February 27, 2025

Testimony of Chief Justice Matthew Fader in support of House Bill 966
House Judiciary Committee

The Maryland Judiciary supports House Bill 966. This bill would establish an Artificial Intelligence Evidence Clinic Pilot Program within the Administrative Office of the Courts (AOC). This pilot program would provide expert testimony on the authenticity of electronic evidence that a court determines may have been created or altered by Artificial Intelligence (AI). This applies to circuit courts and the District Court. The AOC would develop a request for proposals for an entity to manage the program and will prioritize Maryland-based academic institutions with expertise in computer science and particularly in AI.

This bill is intended to address an urgent need to help Maryland courts prepare for an expected expansion in the use of allegedly fake evidence associated with the explosive growth and ready availability of generative artificial intelligence platforms. While fabricated evidence is not a new problem in state courts, generative artificial intelligence platforms threaten to exacerbate the problem by offering the ability to create convincing fake evidence with ease and at little or no cost. Such fabricated evidence is often referred to as "deepfakes." At present, and for the readily foreseeable future, courts lack tools to easily and reliably detect when high-quality artificial intelligence may have been used to generate deepfake evidence. Examples of evidence that can be created or manipulated using generative artificial intelligence include digital images, videos, and audio files, all of which are frequently introduced as evidence in our state trial courts, all of which can be given great weight by fact finders in deciding cases, and all of which can be created or manipulated using generative artificial intelligence.

State courts across the country are anticipating that in the near future there will be a substantial increase in challenges to the authenticity of digital evidence, in which one party alleges that something offered as authentic evidence by the other is instead a deepfake. When both parties have sufficient resources to hire experts to opine on the authenticity of the evidence, courts may be able to handle the challenge in the same way they have traditionally handled such challenges. When the parties lack those resources, there is not presently a mechanism for courts to engage expert witness services themselves. As a result, a court may lack any way to determine whether the evidence is real other than their assessment of which party is more likely telling the truth. Given the weight that finders of fact often give to digital evidence such as photographs and

voicemails, the inability to have a more reliable way to determine whether a piece of evidence is real or fabricated may become a significant obstacle to reaching the correct result in cases. Real life examples of disputes that may turn on the authenticity of digital evidence could include a domestic violence protective order case in which one party submits photographs of injuries allegedly caused by the other party, or a custody dispute in which one party submits a series of threatening text messages allegedly sent or voicemails allegedly left by the other party.

The problems presented by the expected substantial increase in deepfake evidence are twofold. First is the risk that deepfakes will be received as real. Second, and equally concerning, is the risk that authentic evidence will be discounted or disregarded out of concern that it might be a deepfake. Both instances create substantial challenges to the truth-seeking function of courts and to the Judiciary's ability to reach the right result under the law. As deepfakes proliferate on the Internet and in social media and as access to the platforms used to create them becomes more familiar to the general public, the Judiciary anticipates that both concerns will quickly grow. The need to find solutions to help courts confront this problem is urgent.

This bill offers an innovative approach to the problem. The bill would allow the Administrative Office of the Courts to create a pilot program that will build the capacity to provide expert witness services to assess the likelihood that digital evidence submitted by parties is authentic. The program will thus allow courts to make better decisions by relying on qualified experts with access to the latest detection technology and expertise in examining metadata and other indicia of genuineness, rather than trying to assess the authenticity of complex digital evidence on their own. It can also be expected that parties who are aware that the courts have access to such services will be less likely to offer deepfake evidence in the first place.

Importantly, this bill also furthers the Judiciary's mission of providing access to justice by focusing on providing expert witness services in cases in which one or both parties are unable to afford them, including cases involving self-represented parties. We are working with the bill sponsor to address two issues with the current language. First, with respect to section (f) of the bill, the Judiciary requests that it be authorized, rather than required, to place a hold harmless provision in its agreement with the selected entity. That will allow the negotiation of a reasonable provision subject to reasonable limitations, rather than requiring an uncapped indemnification. Second, the Judiciary understands the intent of the bill is to authorize a competitive grant to an institution of higher education, rather than an RFP. We are working on language to reflect that.

Thank you for your consideration.