

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
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 1184
Maryland Judiciary – Personal Identifying Information - Protection
DATE: March 3, 2021
(3/10)
POSITION: Oppose, as drafted

The Maryland Judiciary opposes House Bill 1184, as drafted. This bill provides an at-risk individual may submit a written notice to certain entities to request removal of personal identifying information from publicly available content within 72 hours of receipt of the notification. An at-risk individual or immediate family member whose information is not removed may bring an action in any court of competent jurisdiction. The court may issue an injunction ordering removal of personal information and shall award \$10,000 in punitive damages and may include up to three times the amount of actual damages. The legislation allows the Secretary of State to establish and administer the Maryland Judiciary Personal Identifying Information Program for at-risk individuals and immediate family members. The Secretary of State is empowered to adopt regulations to carry out the provisions of this subtitle.

The Judiciary fully supports the sentiment of this legislation but has concerns with implementation of certain provisions. For example, the bill provides that the court must automatically award \$10,000 in punitive damages and may include up to three times the amount of actual damages. The Judiciary believes this provision may be unconstitutional.

In addition, this bill provides that the Secretary of State will establish and administer a Maryland Judiciary Personal Identifying Information Program which will also include adopting regulations to oversee records which may contain information on at-risk individuals. To the extent these records could include court records, this bill would ultimately result in judicial records being bound by regulations promulgated by the Executive Branch. This violates the separation of powers doctrine as it significantly impedes on the Judiciary's independence. Article 8 of the Constitution provides "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." In addition, 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 oversight of judicial records within the Judiciary which ought not be subject to oversight by the Executive Branch.

Although the Judiciary is extremely appreciative of the Sponsor's commitment to the safety and security of judges, the Judiciary would respectfully request that efforts be focused on the passage of House Bill 686.

cc. Hon. Jon Cardin
Judicial Council
Legislative Committee
Kelley O'Connor