

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Mary Ellen Barbera  
Chief Judge

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Finance Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq.  
410-260-1523  
**RE:** Senate Bill 727  
Maryland Healthy Working Families Act – Revisions and Public  
Health Emergency Leave  
**DATE:** February 17, 2021  
(3/17)  
**POSITION:** Oppose

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The Maryland Judiciary opposes Senate Bill 727. This bill expands the Sick and Safe Leave provisions of the Labor and Employment Article. In 3-1301, it expands the definition of Family Member to include among many others: a child of the employee's domestic partner; an individual who is recognized as the employee's spouse or domestic partner or as being in a similar union with the employee under the laws of any state or jurisdiction; and, any other individual related by blood to, or whose close relationship with, the employee is equivalent of a family relationship. Therefore, the list of family members who would qualify the employee for the leave has been significantly expanded. In 3-1304, the reasons for when an employee may use sick and safe leave has been expanded to include a "public health emergency."

This bill raises separation of power concerns as it impedes the Judiciary's independence. Article IV, §18(b)(1) identifies the Chief Judge of the Court of Appeals as the administrative head of the Maryland Judiciary. The power to administer the Judiciary is not an implied or inherent power but is an express constitutional power of the Chief Judge. This constitutional authority includes managing the Judiciary's personnel.

The Judiciary has its own comprehensive personnel system with policies that address recruitment, supervision, grievances, and termination. The Judiciary is exempt from those aspects of the State Personnel Management System. Indeed, in 1996, as part of the comprehensive personnel reform bill, the General Assembly enacted State Personnel and Pensions Article §2-201, which says "Except as otherwise provided by law, an employee in the Judicial, Legislative, or Executive Branch of State Government is governed by the laws and personnel policies and procedures applicable in that branch." The Judiciary, therefore, submits that the same principle should be applied here: that this legislation should not be applied to the Judiciary.

This bill would also have a significant operational impact on the Judiciary. This bill could result in an increase in absences during a public health emergency, especially if employees are allowed paid time off in addition to what is currently allowed. This potentially would cause staffing issues that would need to be addressed, either requiring current employees to cover the absences, or hiring additional staff. A large percentage of these employees provide security for the courthouses and the absences could create coverage issues and gaps in building and judicial security. Although the health and safety of the public, judges and the Judiciary staff are a top priority, the Judiciary must ensure that its core functions remain available to provide access to justice for all citizens. This provision could substantially impede this access if courts cannot operate as needed.

Further, not only will this bill have a significant operational impact on the Judiciary but it would also have a significant fiscal impact on the Judiciary. It would require the Judiciary to fund an additional 112 hours of paid leave, per eligible employee. It requires that it be done retroactively, causing the Judiciary to fund absences that have already occurred and for which it did not plan. The Act would be effective immediately upon passage and, as such, providing no opportunity for the Judiciary to budget for the expense, potentially resulting in the need to shift funds from budgeted items to fund the leave.

In addition, this bill is unnecessary as the Judiciary provided federally mandated Emergency Paid Sick Leave (EPSL) to all employees in 2020. When that leave expired, the Judiciary chose to offer to its employees another form of paid leave beginning on January 1, 2021 – Coronavirus Related Paid Leave (CRPL) -- that provides a similar benefit to that offered by the former EPSL.

cc. Hon. Brian Feldman  
Judicial Council  
Legislative Committee  
Kelley O'Connor