

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 511

(Senator Waugh, *et al.*)

Judicial Proceedings

Civil Actions – Active Duty Service Members – Electronic Deposition and
Testimony

This bill authorizes a party to a civil action who is entitled to protection under the federal Servicemembers Civil Relief Act because of the party's active duty military status to petition the court to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A party authorized to file such a petition may do so regardless of the party's state of residency. The Maryland Court of Appeals may adopt rules to implement the bill.

Fiscal Summary

State Effect: The bill can be implemented with existing budgeted State resources, as discussed below.

Local Effect: The bill can be implemented with existing local resources, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: A tribunal of this State must cooperate with other tribunals or the appropriate representative of the U.S. Armed Forces in designating an appropriate location for the deposition or testimony.

The bill's provisions may not be construed to abrogate or limit the protections and rights of a party under the federal Servicemembers Civil Relief Act.

Current Law/Background: The purpose of the federal Servicemembers Civil Relief Act is to allow service members to focus on their defense-related responsibilities by providing for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of service members during their active duty military service. It covers a variety of issues, such as rental agreements, evictions, installment contracts, mortgage foreclosures, civil judicial proceedings, life insurance, health insurance, and income tax payments.

Under Maryland Rules 2-513 and 3-513, a court may allow the testimony of a witness to be taken by landline telephone (1) upon stipulation by the parties or (2) on motion of a party to the action and for good cause shown. While the Rule's provisions only apply to testimony by telephone, the Rule does not preclude testimony by other remote means allowed by law or, with the approval of the court, agreed to by the parties. A motion for testimony by telephone must be filed at least 30 days before the trial or hearing at which the testimony is to be offered and must comply with specified content requirements.

A court may find that there is good cause to allow the testimony of a witness to be taken by telephone if (1) the witness is otherwise unavailable to appear because of age, infirmity, or illness; (2) personal appearance of the witness cannot be secured by subpoena or other reasonable means; (3) a personal appearance would be an undue hardship to the witness; or (4) there are any other circumstances that constitute good cause for allowing the testimony of the witness to be taken by telephone.

However, if a party objects, a court is prohibited from allowing the testimony of a witness to be taken by telephone unless the court makes specified findings, including that the witness is not a party and will not be testifying as an expert. A deposition of a witness whose testimony is received by telephone may be used by any party for any purpose for which the deposition could have been used had the witness appeared in person. Unless the court orders otherwise for good cause, all costs of testimony taken by telephone must be paid by the movant and may not be charged to any other party.

Maryland Rule 5-611 requires a court to exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth; (2) avoid needless consumption of time; and (3) protect witnesses from harassment or undue embarrassment.

Under Maryland Rule 2-412, a party desiring to take a deposition must serve a notice of deposition upon oral examination at least 10 days before the date of the deposition or a notice of deposition upon written questions in accordance with specified requirements. If a subpoena is to be served on the person to be examined, it must be served at least 10 days before the date of the deposition. If the deposition is to be recorded by electronic audio or

audio-video means, the notice must specify the method of recording. Maryland Rule 2-416 specifies requirements for audio and audio-video recordings of depositions.

A party to an action may be required to attend a deposition wherever a nonparty could be required to attend or in the county in which the action is pending. A nonparty resident of the State may be required to attend a deposition only in the person's county of residence, county of employment, county of business, or at any other convenient place fixed by order of the court. A nonparty nonresident of the State may be required to attend a deposition in this State only in the county in which the nonresident is served with a subpoena, within 40 miles from the place or services, or at any other convenient place fixed by order of the court.

In a proceeding under the Maryland Uniform Interstate Family Support Act, a tribunal of this State must permit a party or witness residing outside of this State to be deposed or testify under penalty of perjury by telephone, audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of this State must cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

State/Local Fiscal Effect: The Judiciary advises that because the bill allows for communication via telephone, it can meet the bill's requirements with minimal fiscal or operational impact. However, the Judiciary also notes that should alternative methods of communication be required that necessitate enhanced connections, the Judiciary would need to install and/or upgrade audiovisual equipment or other means at a potentially significant cost.

Additional Information

Prior Introductions: None.

Cross File: HB 1585 (Delegate Vallario, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); U.S. Department of Justice; Department of Legislative Services

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mm/kdm

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