

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 469
Courts – Remote Public Access
DATE: February 2, 2022
(2/15)
POSITION: Oppose

The Judiciary opposes Senate Bill 469. This bill seeks to require each court in the State, except for Orphans' Courts and Maryland Tax Court, to provide remote audio-visual public access for all public court proceedings unless a proceeding is deemed closed, confidential, or restricted by Federal or State Law.

This bill presents separation of power concerns as it impedes the Judiciary's independence. A separation of powers has been established in Article 8 of the Maryland Declaration of Rights, which states, "the Legislature, Executive and Judicial power of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other." 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 public access to court proceedings. This authority is further established in the Maryland Rules, which states, "The Chief Judge of the Court of Appeals is the administrative head of the Maryland judicial system and has overall responsibility for the administration of the courts of this State. Maryland Rule 16-102.

Currently, the Court of Appeals has Rules in place that govern remote participation by the public in civil matters in both circuit and in the District Court. Both MD Rule 2-804(g) and MD Rule 3-513.1(b) state, "[i]f a proceeding that otherwise would be open to the public is conducted entirely by remote electronic means, the court shall ensure that members of the public shall have the ability to listen to the non-redactable portions of the proceeding during the course of the proceeding through remote electronic means."

Another matter of concern regarding this bill is use of the term "overriding public interest." This term is not defined in the bill nor does the bill provide any factors for the

court to consider when making the determination as to whether to prohibit the broadcast at the request of any party, witness, or counsel. Further, the request to prohibit the broadcast is limited to any party, a witness, or counsel. The bill does not provide the Court with the authority, on their own initiative to prohibit the broadcast. Currently, Maryland Rule 16-608 provides, “upon a finding of good cause, the presiding judge, on the judge’s own initiative or on the request of a party, witness, or juror, may limit or terminate extended coverage of all or any portion of a proceeding. When considering the request of a party, good cause shall be presumed in cases involving domestic violence, custody of or visitation with a child, divorce, annulment, minors, relocated witnesses, and trade secrets.” The Committee note to this Rule states: “examples of good cause include unfairness, danger to a person, undue embarrassment, or hinderance of proper law enforcement.”

In addition, this will have a large fiscal impact on the Judiciary which has not been budgeted for in the Judiciary’s budget. The cost of technology, including delivery and storage is estimated at \$2.5 million. Further, providing ostensibly universal audio-visual access to court proceedings will likely consume an enormous amount of bandwidth causing interruptions in court proceedings and other technology systems. The bill also does not address the consequences to a user who unlawfully records or broadcast court proceedings. Finally, the Judiciary is concerned that the bill makes no allowance for inevitable interruptions in technology caused by unforeseen events such as Wi-Fi outages. In such an event, a court presumably would violate the statute by conducting a proceeding in the absence of public access by audio-visual means.

cc. Hon. Jim Rosapepe
Judicial Council
Legislative Committee
Kelley O’Connor