

**MARYLAND JUDICIAL CONFERENCE**  
**GOVERNMENT RELATIONS AND PUBLIC AFFAIRS**

Hon. Joseph M. Getty  
Chief Judge

187 Harry S. Truman Parkway  
Annapolis, MD 21401

**MEMORANDUM**

**TO:** Senate Judicial Proceedings Committee  
**FROM:** Legislative Committee  
Suzanne D. Pelz, Esq. (410-260-1523)

**RE:** Senate Bill 758  
Criminal Procedure – Live Video Streaming of Public Proceedings

**DATE:** February 28, 2022  
(3/2/22)

**POSITION:** **OPPOSE**

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The Maryland Judiciary opposes Senate Bill 758 for three primary reasons:

- (i) Live video streaming of criminal proceedings will discourage victims and witnesses from participating in the criminal justice process;
- (ii) Live video stream feeds will be exploited by commercial media, which has historically used audio-visual court recordings to sensationalize and distort the criminal justice system, often at the expense of minorities; and
- (iii) By mandating live video streaming of every proceeding involving a crime of violence, (e.g., every bail review hearing, arraignment, pretrial, in-trial and post-trial motions hearing, every trial, sentencing hearing, and appeal), Senate Bill 758 is a costly and unwieldy encroachment on the authority of the judicial branch to regulate courtroom procedure necessary to fulfill its constitutional obligation to guarantee the 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 concluded a six-month investigation into whether criminal proceedings should be broadcast to the public. As detailed in its [published report](#), **all representatives of 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) testified in opposition to broadcast coverage of Maryland criminal proceedings.** The fact that prosecutors, the defense bar, and victims’ rights advocates were opposed to allowing broadcast coverage of criminal proceedings was compelling, and the Judiciary concluded that the existing ban on electronic coverage should continue.

Victims and their families are often required to describe humiliating details of heinous acts perpetrated against them, and are asked to reveal sensitive personal, medical and psychological information. Defendants likewise provide testimony and evidence regarding personal details of trauma in their lives in mitigation or to establish their prospects for rehabilitation. **These intimate details of personal humiliation and suffering have no educational value and televising them can serve only to satisfy a prurient interest in the misfortune of others and for the commercial benefit of broadcast media organizations.**

This was of grave concern to prosecutors and victims' rights advocates for cases involving homicide, sexual assault, domestic violence, child abuse and other crimes of violence, precisely the types of cases that receive the most viewer attention and to which SB 758 would apply. Except for victims of sex crimes (whose images could not be shown but whose voices would still be live streamed), there is nothing in the bill to protect victims and their families from having to bare their souls to the world, on camera and in real time. They would be left to fend for themselves, and their only defense would be to refuse to testify.

The chilling effect of television on victim and witness participation feared by prosecutors and victim rights 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 – a decade before YouTube was founded and the term “going viral” entered our lexicon - 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). See also National Center for Victims of Crime, *Snitches Get Stitches: Youth, Gangs and Witness Intimidation in Massachusetts* (2007) (two-thirds of the 600 teens polled cited fear of retaliation as the primary reason that people refuse to report gang-related crime to the police).

[WBFF/Fox 45 in Baltimore has reported that in 2018](#) **“Baltimore City prosecutors dismissed over 300 cases because victims and witnesses would not work with them on a case.”** The fact that their testimony would be live streamed will likely intensify their reluctance to report and help prosecute violent crime in Maryland, and add to the nearly \$4 million dollars already being spent in the City annually to protect those who do.

This seems to be a rather high price to pay for “judicial transparency,” which SB 758 purports to promote. The fact is that **all public proceedings for criminal cases involving a crime of violence are already open to the public and to the press**, which is free to attend and report on what transpires in the courtroom. SB 758 and taxpayer financed audio-visual footage of victims, witnesses and other trial participants will add little to public discourse, but would cost Marylanders much.

**Broadcast Coverage Sensationalizes and Distorts the Criminal Process, Often at the Expense of Minorities.** As SB 758 places no limitations on the use of live streamed video to be produced at public expense, commercial media can be expected to appropriate the most tantalizing excerpts and sound bites for private gain. Research confirms that television coverage

of criminal proceedings is driven by a desire to entertain rather than educate viewers and distorts rather than reports on the criminal justice system. A 2002 study published in the Harvard International Journal of Press & Politics concluded that television news focuses on the violent and the unusual rather than cases of broad community import; that television coverage consists of short and dramatic clips with little explanatory content; and that **minority members of the community are far 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 Judiciary's previously published [report](#) at pp. 22-32.

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 video broadcasting dangerously distorts rather than accurately reports what happens in our communities and courtrooms. It should not be permitted.

### **Senate Bill 758 Encroaches on Judicial Authority to Regulate Court Procedure.**

SB 758 represents an unnecessary encroachment upon the authority of the judicial branch to regulate courtroom procedure that will interfere with its constitutional obligation to guarantee the fair and orderly administration of justice. The shotgun approach of SB 758 (“[t]he court shall make available to the public live video streaming of all public proceedings for criminal cases involving a crime of violence”) is also expensive and unworkable.

The bill mandates that every proceeding, from arraignment through sentencing and post-conviction, be live streamed. In larger jurisdictions, many such “proceedings” occur simultaneously at any given hour. The hardware, software, staffing and other logistical costs of such an undertaking would be significant.

In addition to the costs of equipping every courtroom with the audio-visual equipment necessary to capture and record criminal proceedings, the Judiciary estimates that it will need **an additional \$2.5 million annually for required software licenses and enhanced storage capability needed to comply with the live stream mandate.** The estimate does not include the costs associated with ensuring that each district and circuit courthouse has the required

bandwidth to broadcast simultaneously from multiple courtrooms without adversely impacting the information technology needs for routine courthouse operations and communications.

The \$2.5 million estimate also does not include costs for staff needed for the most basic courtroom tasks associated with the proposed mandate, such as technicians to ensure functionality and troubleshoot problems. As SB 758 precludes showing jurors and victims of sex offenses, other employees would be required to monitor the video feeds to make sure that the video feed is properly redacted. Employees would also need to be certain that side-bar discussions and confidential communications between lawyer and client are not broadcast to the public. Other important questions, such as how to prevent these recordings from being viewed by jurors before or during deliberations, are left open by the bill.

The practical considerations of having the Legislature impose a broadcast requirement on the Judiciary are considerable, which illustrates a more fundamental point: **regulation of courtroom procedure is a time-honored constitutional prerogative of the trial judge regulated by the Court of Appeals through the Maryland Rules of Practice and Procedure.** [Rules 16-601 et seq.](#), for example, already govern electronic coverage of civil proceedings and expressly address, *inter alia*, coverage of attorney-client communications and side-bar conferences, and the protection of privacy and other rights of trial participants. These rules, like all court rules, were enacted after extensive study and public comment that allowed for consideration of the concerns of what are often competing interests. The Judiciary respectfully submits that if it, the MCVRC, the MSAA and the OPD are to be ignored and the broadcast coverage of criminal proceedings is to be imposed on the courts, then the constitutional prerogative of the Court of Appeals to regulate courtroom procedure and to guarantee the fair and orderly administration of justice ought to be respected.

The Maryland Judiciary, therefore, is opposed to SB 758.

cc: Hon. Antonio L. Hayes  
Maryland Judicial Council  
Legislative Committee  
Kelley O'Connor, Esquire