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SENATE RESOLUTION

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WHEREAS, On March 17, 2020, the Illinois Supreme Court issued an emergency response to the COVID-19 pandemic by allowing Illinois courts to establish and update, as necessary, temporary procedures, including the use of remote technology, to minimize the impact of COVID-19 on the court system while continuing to provide access to justice; and

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WHEREAS, In May of 2020, the Illinois Supreme Court adopted the "Illinois Supreme Court Policy on Remote Court Appearances in Civil Proceedings" to allow and encourage the broad use of remote court appearances; and

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WHEREAS, The subsequent development of a vaccine and fluctuating changes in COVID-19 numbers allowed the resumption of in-person court hearings periodically throughout the pandemic but on a sporadic and county by county basis; and

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WHEREAS, The National Juvenile Defender Center (NJDC) issued a report in March of 2021 entitled "Due Process in the Time of COVID" that examined the use of remote technology on the ability of lawyers to represent children in conflict with the law; and

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WHEREAS, The NJDC report, based on interviews with lawyers

1 representing children in 38 states, concluded that "the shift
2 to technology-based communications and remote hearings
3 threatens young people's constitutional rights, including
4 fundamental aspects of effective legal representation, due
5 process, and access to courts"; and

6 WHEREAS, The NJDC report also found that "the pandemic has
7 magnified the disparate treatment of youth of color in the
8 delinquency system and the disproportionate danger youth of
9 color face due to their overrepresentation in facilities and
10 the system as a whole"; and

11 WHEREAS, The NJDC report cautioned that the "findings
12 raise serious concerns about the future operations of juvenile
13 courts once the pandemic subsides...Technology-based
14 communications have caused significant barriers in client
15 communication and access to counsel"; and

16 WHEREAS, The NJDC report finds that "every person accused
17 of a crime has a constitutional right to be present at hearings
18 in which their participation may affect the outcome"; and

19 WHEREAS, Privacy concerns and technological challenges
20 with the use of remote conferencing technology has a chilling
21 impact on confidential communication between the attorney and
22 the client during hearings; and

1 WHEREAS, In interviews conducted by the Juvenile Justice
2 Initiative with six children who were sentenced to juvenile
3 prison in the Illinois Department of Juvenile Justice
4 resulting from Zoom court hearings, the children were
5 concerned when speaking with their lawyers through remote
6 technology that their statements would be overheard by another
7 person, such as counselors or correctional officers, who may
8 be just outside the room where they were teleconferencing; and

9 WHEREAS, Remote conferencing limits the capacity of an
10 attorney to ascertain the true level of comprehension of the
11 legal process by their juvenile client; and

12 WHEREAS, Virtual hearings limit the capacity of children
13 to convey emotion and read subtle cues and gestures; and

14 WHEREAS, Virtual hearings dehumanize children; and

15 WHEREAS, A report from the Brennan Center for Justice
16 (Brennan Center) entitled "The Impact of Video Proceedings on
17 Fairness and Access to Justice in Court" highlights some of
18 the negative impacts of remote hearings; and

19 WHEREAS, The Brennan Center report includes a study of
20 Cook County's early use of remote technology in felony bond

1 hearings, beginning in 1999, where defendants participated in
2 bond hearings through closed-circuit television; and

3 WHEREAS, The study of over 645,000 Cook County felony bond
4 hearings between 1991 and 2007 concluded that the average bond
5 amount was 51 percent higher when the hearing was virtual and
6 that some cases saw increases of as much as 91 percent in bond
7 amount; and

8 WHEREAS, The study, along with a class action lawsuit,
9 caused Cook County to voluntarily return to live bail
10 hearings; therefore, be it

11 RESOLVED, BY THE SENATE OF THE ONE HUNDRED SECOND GENERAL
12 ASSEMBLY OF THE STATE OF ILLINOIS, that we urge the Illinois
13 Supreme Court to exercise its authority to require courts
14 throughout Illinois to responsibly transition hearings
15 conducted under Article V of the Juvenile Court Act of 1987
16 back to in-person hearings with priority to those hearings
17 where liberty interests are at stake; and be it further

18 RESOLVED, That we urge the Illinois Supreme Court and the
19 Administrative Office of the Illinois Courts (AOIC) to
20 exercise a rights-based approach when weighing the impact of,
21 and determining policy on, remote court appearances,
22 especially those under Article V of the Juvenile Court Act,

1 focusing primarily on protecting children's rights to
2 in-person participation and confrontation, including the
3 benefits of children being able to meet with their lawyers in
4 person prior to and after court hearings; and be it further

5 RESOLVED, That we urge the Illinois Supreme Court and AOIC
6 to work to ensure that court policies, processes, and
7 procedures implemented to protect the health and well-being of
8 youth involved in the justice system do not infringe upon
9 their access to counsel and their right to a fair trial; and be
10 it further

11 RESOLVED, That we understand that with the possibility of
12 COVID-19 variants or another significant public health crisis
13 there may be times when the Illinois Supreme Court deems it
14 appropriate to transition to virtual hearings for the purpose
15 of protecting the health and well-being for all court hearing
16 participants but that the use of remote technology shall be a
17 last resort for as short a time as possible and all efforts
18 should be made to ensure children have their lawyers
19 physically present during virtual hearings, especially in
20 cases where liberty interests are at stake.