

HOUSE BILL 686

MARYLAND JUDICIARY STATEMENT OF SUPPORT AS AMENDED

On behalf of the Maryland Judiciary and at the request of Delegate Susan McComas, the sponsor of HB 686, I was asked to testify in support of the bill, with the amendments that will be proposed at the hearing on the bill scheduled for February 24, 2021. Conscious of the restricted time permitted for oral testimony, I offer this Statement for the Committee's consideration but will be available remotely at the hearing to answer any questions members of the Committee may have.

The bill addresses a serious problem that has always lurked but has become overt and truly deadly in recent times, of judicial officials and prosecutors, and members of their families, becoming active targets for disgruntled litigants, racists, sexists, and other bigots. The Committee members, I am sure, are aware of the tragic attack against the family of U. S. District Court Judge Esther Salas in New Jersey, in which, in a home invasion by a misguided bigot, Judge Salas's son was murdered and her husband was seriously wounded. That outrage was merely the latest that made the national spotlight. Judges in Maryland have received both explicit and implicit death threats over the years. It has been reported that threats and other inappropriate communications against just Federal judicial personnel (who are a small fraction of the number of State judicial personnel) increased from 926 in 2015 to 4,449 in 2019. And the Federal courts do not handle such emotion-laden cases as divorce, domestic violence, peace order, or residential evictions (which, alone, amount to over 600,000 a year in Maryland).

We all recognize that no statute can stop those kinds of threats. Misguided haters and disgruntled litigants seeking vengeance against the judge, magistrate, or

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commissioner who ruled against them will continue to make them. *What can be done, however, is to make it more difficult for them to carry out their threat by attacking or harassing the judge or the judge's family at the judge's home, where the judge or family member is the most vulnerable.* Spurred by the attack on the Salas family, legislation has been proposed in Congress and in many States to achieve at least that objective by removing from the Internet and other public databases identifying information that can be, *and has been,* used to locate the targets where they are most vulnerable.

I have had the opportunity to look at some of the statutes that attempt to block the disclosure of that kind of information – the proposed Federal legislation, the laws enacted in New Jersey and California, and bills currently pending in the General Assembly. The broadest ones that appear to offer the most comprehensive relief – barring the disclosure of any public record of a judge's automobile license plate number, birth or marriage record, or voter registration information – and providing the harshest remedies, such as mandatory punitive damages or criminal sanctions for violations, seem to have a superficial merit, but, on analysis, may well be incapable of practical implementation or, with respect to judicial records, raise serious Constitutional issues.

As part of a team that included other authorized judicial officials, I had the pleasure of working with Delegate McComas on HB 686 and pointing out some of the perceived practical issues with the first reader version of the bill. Our effort was to find a way to support the bill, because we agree with its objective, and Delegate McComas was gracious enough to consider our suggestions and, through proposed amendments, achieve the objective in a way that could be implemented without undue burden on governmental or non-governmental officials or entities.

With the proposed amendments, the law would be housed in the Public Safety Article of the Code, where it belongs, because public safety is its only objective. It

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would cover incumbent and retired Maryland judges, incumbent and retired judges of a United States Court (including a Bankruptcy Court) who are domiciled in Maryland, an incumbent magistrate of a Maryland court or the U.S. District Court for the District of Maryland, an incumbent District Court Commissioner, prosecutors authorized to prosecute a criminal, offense in a Maryland court or the U.S. District Court for the District of Maryland, and members of the immediate family (a defined term) of those officials.¹

Proposed sections 3-521(b) and (c) address the pragmatic problem of implementation. There are two aspects of that. First, like the New Jersey law, the information protected is limited to home addresses and unpublished telephone numbers posted or subject to posting on the Internet and does not extend to records that may need to be publicly accessible. Second, custodians of records in Government files that contain home addresses or telephone numbers may have no way of knowing whether the individual is a retired judge, much less the spouse, child or parent of a judge, magistrate,

¹ We gave consideration to whether the bill should include Federal judges. We took account of the facts that (1) only a handful or two of Federal judges live in Maryland, and (2) legislation is pending in Congress to provide protection to Federal judges, and ,if that legislation passes, State law regarding Federal judges would likely be preempted. On the other hand, it is uncertain whether or when any such Federal legislation may be enacted. The decision was made to include Federal judges who are domiciled in Maryland (U.S. District Court judges, some judges on the U.S. Court of Appeals for the Fourth Circuit, one or more on the Supreme Court, and possibly a few on other U.S. courts located in the District of Columbia) with the understanding that, if Federal legislation is enacted, the Maryland law would likely need to be amended to exclude them.

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prosecutor, or retired judge. Land records or marital property statements required in divorce cases likely will contain a home address. The bill, as proposed to be amended, permits the protected person, who is more likely to know whether a record containing information pertaining to him or her exists, to file a request that any such information not be posted on the Internet or, if already posted, that it be removed and requires the custodian to acknowledge receipt of the request and, if satisfied that the requester is a protected person, to comply with the request.

Section 3-521 (c) provides an analogous procedure with respect to information posted on the Internet by a person other than a unit or official of the State or local government. Under both sections, the protected individual may seek judicial relief, including an award of attorneys' fees, upon a failure to comply with a legitimate request.

Whether or not this bill is enacted, the Court of Appeals Rules Committee will examine whether this kind of information that may reside in judicial records should be shielded from public inspection under the Court's access Rules codified in Title 16, Chapter 900 of the Maryland Rules. That would go beyond just excluding it from the Internet.

As noted, I will be pleased to answer any questions the Committee may have at the scheduled hearing on HB 686.

Respectfully submitted,

/s/ Alan M. Wilner

DRAFT LEGISLATION – 2021 LEGISLATIVE SESSION

Judicial Officials and Prosecutors and Their Immediate Families – Posting of Private Contact Information on the Internet

A BILL ENTITLED

An ACT concerning

Judicial Officials and Prosecutors and Their Immediate Families – Posting of Private Contact Information on the Internet

FOR the purpose of protecting certain judicial officials and prosecutors and their immediate families from the risk of harm to life or property and from unlawful harassment by prohibiting State and local government agencies and certain persons from publishing or posting on the Internet the home address or unpublished home telephone number of certain judicial officials, prosecutors and members of their immediate family under certain circumstances; requiring persons who post such information on the Internet to remove the information on request of the judicial official, prosecutor or immediate family member; providing relief for violations; and generally relating to judicial officials and prosecutors.

BY adding to
Article – Public Safety

Section 3-521

Annotated Code of Maryland

2018 Replacement Volume

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

That the Laws of Maryland read as follows:

Article – Public Safety Article

§ 3-521

(A) In this section the following words have the meanings indicated:

(1) Immediate family member means the spouse, parent, or child of a judicial official or a prosecutor.

(2) Judicial Official means:

(A) an incumbent or retired judge of a Maryland court created under Article IV of the Maryland Constitution;

(B) An incumbent or retired judge of a United States Court, including a Federal Bankruptcy Court, who is domiciled in Maryland;

(C) An incumbent magistrate appointed by the United States District Court for the District of Maryland or a circuit court of the State of Maryland; and

(D) An incumbent commissioner appointed by the District Court of Maryland.

(3) Prosecutor means a person authorized to prosecute an offense in a Maryland court or in the United States District Court for the District of Maryland.

(4) Protected individual means a judicial official, a prosecutor, or a member of the immediate family of a judicial officer or prosecutor.

(B)

(1) A protected individual who has reason to believe that a unit or official of the State or a local government in the State has in its possession the home address or previously unpublished home telephone number of the protected person or member of the immediate family of the protected person may file with the unit or official a written request that:

(a) adequately identifies the individual as a protected individual,

(b) identifies the document or documents likely containing the information, and

(c) directs that such information not be posted on the Internet or, if already posted on the Internet by the unit or official, that it can be removed.

(2) The unit or official shall promptly and in writing acknowledge receipt of the request and, if satisfied that the requester is a protected individual, either redact that information or take all reasonable steps to assure that the information will not be posted on the Internet, or if already posted, it will promptly be removed from the Internet.

(C)

(1) A protected individual who discovers that the individual's home address or previously unpublished home telephone number has been posted on the Internet by a person other than a unit or official of the State or a local government of the State may deliver to the person who posted the information or caused it to be posted by certified and first class mail, a statement that:

- (a) adequately identifies the individual as a protected individual,
- (b) identifies the posting containing the information, and
- (c) demands that the information be removed from the Internet.

(2) Unless the person has good reason to believe that the individual is not a protected individual or that the person did not post the information or cause it to be posted, the person shall promptly remove the information from the Internet or cause it to be removed and inform the protected individual of the removal.

(D) If a unit or official of the State or a local government fails to comply with the requirements of subsection (B) of this section, the protected individual may seek declaratory and injunctive relief and attorneys' fees in any circuit court having venue.

(E) If any other person fails to comply with the requirements of subsection (C) of this section, the protected individual may seek declaratory and injunctive relief, civil damages, and attorneys' fees in any circuit court having venue. Upon a finding by the court that the posting of the information or refusal to remove the posting or cause it to be removed was willful, the court may award punitive damages.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2021.