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POSITION ON PROPOSED LEGISLATION

BILL: SB758 Criminal Procedure – Live Video Streaming of Public Proceedings (The Judicial Transparency Act 2.0)

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: March 2, 2022

The Maryland Office of the Public Defender respectfully requests that this Committee issue an unfavorable report on SB758 for the following reasons:

This bill requires the court to make available to the public live video streaming of all public proceedings for criminal cases involving a crime of violence under § 14-101 of the Criminal Law Article. Although, a juror and an alleged victim of a sexual offense may not be visible in a live video streaming.

While the Office of the Public Defender understands and appreciates the importance of transparency and access to court proceedings as a means to ensuring a fair judicial system and holding the criminal legal system accountable, providing public broadcasting access for all court proceedings involving crimes of violence in turn poses many risks and raises serious concerns for our clients and all parties involved in the judicial system. In consideration of this legislation, it is important to weigh and balance these unresolved issues and concerns.

It is important to acknowledge that public access to criminal court proceedings allows for the general public to act as a check on the legal system and ensure that it is functioning properly and fairly. However, allowing the public to access *all* public court proceedings involving crimes of violence presents immense concern for the dissemination of confidential and sensitive information, as well as real dangers with exposing permanent images and information that can not only improperly influence public perceptions and potentially taint jury pools, and be misused by those with ill intentions to impact live proceedings, but also create permanent records for

anyone who may later be found not guilty or have their matter dismissed and/or be eligible for expungement of their records.

According to the 2008 report provided by the Committee to Study Extended Media Coverage, a Subcommittee of the Legislative Committee of the Maryland Judicial Conference, media coverage can adversely impact trial participants, interfere with the fact-finding process, and impair public confidence in the criminal justice system.¹ The committee determined unanimously that the putative benefits of extended electronic media coverage are illusory, while the adverse impacts on the criminal justice process are real. Additionally, it was concluded unanimously that the current statutory ban on cameras in criminal trial courts should remain in effect.

The Committee agreed in principle with the media's contention that broadcast coverage has the potential to educate the public. In practice, however, television coverage of court proceedings has most often been used to entertain rather than to educate its viewers. SB758 and its focus on criminal proceedings involving crimes of violence, would further encourage sensationalized media coverage and not informational coverage.

Media broadcasting of such criminal proceedings would allow for the exposure of sensitive information that can have serious privacy implications for persons impacted by criminal proceedings on both sides. The nature of sentencing proceedings is highly emotional and often victims and their families are asked to provide victim impact statements, which can include information regarding the victim's medical and psychological information. While the bill prevents jurors and victims of sexual offenses from being visible on the broadcasting, victims would still be heard audibly and there is nothing protecting the broadcasting of their identities through other means throughout the proceeding. In criminal proceedings very sensitive information is shared about our clients and other parties involved. The public exposure of easily accessible and distributable information pertaining to the incredibly sensitive nature of many of our cases, including prior criminal history, medical and mental illness, substance abuse, family issues, financial limitations, etc., can be extremely detrimental to our clients or others involved. The mass exposure and readily accessible information could have negative and irreparable employment, housing and education ramifications.

¹ <https://www.mdcourts.gov/sites/default/files/import/publications/pdfs/mediacoveragereport08.pdf>

Moreover, broadcasting criminal proceedings impedes a person's ability to adequately expunge their record. Under Maryland law, numerous offenders are able to expunge or remove their criminal convictions from public inspection. A significant reason for this ability is to promote the potential for future success and give persons involved in the criminal system a second chance. If that person's criminal proceedings had been broadcasted to the public, however, the Court would be unable to control its dissemination and could not ensure its removal from public inspection.

Broadcast coverage sensationalizes and distorts the criminal process, often at the expense of minorities. 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 informational 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.² For example, according to averages of arrest statistics from the New York City Police Department from 2011-2016, 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.³ This disproportional, and racially biased media coverage has been noted elsewhere throughout the country.⁴

Further, the approval of SB758 encroaches on judicial authority to regulate court procedure. It 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.

For the foregoing reasons, the Maryland Office of Public Defender urges an unfavorable report on SB758.

² Vinson, C. Danielle & John S. Ertter, Entertainment or Education, How Do the Media Cover the Courts?, Harvard Intl. J. Press/Politics 7:80 (Fall 2002).

³ Daniel Angster & Salvatore Colleluori, New York City Television Stations Continue Disproportionate Coverage of Black Crime (Mar. 23, 2015, 9:34 AM).

⁴ See also 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).