

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 951
Judiciary

(Delegate Buckel)

Estates and Trusts - Cross-Jurisdictional Probate Judges

This proposed constitutional amendment establishes the position of “cross-jurisdictional probate judge” and specifies requirements relating to the position. Contingent on the passage of the proposed amendment, the bill alters statutory provisions governing certain proceedings in and among the orphans’ courts, circuit courts, and cross-jurisdictional probate judges.

Fiscal Summary

State Effect: General fund expenditures may increase, potentially significantly, as discussed below. Revenues are not affected.

Local Effect: Local government expenditures may increase, potentially significantly, as discussed below. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Proposed Constitutional Amendment Establishing Cross-jurisdictional Probate Judges

The proposed amendment requires the judges of each judicial circuit to appoint one or more cross-jurisdictional probate judges from each judicial circuit. A cross-jurisdictional probate judge must have the authority to adjudicate any matter within the jurisdiction of the

orphans' court where an interested person requests adjudication by a cross-jurisdictional probate judge.

Cross-jurisdictional probate judges must be citizens of the State and qualified voters and must have resided in the judicial circuit at least 12 months preceding appointment. Cross-jurisdictional probate judges must be admitted to practice law in the State and must be most distinguished for integrity, wisdom, and sound legal knowledge.

Each cross-jurisdictional probate judge serves for a term of six years and must be eligible for reappointment. If a cross-jurisdictional probate judge leaves office before the expiration of the term, the judges of the judicial circuit must appoint a qualified individual to serve for the remainder of the term.

Section 12-701 of the Courts and Judicial Proceedings Article

Contingent on the passage of the proposed amendment, the bill replaces the current role given to a *circuit court* with a *cross-jurisdictional probate judge* in the statutory provisions, under § 12-701 of the Courts and Judicial Proceedings Article, that specify (1) whether an appeal from an orphans' court or a circuit court stays proceedings in the orphans' court concerning the issue appealed; (2) that an appeal from a final order of an orphans' court or a circuit court removing a personal representative does not stay an order appointing a successor personal representative or special administrator; and (3) if an appeal is filed from the final order of an orphans' court or a circuit court removing a personal representative and the court appointed a successor personal representative, the successor personal representative must have the powers of a special administrator.

Section 2-105 of the Estates and Trusts Article

Contingent on the passage of the proposed amendment, the bill replaces the current role given to a *court of law* with a *cross-jurisdictional probate judge* in the statutory provisions, under § 2-105 of the Estates and Trusts Article, providing that issues of fact before an orphans' court may be transmitted to, and determined by, a court of law. The bill does not alter a specification that these provisions do not apply when an estate is administered under the jurisdiction of a court having general equity jurisdiction.

Current Law: Orphans' courts have special limited jurisdiction and may only exercise the power expressly provided by law. *See In re Adoption/Guardianship of Tracy K.*, 434 Md. 198 (2013). Under § 2-102 of the Estates and Trusts Article, an orphans' court may conduct judicial probate, direct the conduct of a personal representative, summon witnesses, and issue specified orders, including those that may be required in the course of the administration of an estate of a decedent. Although the orphans' courts have sufficient incidental authority to effectively render the power expressly granted, they may not, under

the pretext of incidental power or constructive authority, exercise any jurisdiction not expressly conferred by law. Orphans' courts are prohibited from determining questions of title to real property of any value or to personal property exceeding \$50,000; such issues must be taken to circuit court.

Under § 12-501 of the Courts and Judicial Proceedings Article, a party may generally appeal to the Court of Special Appeals from a final judgment of an orphans' court. However, "the concept of an appealable 'final judgment' for purposes of orphans' courts proceedings is very different from the concept of a final judgment in conventional civil litigation." *Green v. McClintock*, 218 Md. App. 336, 363 n. 24 (2014) (citing *Banashak v. Wittstadt*, 167 Md. App. 627, 656-58 (2006)). Unlike the general rule governing other civil litigation, immediate appeals of some orders relating to estate administration in probate proceedings are permitted prior to the adjudication of all claims by and against all parties.

Under the Maryland Constitution, each county elects, for a term of four years, three judges to the orphans' court of their respective jurisdictions, with the exception of Harford and Montgomery counties, where a circuit court judge sits as the orphans' court. If an orphans' court judge is unable to serve for any reason, the Chief Judge of the Court of Appeals may assign, on a temporary basis, an orphans' court judge of another county to sit for the judge who is unable to serve.

State/Local Fiscal Effect: Under the bill (and subject to passage of the proposed constitutional amendment), cross-jurisdictional probate judges are established and granted authority to handle matters currently heard in orphans' courts and circuit courts, at the request of an interested person. The full extent to which the bill may alter operations in and among the various courts is indeterminable at this time; however, it is generally assumed that costs associated with the bill will be supplemental to (and will not supplant) State/local expenditures currently incurred for these activities. Without additional information, including a reliable estimate of the number of cases a cross-jurisdictional probate judge may ultimately be requested to handle, the Department of Legislative Services (DLS) is unable to anticipate an appropriate salary (or salary range) for a cross-jurisdictional probate judge, but notes that the bill requires the appointment of at least eight judges (based on the number of judicial circuits). In addition to expenditures related to salaries and fringe benefits, additional expenditures may be incurred for additional staff, office space, and other operational costs (such as furniture, supplies, education, and training, *etc.*). Although *total* costs associated with the bill are assumed to be significant, DLS also advises that it is unclear whether costs associated with cross-jurisdictional probate judges will be a State expense, a local expense, or a combination.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

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

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