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POSITION ON PROPOSED LEGISLATION

BILL: SB 43 Court Proceedings - Remote Public Access

FROM: Maryland Office of the Public Defender

POSITION: Favorable with Amendment

DATE: 1/24/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable report with amendment on Senate Bill 43.

Senate Bill 43 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. We propose that this latter clause be amended to require the presiding judge to prohibit the broadcast of any portion of a proceeding on the request of the defendant in a criminal or post-conviction proceeding.

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. The COVID-19 pandemic made remote access particularly important and valuable to help 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. For instance, prior to the 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. Likewise, 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.

However, providing remote audio-visual public access for all public court proceedings poses significant risks of the dissemination of confidential and sensitive information. The exposure of permanent images and information may improperly influence public perceptions and potentially taint jury pools, be misused by those with ill intentions to impact live proceedings, and create permanent and misleading records for cases resulting in acquittal, dismissal, reversal, and/or expungement. This last concern is uniquely relevant for people accused in criminal cases and subsequently involved in appellate, post-conviction, and similar related proceedings.

In criminal proceedings, very sensitive information is shared about our clients and parties involved, including prior criminal history, medical and mental illness, substance abuse, family issues, financial limitations, and similar personal matters. The public exposure of easily accessible and distributable information pertaining to these sensitive matters can be extremely detrimental to our clients or others involved, with negative and irreparable ramifications, particularly with respect to employment, housing and education.

Allowing remote access to the public also presents far-reaching concerns. Anyone watching the proceeding has the potential to post the proceeding on social media, record it, and/or alter it. For example, in a domestic violence case that occurred during COVID, the family members of the alleged victim surreptitiously recorded the trial from that other room and then streamed it on Facebook where it was viewed by other witnesses. Moreover, the constant streaming of defendants in a detention jumpsuit reinforces negative images influencing media in ways that historically have had racially discriminatory impacts on black populations and communities.

This bill seeks to include an important check by allowing a presiding judge to prohibit the broadcast of a proceeding on the request of any party, witness, or counsel involved in the proceeding. However, relying on the discretion of the presiding judge will create inconsistent access across cases and not sufficiently protect the accused. **As such, we propose that the bill be amended to require the presiding judge to grant a defendant's request to prohibit the broadcast of a proceeding.**

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable report with amendment on SB 43.

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

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