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POSITION ON PROPOSED LEGISLATION

BILL: SB469/HB647 – Courts – Remote Public Access

FROM: Maryland Office of the Public Defender

POSITION: Informational

DATE: 02/15/2022

The Maryland Office of the Public Defender respectfully submits this statement as information for the Committee to consider on SB469/HB647.

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. It also 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.

While the Office of the Public Defender understands and appreciates the importance of transparency and access to court proceedings as a means to ensuring a fair judicial system and holding the criminal legal system accountable, providing remote audio-visual public access for all public court proceedings in turn poses many risks and raises serious concerns for our clients and all parties involved in the judicial system. In consideration of this legislation, it is important to weigh and balance these unresolved issues and concerns.

Namely, it is important to acknowledge that public access to criminal court proceedings allows for the general public to act as a check on the legal system and ensure that it is functioning properly and fairly. Indeed with the vast limitations imposed by the Covid-19 pandemic many of our clients and their families have often been deprived of the ability to fully participate in their court proceedings. The utilization of remote access has helped ease and facilitate the ability for parties and families to participate as well as helped shed light to the public on the extensive deficiencies throughout the jails, prisons, and court systems. In addition, the utilization of remote access has in fact improved some aspects of participation by our clients and their families. For instance, prior to implementation of remotely broadcasted proceedings in the Court of Special Appeals, incarcerated clients did not have the opportunity to view live oral arguments in their direct appeal; instead, they could only listen to the audio at a later date. And during bail review hearings, client's family members had to make an impossible choice: come to the courthouse to observe the hearing and support their family member, foregoing an afternoon's pay at work, or miss the hearing entirely.

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That being said, allowing the public to access *all* public court proceedings through remote access presents immense concern for the dissemination of confidential and sensitive information, as well as real dangers with exposing permanent images and information that can not only improperly influence public perceptions and potentially taint jury pools, and be misused by those with ill intentions to impact live proceedings, but also create permanent records for anyone who may later be found not guilty or have their matter dismissed and/or be eligible for expungement of their records.

In criminal proceedings very sensitive information is shared about our clients and parties involved. The public exposure of easily accessible and distributable information pertaining to the incredibly sensitive nature of many of our cases, including prior criminal history, medical and mental illness, substance abuse, family issues, financial limitations, etc., can be extremely detrimental to our clients or others involved. The mass exposure and readily accessible information could have negative and irreparable employment, housing and education ramifications.

Additionally, concerns with allowing remote public access to all public hearings is that there are many court dates involving various types of cases, such as bail review, preliminary hearings, status conferences, motions, pretrial and post-trial, and sentencing and probation proceedings. Most defendants involved in these proceeding are in jail or prison, and the constant streaming of defendants in a detention jumpsuit, presents real dangers for negative images influencing media in ways that historically have had racially discriminatory impacts on black populations and communities.

Allowing remote access to the public also presents far-reaching concerns with the ability for anyone who is watching to post the proceeding on social media, record it, and/or alter it. For example, some of our attorneys have had trials during Covid and the trials were broadcast in a space that was one room over from other family members. In one domestic violence case, the family members of the alleged victim surreptitiously recorded the trial from that other room and then streamed it on Facebook. It was viewed by other witnesses. Thus, there is a real concern about about witness sequestration in any type of hearing where this would be at play. While this is a concern even if the witnesses are in the courtroom, it is far easier to record proceedings when no one is watching you and put it on the internet. Currently we have proceedings that are virtual but the link is only sent out to the parties/attorneys/victims in some cases.

Although this bill includes an important check, allowing a presiding judge to prohibit the broadcast of a proceeding on the request of any party, witness, or counsel involved in the proceeding, there are no guarantees that a presiding judge will in fact grant such request.

As such, we hope this information is helpful and instructive in the Committee's consideration in reviewing this bill.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.