

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 162

(Senator Stone, *et al.*)

Judicial Proceedings

**Public Records - Victim and Witness Information - Remote Access and
Electronic Copying**

This emergency bill amends the Maryland Public Information Act to prevent remote access to and electronic copying of identifying information pertaining to victims or witnesses in a criminal case, other than the defendant.

Fiscal Summary

State Effect: Potential one-time increase in State expenditures of approximately \$147,000 in FY 2007 for the Judiciary to implement the changes to its database required by this bill.

Local Effect: Potential increase in expenditures to Prince George's and Montgomery counties to implement changes to their independent databases.

Small Business Effect: None.

Analysis

Bill Summary: This bill requires a custodian to prevent:

- remote access to the name, address, telephone number, electronic mail address, place of employment, and other identifying information of a victim or witness other than a defendant in a criminal case; and

- electronic copying of this information if the information is not available at computer terminals that a court or other judicial agency provides for public use.

The bill defines “remote access” as the ability to inspect, search, or copy a court record electronically from a location other than the location where the record is stored.

The bill contains exceptions for identifying information of expert witnesses and law enforcement officers and other public officials acting in their official capacities.

Current Law: Rules adopted by the Court of Appeals (Title 16, Chapter 1000 of the Maryland Rules) differ from the Public Information Act in how they treat access to “case records.” Case records are records that come into the court’s possession because they were filed by litigants in judicial actions.

The exceptions to the disclosure requirements under the rules are generally narrower than those under the Act. Under the Maryland Rules, a custodian must deny inspection of a case record or any part of a case record only if inspection would be contrary to: (1) federal law or the U.S. Constitution; (2) the Maryland Constitution or a State statute other than the Public Information Act that expressly or by necessary implication applies to a court record; (3) a provision of the Public Information Act that is expressly adopted by the rules governing court records; (4) a rule adopted by the Court of Appeals; or (5) a court order.

The rules also require custodians to deny access to certain information, including certain actions involving children, identifying information of a person who reports the abuse of a vulnerable adult, and complete Social Security or federal identification numbers. Parties to an action in which a case record is filed can file a motion to seal or limit inspection of the record. Persons who file case records have the responsibility of informing the custodian if all or part of the case record being filed should be shielded from inspection. However, it is the custodian’s decision whether or not to permit inspection of the case record.

Electronic court records are subject to the same inspection provisions as paper records.

Background: The Judiciary provides Internet access to case records via its Public Data Warehouse. In general, information in paper records can be accessed electronically through this system. Because case records are presumed open to public access unless otherwise excluded, the identifying information excluded from access in this bill could be accessed electronically. These records are also accessible at the courthouses where they are stored.

The Standing Committee on Rules of Practice and Procedure recently recommended changes to Title 16, Chapter 1000 of the Maryland Rules to limit remote access to identifying information of victims and nonparty witnesses in criminal cases, other than identifying information of law enforcement officers, other public officials acting in their official capacity, and expert witnesses. The Court of Appeals considered the proposed changes at an open meeting on January 10, 2006, but decided to defer action pending further study.

State Expenditures: The Judicial Information System (JIS) is comprised of several databases. The Judiciary currently estimates that the changes implemented by this bill would require about \$147,000 in computer reprogramming costs in fiscal 2007 only. Because some of the databases cannot separate expert witnesses from other witnesses, this bill could also result in increased operational costs for custodians to manually input this data.

Local Expenditures: The Judiciary advises that there may be increased costs in Montgomery and Prince George's counties' circuit courts, since these counties maintain their own databases. Though these counties transmit data to JIS, they still may have to block information on their independent databases. There are insufficient data at this time to reliably estimate any such expenditure increases needed to implement the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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