective order proceedings to petitioners and respondents who meet income eligibility requirements established by MLSC. Of the money appropriated for legal representation in protective order proceedings, specified percentages in fiscal 2017 through 2019 must be allocated to programs that provide legal representation to income-eligible respondents. The bill also states that it is the intent of the General Assembly that for fiscal 2020 and every year thereafter, all income-eligible petitioners and respondents have access to legal representation in protective order proceedings.

### *Judicare Pilot Program*

The purpose of the pilot program is to provide legal representation in contested custody and visitation proceedings to parents who meet income eligibility requirements established by MLSC. The pilot program must be implemented in (1) Baltimore City; (2) Prince George's County; and (3) Dorchester, Somerset, Wicomico, and Worcester counties. The pilot program must be jointly administered by MLSC and the Administrative Office of the Courts (AOC).

Legal representation must be provided under the pilot program to income-eligible clients by (1) private attorneys in accordance with a fee schedule established by MLSC and AOC and (2) staff attorneys employed by the pilot program in areas where the number of qualified private attorneys is insufficient to meet the need for representation.

The Governor must include specified minimum appropriations to fund the pilot program as shown in Exhibit 1. The money appropriated under the bill must be used to supplement and not supplant existing funds for the Judicare Program.

### *Workgroup to Monitor Implementation of a Civil Right to Counsel*

The Chief Judge of the Court of Appeals must designate the chair of the workgroup, which is to be staffed by AOC. A member of the workgroup may not receive compensation, but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

The workgroup must monitor implementation of the programs that provide legal representation in protective order proceedings and the Judicare Pilot Program and evaluate the effectiveness of the programs.

By December 1, 2020, the workgroup must report its findings and recommendations to the Governor, the Chief Judge of the Court of Appeals, the President of the Senate, the Speaker of the House, and specified legislative committees.

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**Exhibit 1**  
**Mandated Appropriations to Fund Civil Right to Counsel**

	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020<sup>2</sup></u>	<u>FY 2021</u>
<b>Protective Order Proceedings</b>	<b>\$2,475,805</b>	<b>\$3,675,805</b>	<b>\$4,875,805</b>	<b>\$6,075,805</b>	<b>\$6,075,805</b>
Representation for Respondents <sup>1</sup>	495,161	1,102,741	1,950,322		
Representation for Petitioners	1,980,644	2,573,064	2,925,483		
<b>Judicare Pilot Program</b>	<b>\$757,500</b>	<b>\$1,515,000</b>	<b>\$2,322,500</b>	<b>\$3,030,000</b>	<b>\$3,030,000</b>
Baltimore City	275,000	550,000	875,000	1,100,000	1,100,000
Prince George's County	325,000	650,000	975,000	1,300,000	1,300,000
Dorchester, Somerset, Wicomico, and Worcester counties	<u>157,500</u>	<u>315,000</u>	<u>472,500</u>	<u>630,000</u>	<u>630,000</u>
<b>Total Mandated Appropriations</b>	<b>\$3,233,305</b>	<b>\$5,190,805</b>	<b>\$7,198,305</b>	<b>\$9,105,805</b>	<b>\$9,105,805</b>

<sup>1</sup> This represents the portion of the mandated appropriation that must be allocated to programs providing legal representation to respondents. No portion is specified after fiscal 2019.

<sup>2</sup> Pursuant to the bill, the mandated appropriations for fiscal 2020 continue annually thereafter.

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**Current Law/Background:** There is no civil right to counsel in protective order, custody, or visitation proceedings. The Judiciary advises that a significant number of individuals are unrepresented in these types of cases. For example, during a six-month period in 2014, petitioners in protective order cases were only represented 23.6% of the time; respondents were represented in only 17.8% of the cases. The Judiciary also estimates that approximately half of the litigants in protective order proceedings are likely to be income-eligible for assistance once guidelines are established by MLSC pursuant to the bill.

MLSC was established by the Maryland General Assembly in 1982. It receives and distributes funds to nonprofit grantees that provide legal assistance to eligible clients in civil cases. In 2008, MLSC and AOC established the Judicare Family Law Pilot Project to expand representation in family law matters at reduced fees. This project evolved out of the Child Custody Representation Project, which was an initiative to increase the number of low-income individuals who had legal representation in complex child custody cases.

**State Fiscal Effect:** General fund expenditures increase by \$3,233,305 in fiscal 2017, and by increasing amounts annually thereafter, to provide funding for individuals to have legal representation in protective order and contested custody and visitation proceedings. Exhibit 1 represents the *minimum* mandated appropriations as required by the bill. Because the bill expresses an intent for all income-eligible petitioners and respondents in protective order cases to have access to legal representation by fiscal 2020 and thereafter, general fund expenditures may increase further to the extent that additional funding is needed to satisfy the intent. The Department of Legislative Services also notes that the bill may improve operational efficiency for the Judiciary by reducing the number of *pro se* litigants, who traditionally require significantly more judicial resources.

The Judiciary advises that existing resources can be used to staff the workgroup and to assist in administering the pilot program.

**Local Fiscal Effect:** By providing funding for legal representation in contested custody and visitation cases in Baltimore City and Dorchester, Prince George's, Somerset, Wicomico, and Worcester counties, the bill may improve operational efficiency for circuit courts in these jurisdictions by reducing the number of *pro se* litigants. Although circuit courts do not generally have the same volume of protective order cases as the District Court, circuit courts statewide may experience improved operational efficiency to the extent that the bill reduces the number of *pro se* litigants in protective order proceedings in the circuit courts.

**Small Business Effect:** Private attorneys may be awarded funding to provide representation to income-eligible clients in contested custody and visitation proceedings. Accordingly, the bill has a potential meaningful impact on any small law firm that is awarded State funding to represent a litigant in a civil case.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** Although SB 468 (Senator Madaleno - Judicial Proceedings) is designated as a cross file, it is different.

**Information Source(s):** Department of Budget and Management; Judiciary (Administrative Office of the Courts); Baltimore City; Dorchester, Prince George's, and Worcester counties; Maryland Legal Services Corporation; Department of Legislative Services

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