

# **SB 758 Testimony.docx.pdf**

Uploaded by: Antonio Hayes

Position: FAV

ANTONIO HAYES  
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Finance Committee



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THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Hayes in Support of Senate Bill 758: Criminal Procedure – Live  
Video Streaming of Public Proceedings (The Judicial Transparency Act 2.0)**

**March 2, 2022**

Dear Chairman Smith and Members of the Judicial Proceedings Committee,

SB 758 is a bill drafted in order to improve the public's confidence and transparency in our judicial system. The goal of this bill is to make live streaming of Court proceedings available to the public. Similar to how the Maryland General Assembly streams bill hearings. With reasonable exceptions in place to protect the privacy of jurors, minors, and victims involved in cases. As things currently are, the Courts already have the technology in place to hold remote hearings & offer audio streaming, video streaming is the next step in establishing more communal trust. The scope of this bill covers all violent crimes and would enable proceedings to be easily available for the public to watch.

Thus, I urge a favorable report on Senate Bill 758.

Respectfully,

A handwritten signature in blue ink, appearing to read "Antonio L. Hayes".

Senator Antonio L. Hayes  
40<sup>th</sup> Legislative District - MD

**MDDC Support SB758.pdf**

Uploaded by: Rebecca Snyder

Position: FAV



**Maryland | Delaware | DC Press Association**

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To: Judicial Proceedings Committee

From: Rebecca Snyder, Executive Director, MDDC Press Association

Date: March 2, 2022

Re: **SB758- SUPPORT**

The Maryland-Delaware-District of Columbia Press Association represents a diverse membership of news media organizations, from large metro dailies like the Washington Post and the Baltimore Sun, to hometown newspapers such as The Annapolis Capital and the Frederick News Post to publications such as The Daily Record, the Baltimore Times, and online-only publications such as MarylandReporter.com and Baltimore Brew.

The Press Association is pleased to support SB758, which would allow livestreaming of all criminal proceedings with the exception of a juror or an alleged victim of a sexual offense.

During the past two years, the public has become increasingly familiar with virtual participation in various proceedings. Courts held sessions virtually and have become more adept at this. This bill simply continues in that vein by allowing live broadcast of criminal court proceedings. This is not a new concept. In a 2016 report by the Federal Judicial Center, "Video Recording Courtroom Proceedings in United States District Courts: Report on a Pilot Project", ([http://www.fjc.gov/public/pdf.nsf/lookup/Cameras-in-Courts-Project-Report-2016.pdf/\\$file/Cameras-in-Courts-Project-Report-2016.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/Cameras-in-Courts-Project-Report-2016.pdf/$file/Cameras-in-Courts-Project-Report-2016.pdf)) researchers surveyed bench, bar and staff to understand the effects of a pilot program for video recording. News media were allowed to record and broadcast court proceedings in several of the pilot sites. Survey respondents said that news media did not pose disruptions to proceedings (p Appendix F-14, F-15).

Live streaming criminal court proceedings will provide more transparency and openness to the process and allow the public to better understand and access the court system. It will also allow for court watchers and others to more easily understand the broad trends within the criminal justice system. This legislation is important to our members, as they would be able to cover proceedings more easily and thoroughly without the burdens of proximity.

The Press Association urges a favorable report.



**We believe a strong news media is  
central to a strong and open society.**

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# **OPD Opposition to SB758.pdf**

Uploaded by: Krystal Williams

Position: UNF



**PAUL DEWOLFE**  
PUBLIC DEFENDER

**KEITH LOTRIDGE**  
DEPUTY PUBLIC DEFENDER

**MELISSA ROTHSTEIN**  
DIRECTOR OF POLICY AND DEVELOPMENT

**KRYSTAL WILLIAMS**  
DIRECTOR OF GOVERNMENT RELATIONS DIVISION

**ELIZABETH HILLIARD**  
ASSISTANT DIRECTOR OF GOVERNMENT RELATIONS DIVISION

## **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.<sup>1</sup> 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 criminals 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.

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<sup>1</sup> <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.<sup>2</sup> 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.<sup>3</sup> This disproportional, and racially biased media coverage has been noted elsewhere throughout the country.<sup>4</sup>

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.

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<sup>2</sup> 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).

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

<sup>4</sup> 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).



**sb758final.pdf**

Uploaded by: Sara Elalamy

Position: UNF

**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

**SB 758 - MSBA Opposition Letter (2022.03.02).pdf**

Uploaded by: Shaoli Katana

Position: UNF

## 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

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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](mailto:shaoli@msba.org).