

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: House Judiciary Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: House Bill 1376
Criminal Procedure – Cameras in the Courtroom – Criminal
Sentencing Hearings
DATE: February 25, 2020
(2/26)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 1376 for the following reasons:

- (i) Broadcast coverage of criminal proceedings discourages victims and witnesses from participating in the criminal justice process;
- (ii) Broadcast coverage sensationalizes and distorts the criminal justice process, often at the expense of minorities; and
- (iii) House Bill 1376 is unworkable and encroaches upon the authority of the judicial branch to regulate courtroom procedure to guarantee fair and orderly administration of justice.

Broadcast coverage of criminal proceedings discourages victims and witnesses from participating in the criminal justice process. In 2008, the Judiciary completed a six-month investigation into whether electronic media should be allowed in criminal courtrooms. At its public hearing, all witnesses representing participants in the criminal justice process (the Maryland State’s Attorneys Association, the Office of the Public Defender, the Maryland State Bar Association, and the Maryland Crime Victims Resource Center) were opposed to allowing television coverage of Maryland criminal proceedings. **The fact that prosecutors, the defense bar, victims’ rights advocates, and the Judiciary were and continue to be opposed to broadcast coverage of criminal proceedings is compelling.**

HB 1376 concerns the sentencing hearings, where the prospect of victim exploitation is particularly acute. Sentencings proceedings are by their nature highly emotional affairs. Victims and their families are asked to provide “victim impact statements,” which often include sensitive medical and psychological information. Defendants also offer

testimony regarding equally personal and often traumatic details of their lives in mitigation or to establish their prospect for rehabilitation. **These intimate details of humiliation and suffering have no educational value to the general public. Televising them can serve only to satisfy a prurient interest in the misfortune of others, solely for the commercial benefit of broadcast media organizations.** This was of grave concern to prosecutors and victims' rights advocates for cases involving domestic violence, child abuse, homicide, and other crimes of violence, precisely the types of cases that receive the most media attention. There is nothing in HB 1376 that would prevent the broadcasting of testimony of victims' family members, who often are the most compelling, if not the only, witnesses providing impact statements at sentencing hearings, particularly where the actual victim is young, had young children, or is deceased or incapacitated. Their only protection is to refuse to testify or otherwise cooperate in the sentencing hearing.

The chilling effect of television on victim and witness participation feared by prosecutors and victim advocates has been demonstrated in several studies. A Marist Institute poll of New York voters conducted before the New York Legislature ended its experiment with cameras in its courts in 1996 revealed that **54% of the respondents (including 64% of female respondents) would be less willing to testify if cameras were present, and 68% would not want their trial televised if a victim of a crime.** Marist Institute for Public Opinion, *Television Cameras in the Courts* (1996). A survey of more than 600 teens from high-crime neighborhoods indicated that two-thirds cited fear of retaliation as the primary reason that people refuse to report gang-related crime to the police. National Center for Victims of Crime, *Snitches Get Stitches: Youth, Gangs and Witness Intimidation in Massachusetts* (2007). The fact that their testimony can now be broadcast and go viral instantly on social media would add to the reluctance of victims and witnesses to come forward to report and then help prosecute violent crime in Maryland.

Broadcast Coverage Sensationalizes and Distorts the Criminal Process, Often at the Expense of Minorities. Other research confirms that television coverage of criminal proceedings is driven by a commercial desire to entertain, rather than educate viewers, while distorting, rather than reporting on the criminal justice system. A 2002 study published in the Harvard International Journal of Press & Politics concluded that television news tends to focus on the violent and the unusual, rather than cases of broad community import; that television coverage consists of short and dramatic clips, and is less likely to include explanatory content than newspapers; and that **members of minority communities are more likely to be covered by the media as perpetrators of crime than are whites, particularly when the victims are white.** Citations to these studies can be found in the Report of the Committee to Study Extended Media Coverage of Criminal Trial Proceedings in Maryland (February 1, 2008). On the question of racial disparities in television coverage:

According to averages of arrest statistics from the [NYPD] for the past four years, African Americans represented 54% of murder arrests, 55% of theft arrests, and 49% of assault arrests. But between August 18 and December 31, 2014, 74% of murders, 84% of thefts, and 73% of assaults covered by the four major broadcast

television stations in New York City involved African American suspects [citation omitted] Similar data has been collected in other regions. ...[See] Trina T. Creighton, et al, *Coverage of Black Versus White Males in Local Television Lead Stories*, 4(8) J. Mass Comm'n Journalism 216, at 4 (2014) (a study of news coverage by Omaha's four local television affiliates over a 3-month period in 2012 showed that 69% of crime-related lead stories featured an African American male as the perpetrator, while African American males represented only 39% of arrests over the same time period).

S.Ct. Minn., ADM09-8009 (8/12/15), at D10-12, Page, J., dissenting (footnotes omitted)

The Judiciary, therefore, has again concluded that television coverage dangerously distorts, rather than accurately reports, what actually happens in our communities and courtrooms. It should not be permitted.

House Bill 1376 Encroaches on Judicial Authority to Regulate Court Procedure.

House Bill 1376 inappropriately attempts to dictate courtroom procedure by statute, rather than through the Maryland Rules of Practice and Procedure, the manner in which the Judiciary traditionally exercises its constitutional prerogative to regulate day to day operations. House Bill 1376 imposes on court clerks the burden to notify parties (*i.e.*, the State and the defendant, but not the victim or the victim's family) of the media's interest in broadcasting the proceeding, a burden that should be borne by the media. Further, the bill as drafted is simply unworkable. The proposed 24-hour notice period is not sufficient to: (1) provide actual notice of the request to the parties; (2) afford the parties time to consult witnesses, victims, and clients to determine whether there are grounds for seeking to limit coverage; (3) enable the parties to notify the court of their position; (4) allow the court to schedule and then hold a hearing; (5) allow the judge time to deliberate and make findings of facts as required in the bill, and then draft and enter an appropriate order; (6) make arrangements for access to the courtroom to set up the equipment necessary for the broadcast; (7) establish any pooling arrangements that would be required if multiple media outlets that want to televise the proceedings; and (8) test the equipment to ensure that any limitations set by the court are properly honored.

Court schedules are set weeks and months in advance. Even if it were possible to accomplish all of these tasks in 24 hours, it would require multiple court employees to drop everything to meet the deadline. This would result in considerable expense and inconvenience to parties, witnesses, jurors and attorneys involved in other scheduled proceedings whose matters are pushed aside in order to meet the legislatively imposed deadline. HB 1376, therefore, is a prescription for costly delay and disruption that will have a rippling effect throughout the courthouse.

The proposed legislation also contains no provisions to protect the identity or image of jurors or spectators and provides no authority for a judge to deny requests for coverage if it is not technologically feasible, a significant problem in many courtrooms as outlined in the Administrative Office of the Courts' explanation of the fiscal impact of House Bill 1376.

It is respectfully submitted that if the concerns of law enforcement, victims, the organized bar, and the judicial branch are to be ignored, then the manner in which television coverage is to be regulated and implemented should continue to be governed by the Maryland Rules of Practice and Procedure. Rule 16-601 et seq. currently governs electronic coverage of civil proceedings. Matters covered by Rule 16-601 et seq, include, for example, limitations on coverage of attorney-client communications and side-bar conferences, prohibitions on broadcasting from the courtroom during recesses, and protection against delays to accommodate electronic coverage. This rule, like all court rules, was enacted after extensive study and public comment that allowed for consideration of all competing interests.

There is also nothing in the bill to require commercial media organizations to reimburse the court and/or sheriff for expenses incurred as a result of their coverage, including overtime for security and technical staff needed on short notice before and after regular court hours while equipment is being set up or taken down, or for the installation of minimally intrusive state-of-the-art equipment that would allow the court to monitor the audio-visual feed. Many of these and other important details are addressed in the Maryland Rules, the most appropriate vehicle for governing court procedures.

The Maryland Judiciary is opposed to HB 1376.

cc. Hon. Nicholas Kipke
Judicial Council
Legislative Committee
Kelley O'Connor