

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 133
Courts – Remote Public Access
DATE: January 23, 2023
(1/25)
POSITION: Oppose

The Judiciary opposes House Bill 133. 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.

The Maryland Judiciary strongly opposes this bill. The Judiciary has a legitimate and substantial interest in maintaining security and order in its courtrooms and in preserving the dignity of the court. This bill would significantly undermine that authority. Moreover, and of even more significant concern, the bill would allow “an individual *who is not a party to a proceeding* to participate in the proceeding remotely, including by *speaking on the record and offering testimony.*” On its face, the bill would allow members of the public to interject themselves into the trials of unrelated individuals over the objection of the parties to the case. This would almost certainly not pass constitutional muster as it violates the basic tenets of our jurisprudential system – the right to a fair and impartial trial -- and raises significant due process concerns. Judges and juries are constitutionally bound to decide the cases before them based only on the lawfully-presented evidence and applicable law, without partiality or prejudice and without being swayed by public opinion. This bill turns those safeguards upside down. It also violates the Maryland Rules governing discovery; does not allow the parties to vet the witnesses offered or the testimony given; and places the rights of non-parties over the rights of the litigants themselves. In sum, this bill would turn fair and impartial trials into trials-by-ambush and cause chaos in the courts.

Compliance with this bill would have a significant fiscal impact on the Judiciary since it would require certain technical equipment, services, and personnel to enable each court to provide remote audio-visual access for each court proceeding. Judicial Information Systems estimates the cost of compliance at \$2,564,670 annually, excluding any additional labor cost needed. In addition to the above programming costs, the Judiciary

estimates that an additional clerk position would be needed for each judge or magistrate in each location to monitor, receive and respond to any calls for issues with the system. The total personnel and operating costs for an estimated 124 additional clerks in the District Court and 249 additional clerks in the circuit courts is \$30,738,615 in the first full fiscal year. This bill would also have a significant operational and fiscal impact on courts by forcing them to conduct their court proceedings in a manner that accommodates remote audio-visual access. This could include, for instance, having to constantly ensure that audio-video broadcast equipment and services in each courtroom are working correctly. Further, courts would also have to consider requests by parties, witnesses, and counsel to prohibit broadcast of portions of proceedings. It would also require having a clerk or clerks designated to receive and respond to reports of any technical malfunctioning during all court proceeding. This all could result in additional court and clerical time.

Currently, the Supreme Court of Maryland 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.”

This bill presents a separation of powers concern 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 Justice of the Supreme Court of Maryland 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 Justice. This constitutional authority includes managing public access to court proceedings. This authority is further established in the Maryland Rules, which states, “The Chief ... 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.

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.”

It should be noted that audio-visual streaming of hearings will prevent testimony ordered to be stricken from the record to be stricken from the public domain. This inability would also undermine efforts to expunge cases. Once the information is live-streamed and in the public domain, the court lacks any ability to retain, control or redact the use of that live streamed information. Should that case later be expunged, the court would have no ability to expunge the information already in the public domain.

This bill also presents circumstances that may hinder the Judiciary’s ability to properly execute its role as a fair and impartial adjudicator. Currently, when available, hearings are live-streamed with audio only. Adding a visual component could negatively impact victims, witnesses, attorneys, jurors and even judges. Concerns include victim, witness and juror safety, as well as, the forthrightness of testimony and the performance of parties knowing that anyone, anywhere could be watching.

cc. Hon. David Moon
Judicial Council
Legislative Committee
Kelley O’Connor