

March 19, 2024

TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER (OPD) REGARDING:

House Bill No. 7181

ENTITLED, AN ACT RELATING TO PUBLIC RECORDS – ACCESS TO PUBLIC RECORDS

Chairman Shanley and Members of the State Government and Elections Committee:

The Office of the Public Defender has concerns with H7181 as currently drafted, which proposes revisions to the Access to Public Records Act (APRA). While we recognize the importance of transparency and open government, we have significant concerns regarding the proposed changes, particularly those related to the exemption of disclosure for case-related materials.

Our primary concern revolves around the modification of the current law that exempts records "relating to a client/attorney relationship." The proposed amendment seeks to change this language to "all records protected by the attorney-client privilege or attorney work product privilege." The removal of the "related to" language poses a considerable challenge for our office, as we maintain records that, while not "protected" by attorney-client privilege or attorney work product privilege, are nonetheless sensitive. It's important to note that these records nearly exclusively come from law enforcement agencies through the discovery process and would be exempt from disclosure if sought from the originating agency.

Additionally, we exclusively represent indigent individuals. The potential disclosable nature of some portions of their files under APRA introduces a disparity between individuals who can afford to hire private attorneys and those who are indigent. This discrepancy contradicts the principles of equal justice and fairness that our legal system strives to uphold.

We firmly believe that there is no public interest served by disclosing information in the individual criminal case files that we maintain of our clients. We propose that these issues could be addressed by either including the Public Defender in the section limiting the release of certain law enforcement records or by exempting the Public Defender from the provisions of APRA, with the exception of administrative records, in a manner similar to how the judiciary is treated.

Thank you for your attention to this matter. We would appreciate the opportunity to further discuss our concerns and provide any additional information you may request.

Sincerely,

Curtis R. Pouliot-Alvarez
Legislative Liaison
Office of the Public Defender
401-222-1524
401-775-9946 [Cell]
cpa@ripd.org