

MEMORANDUM

To: Members of the Senate Judicial Proceedings Committee

From: Maryland State Bar Association (MSBA)
Shaoli Katana, Esq., Director

Subject: Senate Bill 758 - Criminal Procedure - Live Video Streaming of Public Proceedings (The Judicial Transparency Act 2.0)

Date: March 2, 2022

Position: Oppose

The Maryland State Bar Association (MSBA) respectfully opposes **Senate Bill 758 - Criminal Procedure - Live Video Streaming of Public Proceedings (The Judicial Transparency Act 2.0)**. Senate Bill 758 requires the court to make available to the public live video streaming of all public proceedings for criminal cases involving a crime of violence; and prohibits a certain live video streaming from depicting a juror or an alleged victim of a sexual offense.

MSBA represents more attorneys than any other organization across the State in all practice areas. MSBA serves as the voice of Maryland's legal profession. Through its Laws Committee and various practice-specific sections, MSBA monitors and takes positions on legislation of importance to the legal profession.

MSBA recognizes and supports transparency and public access to courts. Virtual court proceedings are now commonplace throughout Maryland, due to advances in technology, and further accelerated by the pandemic. Some local jurisdictions have allowed remote public access and streaming to select virtual hearings during the pandemic. The Court of Appeals has video-streamed oral arguments since 2006 and maintains an archive of past arguments for viewing.

However, in considering public access to specific court proceedings, we must also take into consideration the varying technological capabilities of each jurisdiction, the impact of the bill on jurisdictions that have several criminal trials daily, and resulting added costs. Jurisdictions vary widely in their technology and broadcast capabilities, and there is no uniformity across the state regarding this technology. The related Fiscal and Policy Note estimates an increase of \$2.6 million for Judiciary expenditures for

equipment, licensing and storage, and at least \$1.9 million in fiscal year 2023 in state expenditures. The Note further states that because local governments are responsible for maintenance of circuit court structures, they *may* incur additional expenditures if additional maintenance or alterations are needed to facilitate live video streaming of court proceedings.

Additional costs will certainly be a reality for many jurisdictions, in order to comply with the technology requirements of this bill. Jurisdictions that have several criminal cases occurring simultaneously in one day will have significant added costs, as additional equipment and systems would be required in multiple courtrooms. More detailed analysis is needed regarding the costs and technology supports needed to implement this protocol statewide before any further consideration of SB 758.

The bill also raises concerns about the ability of the Judiciary to regulate court proceedings. Judges strive to maintain appropriate control and decorum of all persons in the courtroom, and SB 758 creates the potential for multiple disruptions to this process. The discretion of broadcasting and regulating court proceedings should give appropriate consideration and deference to the judicial branch and proper process through the Maryland Rules of Practice and Procedure, rather than by statute.

The proposed legislation could also negatively impact participants in the criminal cases. Because the bill focuses on live streaming cases involving crimes of violence, victims and witnesses of brutal assaults and sexual abuse could be retraumatized by these recordings and broadcasts and having their testimony shared so broadly and publicly. This bill could serve as a deterrent from these victims and witnesses coming forward and participating in the criminal process. Although §1-201(c)(2) of the bill excludes jurors and an alleged victim of a sexual offense from “being visible” in a live video streaming, the bill language does not specify any further protections for these groups and would not diminish concerns about additional traumas described above.

MSBA looks forward to serving as a partner in exploring these important issues of transparency and public access to the courts. All partners must consider the impact on the judicial process and case participants, and the implementation and cost to local jurisdictions, before further consideration. For the above reasons, MSBA **opposes** SB 758 and respectfully requests an **unfavorable report**. For additional information, please feel free to contact Shaoli Katana at MSBA at shaoli@msba.org.