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POSITION ON PROPOSED LEGISLATION

BILL: HB1143 Courts – Recording of Proceedings – Access

FROM: Maryland Office of the Public Defender

POSITION: Favorable with Amendment

DATE: 3/6/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue a favorable with amendment report on House Bill 1143. HB1143 will ensure that nonparties can receive a copies of recordings of court proceedings, subject to redactions and limited to proceedings in open court. OPD proposes that the bill be further amended to allow for the defendant in a proceeding to object to the dissemination of court recordings in their case.

Transparency is an important component of a healthy judiciary, and access by non-parties implicates important First Amendment concerns and plays a vital role in systemic reform. However, the privacy and fair trial rights of people accused of a crime are equally important. In criminal proceedings, very sensitive information is shared about the defendant 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.

The potential for widespread dissemination of images and audio recording 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. It may also exacerbate the collateral consequences generally associated with a criminal conviction, even for those who are not convicted. While Section (C) will limit access to juvenile proceedings, which are closed as a

matter of law, it will not protect children charged as adults, whose cases do not remain shielded if the transfer is denied, regardless of the case outcome.

To balance the transparency and First Amendment rights of the public with the fair trial and privacy rights of the people accused of a crime, unless otherwise prohibited by law, the Office of the Public Defender proposes that the bill be amended to preclude copying a court recording for a non-party to the proceedings where an objection is lodged by the defendant.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue a favorable with amendment report on HB 1143.

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

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