

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE
Revised

House Bill 323

(The Speaker, *et al.*) (By Request – Administration)

Judiciary

Judicial Proceedings

Court Records - Names and Identities of Victims and Witnesses - Remote Access

This Administration bill provides that in instances where identifying information may not be distributed under Maryland Rule 16-1008(a)(3)(b), a custodian of court records must prevent remote access to electronic court records of the name and identity of any victim, victim representative, or witness.

The bill does not apply to remote access to: (1) electronic court records by judicial officers or employees in the performance of their official duties; or (2) a case record in electronic form by an attorney of record in the action.

The bill takes effect on June 1, 2006.

Fiscal Summary

State Effect: Significant general fund expenditures and administrative costs for the Judiciary to comply with the provisions of this bill, to the extent compliance is even possible. The Judiciary advises that court case management systems supported by the Judicial Information System (JIS) cannot be made compliant with the bill as written since the system cannot determine whether an attorney of record for a particular record is attempting to access the electronic record. The Judiciary also advises that it would have to recode every document in JIS that is affected by the bill so that remote access to identifying information in a record would be blocked to everyone but judicial officials or employees or attorneys of record.

Local Effect: Though Prince George's and Montgomery counties maintain their own databases, they would experience the same logistical difficulties as JIS. Though these counties transmit data to JIS, they would still have to block information on their

independent databases. These counties would incur significant expenditures and administrative costs to comply with the provisions of this bill, to the extent compliance is even possible.

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

Current Law: On March 7, 2006, the Court of Appeals adopted amendments to Maryland Rule 16-1002(f) and adopted Maryland Rule 16-1008(a)(3)(b), effective July 1, 2006. The new rule provides that except for identifying information relating to law enforcement officers, other public officials acting in their official capacity, and expert witnesses, a custodian must prevent remote access to the address, telephone number, date of birth, email address, and place of employment of a victim or nonparty witness in a: (1) criminal action; (2) juvenile delinquency action; (3) domestic violence case; or (4) a peace order proceeding.

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.

Additional Comments: Rule 16-1002(f) as amended, provides that the limitations on access to court records under Title 16, Chapter 1000 of the Maryland Rules do not apply "...to access to court records by judicial officials or employees in the performance of their official duties, or to a case record by a party or counsel of record in the action." Since Rule 16-1008(a)(3)(b) is contained in Title 16, Chapter 1000 of the Maryland Rules, it is assumed that the exceptions under Rule 16-1002(f) as amended would also apply to the newer Rule 16-1008(a)(3)(b). It appears that JIS would not be able to comply with the court's own rule as well.

Additional Information

Prior Introductions: None.

Cross File: SB 232 (The President, *et al.*) (By Request – Administration) – Judicial Proceedings.

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

Fiscal Note History: First Reader - January 30, 2006
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