

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 232 (The President, *et al.*) (By Request – Administration)
Judicial Proceedings

Court Electronic Records - Personal Information - Victims and Witnesses

This emergency Administration bill prohibits electronic access to personal information, email addresses, or places of employment of victims and witnesses in specified proceedings.

Fiscal Summary

State Effect: Potential one-time increase in State expenditures of approximately \$60,000 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: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Bill Summary: Notwithstanding Title 16, Chapter 1000 of the Maryland Rules, this bill prohibits a custodian from disclosing through electronic access any part of a record of a court or governmental unit of the Judicial Branch that contains the personal information, electronic mail address, or place of employment of a victim or witness in a criminal proceeding, a juvenile delinquency proceeding, domestic violence proceeding, child in need of assistance (CINA) proceeding, juvenile delinquency or child in need of supervision proceeding, and peace order proceeding.

The bill permits courts to order custodians to release these public records after holding a hearing after all victims, witnesses, and persons in interest were given notice. The bill does not prevent disclosing these records if the identifying information has been omitted from the record.

The bill defines “electronic access” as access by electronic means at the location where the record is stored or a location other than the storage location of the record.

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 \$60,000 in one-time (fiscal 2007) computer reprogramming costs.

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 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: HB 323 (The Speaker, *et al.*) (By Request – Administration) – Judiciary.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

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