

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

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 1143
Courts – Recordings of Proceedings - Access
DATE: February 22, 2023
(3/8)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 1143. This bill requires courts to make available upon request copies of recordings of court proceedings except portions of proceedings that the court has ordered shielded. It lists individuals and entities that may obtain unredacted recordings, including the Chief Justice of the Supreme Court of Maryland, the Administrative Judge of the court or circuit in which the proceeding occurred, the judge who presided over the hearing, the Commission on Judicial Disabilities and Bar Counsel, a party to the proceeding, a stenographer or transcription service designated by the court, or any other person authorized by the administrative judge of the county.

Maryland Rules 16-502(g) and 16-504(h) currently require audio recordings in District Court and circuit courts, respectively, to be publicly available with the same exceptions noted above. The appellate courts in Maryland already post online for free recordings of their proceedings. Therefore, no statute is needed to provide a process to request audio recordings.

Further, this bill requires audio-**video** recordings to also be publicly available but with no safeguards in place such as those outlined in the rules. Maryland Rule 16-504(i) provides that a person may listen or view an audio-video recording of a circuit court proceeding at a time and place designated by the court, under the supervision of the custody or other designated court official or employee. This bill turns those safeguards upside down and could allow for widespread public dissemination. This public dissemination would negatively impact victims, witnesses, attorneys, jurors and even judges. This bill does not even require any notice to those individuals that this information has been released. This would also present concerns about victim, witness and juror safety, as well as the forthrightness of testimony and the performance of parties knowing that anyone, anywhere could eventually access this information and spread it to the public domain.

This hinders the Judiciary's ability to properly execute its role as a fair and impartial adjudicator.

Disseminating audio-visual recordings without any protections would also undermine efforts to expunge cases. Once the information is released and in the public domain, the court lacks any ability to retain, control or redact the use of that information. Should that case later be expunged, the court would have no ability to expunge the information already in the public domain.

Finally, this bill raises the issue of separation of powers between the Legislative and Judicial Branches. Article 8 of the Maryland Constitution's Declaration of Rights states: "That the Legislative, Executive and Judicial powers 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(a) of the Maryland Constitution grants the Supreme Court of Maryland the power to "adopt rules and regulations concerning the practice and procedure in the administration" of the State courts. In Maryland Rule 19-602(a), the Supreme Court recognizes that "[c]ontrol over access to judicial records in the custody of judicial agencies, special judicial units, or judicial personnel is an integral part of the practice and procedure in and administration of the courts." Control over access to audio or audio-video recordings of court proceedings is no different. The legislature may exercise its power in order to "augment" or "aid" courts in the performance of their Judicial functions, but it cannot significantly intrude upon them. *Attorney Gen. of Maryland v. Waldron*, 289 Md. 683, 698-99 (1981). Although the bill attempts to align with the existing Rules as far as audio recordings, it is still an intrusion by the Legislature into a Judiciary function rather than an effort to augment or aid courts. Accordingly, by codifying requirements for access to court proceedings, this bill encroaches on the Judiciary's Constitutional authority to set practices and procedures in courts.

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