

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 469 (Senators Rosapepe and Benson)
 Judicial Proceedings

Courts - Remote Public Access

This bill requires each appellate court, circuit court, and District Court in the State 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 bill authorizes a presiding judge to prohibit the broadcast of any portion of a proceeding on the request of any party, witness, or counsel involved in the proceeding, unless there is an overriding public interest compelling disclosure.

Fiscal Summary

State Effect: General fund expenditures increase by *at least* \$1.9 million in FY 2023 and by \$2.6 million annually thereafter. Revenues are not affected.

(\$ in millions)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1.9	2.6	2.6	2.6	2.6
Net Effect	(\$1.9)	(\$2.6)	(\$2.6)	(\$2.6)	(\$2.6)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential increase in circuit court expenditures, as discussed below. Revenues are not affected.

Small Business Effect: Minimal.

Analysis

Current Law: The Sixth Amendment to the U.S. Constitution guarantees a right to a public trial; accordingly, “criminal trials are to be open to the public as a matter of course,

and any closure of the courtroom for even part of the trial and only affecting some of the public must be done with great caution.” *Robinson v. State*, 410 Md. 91, 102 (2009). The U.S. Supreme Court has held that certain requirements must be met to merit closing a criminal trial from the public: (1) “the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced”; (2) “the closure must be no broader than necessary to protect that interest”; (3) “the trial court must consider reasonable alternatives to closing the proceeding”; and (4) the trial court “must make findings adequate to support the closure.” *Markham v. State*, 189 Md. App. 140, 153 (2009) (quoting *Waller v. Georgia*, 467 U.S. 39, 48 (1984)). At the same time, § 1-201 of the Criminal Procedure Article generally prohibits a person from recording or broadcasting any criminal matter, including a trial, hearing, motion, or argument, that is held in trial court or before a grand jury.

Currently, the Maryland Rules specify circumstances under which a judge in a circuit court or District Court may permit or require participants in civil proceedings to *participate* by means of remote electronic participation. If a civil proceeding in a circuit court or District Court that otherwise would be open to the public is conducted entirely by remote electronic means, the court must ensure that members of the public have the ability to listen to the nonredactable portions of the proceeding during the course of the proceeding through remote electronic means.

In addition, the Maryland Rules specify how official recordings of circuit court and District Court proceedings (including proceedings conducted by remote electronic means) must be created, maintained, and made available upon request.

State/Local Expenditures: The Judiciary estimates annual expenditures of approximately \$2.6 million for costs associated with equipment, licensing, and storage (based, in part, on anticipated case volume in the courts). State expenditures are assumed to increase by *at least* \$1.9 million in fiscal 2023, which accounts for the bill’s October 1, 2022 effective date. Because local governments are responsible for the maintenance of circuit court structures, they may incur additional expenditures should any alterations or additional maintenance be needed to facilitate remote audio-visual access of court proceedings. The Judiciary further advises that accommodating remote audio-visual access and/or requests to prohibit broadcasting under the bill may have an operational impact on the conduct of court proceedings.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 647 (Delegate Moon) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Legislative Services

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