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POSITION ON PROPOSED LEGISLATION

BILL: HB 290 - OCME Disclosure of Autopsy Information

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: January 22, 2025

The Maryland Office of the Public Defender respectfully urges the Committee to issue an unfavorable report on House Bill 290

While we recognize the intent of HB 290 to protect sensitive personal information about decedents from public exposure under the Maryland Public Information Act, we have significant concerns about the potential adverse impact on the rights of criminal defendants. Specifically, this bill introduces unnecessary ambiguity and risks limiting access to critical information essential for justice and fair defense.

Key Concerns

1. Potential Impact on Criminal Discovery

Although the bill may be interpreted not to limit the Office of the Chief Medical Examiner's (OCME) obligations under Maryland Rule 4-263, this intent is not explicitly clear. Without affirmative confirmation that all information currently discoverable under Rule 4-263 will remain fully accessible to defendants and their counsel this bill could significantly erode critical access to information for criminal defendants.

2. Unbalanced Access

Currently the statute contains language that permits a State's Attorney to obtain any record from the OCME deemed necessary. However, the bill fails to extend the same explicit right to the Office of the Public Defender (OPD) or criminal defendants. This imbalance undermines the fairness of the judicial process and risks violating defendants' constitutional rights to access evidence. While this bill restricts access to others, it should affirm that the rights of individuals in criminal cases are explicitly protected.

3. Discovery Scope and Critical Records

Criminal defense often relies on full access to OCME case files, including:

- Complete autopsy reports with high-resolution photographs.
- Testing results, investigator reports, laboratory notes, and finalized reports.
- Tissue samples, histology slides, imaging data (LODOX, X-rays, CT scans), and photographs in their original format.
- Protocols, referenced documents, raw data, and investigative documents.
- Credentials (CVs) of medical personnel involved in autopsies.

These materials are vital for independent analysis and defense preparation. By broadly exempting "electronic data" and "records" maintained by the OCME from public disclosure, House Bill 290 risks limiting access to evidence necessary for a fair defense.

4. Preservation of Transparency and Accountability

While protecting a decedent's privacy is a commendable goal, it must not come at the expense of transparency or the integrity of the judicial process. Autopsy records and related information often serve as critical evidence in ensuring that justice is served. Restricting access risks shielding potential errors or misconduct from scrutiny.

Recommendation

The Maryland Office of the Public Defender urges the Committee to:

- Amend House Bill 290 to explicitly confirm that the bill does not limit discovery rights under Maryland Rule 4-263.
- Extend equal access provisions to the OPD and all criminal defendants for records maintained by the OCME.
- Ensure transparency and accountability by safeguarding access to critical OCME records in appropriate circumstances.

Given the potential for House Bill 290 to obstruct the rights of Maryland citizens charged with the most serious of criminal offenses and undermine the principles of a fair trial, we strongly oppose this legislation. We respectfully request an unfavorable report.

Submitted by:

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