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March 21, 2024

TO: The Honorable Will Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: Tiffany Johnson Clark
Chief Counsel, Legislative Affairs, Office of the Attorney General

RE: House Bill 141 – Criminal Procedure – Child Abuse Victim – Testimony
Taken Outside the Court Room – **Support**

The Office of the Attorney General urges the Judicial Proceedings Committee to give House Bill 141 - Criminal Procedure – Child Abuse Victim – Testimony Taken Outside the Court Room a favorable report.

Courtroom testimony, including speaking about abuse in front of one's abuser, can be traumatizing for any victim-survivor, especially for a child. House Bill 141 creates a rebuttable presumption that a child victim under the age of 13 shall be taken outside of court, unless there is "clear and convincing evidence" that the testimony "will not result in the child victim suffering severe emotional distress." House Bill 141 properly balances the defendant's right to confrontation with the technological advances that allow for physical distance between the victim-survivor and the defendant.

Ordinarily, witnesses in criminal cases, including victims, must appear in-person on the witness stand in order to fulfill the constitutional obligation that a criminal defendant be "confronted" by the witnesses against them. However, under Section 11-303 of the Criminal

Procedure Article, in the case of a victim in a case of child abuse or sexual abuse of a minor, a judge may permit the victim to remain outside of the courtroom, and have their testimony live-streamed in the courtroom via CCTV, if the judge determines that the child being physically in the courtroom will cause the child to “suffer such emotional distress that the child cannot reasonably communicate.”

An earlier version of CP § 11-303 was upheld, against a challenge that it violated defendants’ constitutional right to confrontation, in *Maryland v. Craig*, 497 U.S. 836 (1990). In *Craig*, the U.S. Supreme Court held: “if the State makes an adequate showing of necessity, the state interest in protecting child witnesses from the trauma of testifying in a child abuse case is sufficiently important to justify the use of a special procedure that permits a child witness in such cases to testify at trial against a defendant in the absence of face-to-face confrontation with the defendant.” *Id.* at 855.

The Office of the Attorney General would like to alert the Committee, however, that by alleviating the State’s burden to make an “adequate showing of necessity”, as required in *Craig*, House Bill 141 could invite a constitutional challenge in a criminal appeal.

For the foregoing reasons, the Office of the Attorney General urges the Committee to vote favorably on House Bill 141.

cc: The Honorable Jesse Pippy
Judicial Proceedings Committee