

HOUSE COMMITTEE OF REFERENCE REPORT

Chair of Committee

April 5, 2023
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB23-1182 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

- 1 Amend printed bill, page 3, line 1, strike "EXISTING" insert "SUFFICIENT
- 2 EXISTING STAFF OR".

- 3 Page 3, line 3, strike "OR".

- 4 Page 3, line 5, strike "COURT." and substitute "COURT;".

- 5 Page 3, after line 5 insert:
- 6 "(III) TECHNOLOGY, STAFFING, OR INTERNET ISSUES LIMIT OR
- 7 PREVENT REMOTE OBSERVATION; OR
- 8 (IV) AFTER A REQUEST BY A PARTY, WITNESS, OR VICTIM, THE
- 9 COURT MAKES FINDINGS ON THE RECORD BASED ON THE PARTICULAR
- 10 FACTS AND CIRCUMSTANCES OF THE CASE THAT:
- 11 (A) THERE IS A REASONABLE LIKELIHOOD REMOTE OBSERVATION
- 12 OF LIVE PROCEEDINGS RISKS COMPROMISING THE SAFETY OF ANY PERSON,
- 13 THE DEFENDANT'S RIGHT TO A FAIR TRIAL, OR THE VICTIM'S RIGHTS
- 14 PURSUANT TO SECTION 24-4.1-302.5 (1)(a);
- 15 (B) THERE IS NO LESS RESTRICTIVE ALTERNATIVE THAT PRESERVES
- 16 THE PUBLIC INTEREST IN REMOTE OBSERVATION WHILE MITIGATING THE
- 17 IDENTIFIED RISK. AS USED IN THIS SUBSECTION (3.5)(a)(IV)(B), "LESS
- 18 RESTRICTIVE ALTERNATIVE" INCLUDES ALLOWING REMOTE AUDIO-ONLY
- 19 OBSERVATION WHILE DISABLING VIDEO OBSERVATION OR TURNING OFF
- 20 REMOTE OBSERVATION FOR PARTICULAR WITNESSES OR DISCRETE
- 21 PORTIONS OF THE PROCEEDING.
- 22 (b) AS USED IN THIS SECTION, "RISKS COMPROMISING THE SAFETY"
- 23 INCLUDE RISKS TO PHYSICAL AND EMOTIONAL SAFETY, INTIMIDATION, AND
- 24 HARASSMENT.
- 25 (c) WHEN ALLOWING REMOTE OBSERVATION, COURTS SHALL TAKE

1 REASONABLE STEPS TO ENSURE THERE IS NO AUDIO OR VISUAL RECORDING,
2 INCLUDING PHOTOGRAPHY OR SCREENSHOTS OF THE PROCEEDINGS,
3 WITHOUT EXPLICIT PERMISSION OF THE COURT. AS USED IN THIS
4 SUBSECTION (3.5)(c), "REASONABLE STEPS" MAY INCLUDE THE COURT
5 ISSUING A VERBAL OR ON-SCREEN WARNING AND PROHIBITING REMOTE
6 OBSERVATION BY SPECIFIC INDIVIDUALS WHOM THE COURT HAS REASON
7 TO BELIEVE MAY VIOLATE THIS RULE.

8 (d) WHEN ALLOWING REMOTE OBSERVATION, COURTS SHALL TAKE
9 REASONABLE STEPS TO ENSURE NO AUDIO OR VISUAL TRANSMISSION OF
10 PRIVILEGED, CONFIDENTIAL COMMUNICATIONS OCCURS. COURTS SHALL
11 NOTIFY PARTIES AND ATTORNEYS OF THE LOCATION OF MICROPHONES AND
12 ANY ABILITY TO MUTE MICROPHONES. IF THE COURT BECOMES AWARE
13 THAT SUCH TRANSMISSIONS OCCURRED, THE COURT SHALL WORK WITH
14 THE PARTIES AND ATTORNEYS TO PREVENT REOCCURRENCE.

15 (e) IF A PROCEEDING SUBJECT TO A SEQUESTRATION ORDER IS
16 MADE AVAILABLE FOR PUBLIC REMOTE OBSERVATION, THE COURT SHALL
17 TAKE REASONABLE STEPS TO ENSURE COMPLIANCE WITH THE
18 SEQUESTRATION ORDER AND ENSURE THE RIGHT TO A FAIR TRIAL, WHICH
19 MAY INCLUDE ANNOUNCING THE SEQUESTRATION ORDER AS FREQUENTLY
20 AS NECESSARY IN OPEN COURT, REQUIRING OBSERVERS TO IDENTIFY
21 THEMSELVES TO ENSURE NONE ARE POTENTIAL WITNESSES AND THAT ANY
22 OBSERVERS WHO ARE FORBIDDEN FROM DISCUSSING THE CASE WITH
23 WITNESSES KNOW OF THAT OBLIGATION, AND TERMINATING REMOTE
24 OBSERVATION TO PROTECT THE PARTIES' RIGHT TO A FAIR TRIAL OR TO
25 ENSURE COMPLIANCE WITH THE SEQUESTRATION ORDER."

26 Reletter succeeding paragraph accordingly.

27 Page 3, line 6, strike "EXISTING" insert "SUFFICIENT EXISTING STAFF OR".

28 Page 3, line 9, after "SUCH" insert "STAFF AND".

29 Page 3, line 11, after "SUCH" insert "STAFF AND".

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