

**Department of Legislative Services**  
Maryland General Assembly  
2002 Session

**FISCAL NOTE**

House Bill 603  
Judiciary

(Delegate Grosfeld, *et al.*)

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**Equal Access to Justice Act**

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This bill provides that a party to a civil action may not be excluded from attendance at the jury trial of the case based on the party's: (1) physical or mental disability; (2) medical, genetic, or other physiological condition; (3) physical appearance resulting from an injury; (4) incapacity to comprehend the proceedings; or (5) inability to communicate or participate in the trial, except that the court has discretion to exclude a party if necessary to: (1) preserve decorum of the proceedings; or (2) assure continuance of orderly proceedings before the court.

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**Fiscal Summary**

**State Effect:** None. The bill's changes are procedural in nature and are not expected to have a significant impact on State finances.

**Local Effect:** None -- see above.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** A party generally has the right to be present at and participate in trial of the party's case. This right stems from the due process clause of the Maryland and U.S. constitutions as well as Maryland common law. The Court of Appeals has the authority to issue rules and regulations to govern the practice and procedure in all Maryland courts, and those rules and regulations are to be liberally construed.

**Background:** This bill is in response to a recent court decision in which the court ruled that a severely disabled youth, who was unable to communicate and unable to comprehend the proceedings due to his disability, was properly involuntarily excluded from the courtroom during his medical malpractice trial.

Darwin Green was born with hydrocephalus, a condition in which there is excessive fluid in the brain. His birth condition caused him to have developmental disabilities, but he was able to attend special education classes at school and participate in family vacations. When Darwin was 11 years old, he was taken to the local hospital emergency room with symptoms of severe headache, nausea, and drowsiness. He was treated with medication that alleviated the headache and sent home with aftercare instructions. Darwin continued to complain of headaches and the next day, after his primary care physician also noticed Darwin appeared drowsy and was staggering, Darwin was admitted to another hospital for neurosurgery. Overnight, Darwin's status acutely deteriorated and he suffered a cardiac arrest that left him essentially in a vegetative state; he functioned at the level of a one-month old infant and was unable to communicate.

Darwin's parents, on his behalf, subsequently sued the hospitals (one of which settled) and hospital staff for medical malpractice. The trial was bifurcated to separate the issue of liability from damages. The hospital filed a motion to have Darwin's presence excluded from the trial, arguing that Darwin was unable to communicate or assist counsel and unable to understand the proceedings, so that his presence in the courtroom would have no meaning other than to prejudice the jury. After viewing a videotape of Darwin and reviewing relevant deposition transcripts and medical records, the trial court agreed and held that in the liability phase of the trial, the prejudice from Darwin's presence would extend beyond "any instructions that could be offered."

The plaintiff appealed to the Court of Special Appeals, which upheld the trial court's decision to involuntarily exclude Darwin from the liability portion of the proceedings. The Court of Appeals then granted *certiorari*, and also upheld the trial court's decision. The Court of Appeals issued a narrow ruling, holding that:

In the liability phase of a bifurcated trial, the court has discretion to exclude a plaintiff where, after a hearing and an opportunity to observe the plaintiff, either in person, or by other reliable means, the court determines, on the record that: (1) the plaintiff is severely injured; (2) the plaintiff attributes those injuries to the conduct of the defendant(s); (3) there is a substantial prospect that the plaintiff's presence in the courtroom may cause the jury to side with the plaintiff out of emotional sympathy rather than on the evidence; (4) the plaintiff is unable to communicate or participate in the

trial in any meaningful way; and (5) the plaintiff would be unable even to comprehend the proceeding.

*Green v. N. Arundel Hosp. Assoc., Inc., et al.*, 366 Md. 597, 785 A.2d 361 (2001). The court reasoned that, although a party has a right to be present at trial, that right is not absolute. Juror sympathy for a party's condition alone is insufficient to establish juror prejudice; however, there are other factors that may lead a court to determine that the mere presence of a party serves no purpose other than for its prejudicial effect. The court noted that the crux of the judicial function is to provide all parties with a fair trial. The court also noted that several other jurisdictions had reached the same conclusion under similar facts, including Minnesota, Arizona, California, Connecticut, Indiana, New York, North Dakota, Oregon, Tennessee, and the U.S. Court of Appeals for the First and Sixth Circuits.

**Additional Comments:** Senate Bill 185 of 2002 is similar to this bill.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

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