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Bill No.: House Bill 339
Title: Task Force to Study the Orphans' Courts
Committee: Judiciary
Hearing Date: February 12, 2020
Position: Recommend Unfavorable Committee Report

The Orphans' Court, like the Circuit Court, derives from colonial days. It was created under the Acts of 1777, during Maryland's first General Assembly.

The Orphans' Court was included in the judicial branch of government under Maryland's newly ratified State Constitution of 1867. (The District Court of Maryland was established in 1971).

"The Judicial power of this State is vested in a Court of Appeals, such intermediate courts of appeal as the General Assembly may create by law, Circuit Courts, Orphans' Courts and a District Court." Md. Const. Art. IV, § 1.

"The qualified voters of the several Counties, except Montgomery County and Harford County, shall elect three Judges of the Orphans' Courts of Counties who shall be citizens of the State and residents, for the twelve months preceding, in the County for which they may be elected." Md. Const. Art. IV, § 40.

The Constitution was amended to include the additional qualifications of Judges in Baltimore City, Prince George's County and Baltimore County that they be admitted to practice law in this State and are members in good standing of the Maryland Bar. In those three jurisdictions, the Judges preside over hearings alone, whereas in the rest of the State the Judges sit in a panel of three.

The Orphans' Court, as Maryland's probate court, oversees the administration of decedents' estates. "(It) may conduct judicial probate, direct the conduct of a personal representative, and pass orders which may be required in the course of

the administration of an estate of a decedent.” MD Est & Trusts Code § 2-102(a). Probate is the legal process of transferring property from the estate to the heirs and legatees.

During the ordinary course of the administration of a regular estate (an estate having a value over \$50,000.00), the Orphans’ Court reviews estate accounts, petitions for personal representative’s commissions, and petitions for attorney’s fees. If all requirements have been met, then the Court signs Orders approving the accounts and granting commissions and fees. If the Court notices discrepancies or has questions, then the Court may call for a hearing.

The Orphans’ Court also presides over hearings involving disputes including, but not limited to petitions to 1) determine who should be appointed personal representative when two or more petitions for probate have been filed; 2) remove the personal representative; 3) admit a copy of a will; 4) admit a will with defects (*i.e.*, has markings, is not signed by testator, has only one witness signature or no witnesses); 5) determine heirs; and, 6) caveat (challenge) a will. The Orphans’ Court hears these matters for regular as well as small estates. Depending on the issue and its complexity, the length of a hearing can range anywhere from 30 minutes to several days.

In addition to the management of probate matters, the Orphans’ Court has concurrent jurisdiction with the Circuit Court to appoint guardians of the person and/or property of a minor. MD Est & Trusts Code § 13-105(a). A Petition for Guardianship of the Property is filed when a child is inheriting money or real property. The money must be placed in a restricted account. Some Courts also require the guardian to be bonded in the amount of the money or the value of the real property to be inherited, whether or not the petitioner is a parent. The guardian may request the Court for leave to withdraw funds from the account for the benefit of the child.

The majority of petitioners for Guardianship of the Minor Person are family members – grandparents, aunts, uncles, cousins and older siblings. A small percentage are close family friends. Petitions are filed if both parents are unable to care for the child. Those instances include when either both parents are deceased or one parent is deceased and the other is

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unknown because he was not named on the birth certificate. Guardianship of the Minor Person is also sought if 1) a parent is incarcerated; 2) a parent is deployed; 3) a parent is homeless; or, 4) a parent is deported, among other reasons. If the other parent is alive and known, then he/she must consent to the guardianship.

A petitioner has the ability to choose the Orphans' Court over the Circuit Court and may opt for the former because the petition fee is lower, and more importantly, the hearing can be set more quickly. Therefore, the appointed guardian has the ability to enroll the minor promptly in school and add him/her to medical insurance policies. However, the Orphans' Court may transfer a guardianship matter to the Circuit Court upon a finding that it would be in the best interest of the child for the parties to utilize the equitable powers of the Circuit Court. MD Est & Trusts Code § 13-105(c)(2).

The population of each jurisdiction is a major factor in determining how the Court operates.

According to the 2017 United States Census Bureau estimates, the populations for the 22 Maryland Counties with an Orphans' Court were:

Allegany	71,615
Anne Arundel	573,235
Baltimore City	611,648
Baltimore County	832,468
Calvert	91,502
Caroline	33,193
Carroll	167,781
Cecil	102,746
Charles	159,700
Dorchester	32,162
Frederick	252,022
Garrett	29,233
Howard	321,113
Kent	19,384
Prince George's	912,756
Queen Anne's	49,770
Saint Mary's	112,667
Somerset	25,918
Talbot	37,103
Washington	150,578
Wicomico	102,923
Worcester	51,690

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“Except as provided in this section and unless a different time is prescribed by local law, the Court shall be held in each county at the usual place of holding court in the county, on the second Tuesday of February, April, June, August, October, and December, and more often if need be, according to its own adjournment.” MD Est & Trusts Code § 2-106(a).

The small jurisdictions do not have the same caseloads as the middle-sized jurisdictions which do not have the same caseloads as the large jurisdictions. The three largest jurisdictions have their own staff and their Courts are open Monday – Friday. The smaller jurisdictions do not have their own staff and may only have to be open for the minimum days as prescribed by the Estates and Trusts Code. The salaries differ for the Judges as well since compensation is determined by their respective jurisdictions.

There is no one size fits all for the Orphans’ Court. The proposed “study” by a task force is an unnecessary waste of time and resources. As each Orphans’ Court is funded by its particular jurisdiction, any proposed modernization must be made in consultation with each county and city government in the State. The Comments herein have stated the “composition and purpose of the Orphans’ Courts in Maryland,” as requested by the bill. Anyone who wants to further examine the composition and purpose of the Orphans’ Court should read the Maryland Constitution, Article IV and the Annotated Code of Maryland, Estates & Trusts Article.

Therefore,

I recommend an Unfavorable Committee Report for House Bill 339.

Respectfully submitted,



Athena Malloy Groves
Immediate Past President