

**Department of Legislative Services**  
Maryland General Assembly  
2022 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 879 (Delegates Buckel and Atterbeary)  
Judiciary and Ways and Means

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**Orphans' Court Judges – Election and Restriction on Practicing Law**

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This bill requires orphans' court judges to be elected on a nonpartisan basis and only appear on the ballot in the general election. The bill also modifies an existing prohibition (that does not apply equally in all counties) against an orphans' court judge practicing law during a term of office. The bill narrows the prohibition and makes it equally applicable to all counties.

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**Fiscal Summary**

**State Effect:** General fund expenditures increase by approximately \$2,500 in FY 2023 only. Revenues are not affected.

**Local Effect:** The bill is not expected to materially affect local government finances.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:**

*Nonpartisan Election of Orphans' Court Judges*

The bill requires orphans' court judges to be elected on a nonpartisan basis. Candidates for election as an orphans' court judge must – without party designation or regard to party affiliation – file certificates of candidacy, be certified to be on the ballot, appear on the ballot, be voted on, and be elected. A candidate for orphans' court judge does not appear

on the ballot in a primary election and is not otherwise nominated by a political party or by petition. A candidate must file a certificate of candidacy by 5 p.m. on the first Monday in August in the year of the general election for the office.

In the general election for an orphans' court judge, a voter may vote for a number of candidates equal to the number of orphans' court judges to be elected. The candidates, equal in number to the number of offices to be filled, who receive the largest number of votes in the general election, must be declared elected. If two or more candidates each receive the lowest number of votes necessary to qualify for election, creating a tie for the last office to be filled, the office must be considered vacant and be filled as if the vacancy occurred during the term of office. The bill also establishes procedures and rules that apply if a candidate dies or is disqualified prior to the general election.

### *Prohibition Against Specified Practice of Law*

The bill modifies a prohibition against an orphans' court judge acting as an attorney at law in any civil or criminal matter during a term of office, which under current law is subject to county-specific exceptions. The bill repeals the county-specific exceptions and establishes a narrower prohibition applicable to all counties that prohibits an orphans' court judge from acting as an attorney at law in a civil or criminal matter during a term of office if the matter is (1) within the jurisdiction of the orphans' court in any county and (2) related to the administration of an estate or a guardianship of a minor.

**Current Law:** 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. The orphans' courts are the State's probate courts. The courts supervise the handling of estates and also have certain jurisdiction over the guardianship of minors and their property. Elections for judge of the orphans' court occur during the gubernatorial elections and candidates are nominated by primary election, nonprincipal political party nomination, or petition, and listed on the ballot with party designation.

With exceptions in certain counties, an orphans' court judge may not act as an attorney at law in a civil or criminal matter during a term of office. The prohibition does not apply:

- in Harford and Montgomery counties;
- in Baltimore City, to an orphans' court judge while practicing law before any court of the State except an orphans' court; or
- in Baltimore, Calvert, Howard, and Prince George's counties, to an orphans' court judge while practicing law in connection with a case that is (1) outside the jurisdiction of the orphans' court and (2) unrelated to the administration of an estate or guardianship.

**State Fiscal Effect:** General fund expenditures increase by approximately \$2,500 in fiscal 2023 only, to make programming changes to the State Board of Elections' agency election management system. The Department of Legislative Services notes that it is unclear whether the bill applies to the 2022 elections, since the bill's effective date (October 1, 2022) occurs relatively far into the 2022 election process, just over a month prior to the general election.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 485 (Senators West and Watson) - Judicial Proceedings.

**Information Source(s):** State Board of Elections; Baltimore, Caroline, Harford, Howard, Montgomery, and Prince George's counties; Judiciary (Administrative Office of the Courts); Department of Legislative Services

**Fiscal Note History:** First Reader - February 14, 2022  
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