

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Joseph M. Getty
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 810
Criminal Procedure – Cameras in the Courtroom – Criminal
Sentencing Hearings
DATE: February 9, 2022
(2/15)
POSITION: Oppose

The Maryland Judiciary opposes House Bill 810 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 810 is an unworkable encroachment upon the authority of the judicial branch to regulate courtroom procedure to ensure 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 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) opposed 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 810 concerns the sentencing hearings, where the prospect of victim exploitation is particularly acute. Such proceedings are highly emotional affairs where victims and their families provide “victim impact statements” that include sensitive medical and psychological information. Defendants also offer testimony regarding equally personal

details of trauma in their lives in mitigation or to establish their prospect for rehabilitation. **These intimate details of humiliation and suffering have no educational value and televising them can serve only to satisfy a prurient interest in the misfortune of others for the commercial benefit of broadcast media organizations.** This was of grave concern to prosecutors and victims' rights advocates for cases involving homicide and other crimes of violence, precisely the types of cases that receive the most media attention. There is nothing in HB 810 that would prevent broadcast of testimony of victims' family members, often the only witnesses who testify where the actual victim is young is deceased or incapacitated. Their only protection is to refuse to participate at the sentencing hearing, which is the last thing the community needs right now

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 might be broadcast and instantly go viral on social media would add to the reluctance of victims and witnesses to report and help prosecute violent crime in Maryland, and add considerably to the nearly \$4 million dollars spent in the City to protect those who do.

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). 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).

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, 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 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 with little explanatory content and that **members of minority communities 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 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)

As television coverage dangerously distorts, rather than accurately reports what actually happens in our communities and courtrooms, the current ban should remain in effect.

House Bill 810 Encroaches on Judicial Authority to Regulate Court Procedure.

House Bill 810 inappropriately attempts to dictate courtroom procedure by statute, rather than through the Maryland Rules of Practice and Procedure by which the Judiciary traditionally exercises its constitutional prerogative to regulate day to day operations. House Bill 810 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 proposed **24-hour notice period is unworkable and patently insufficient 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 by the bill, and then draft and enter an appropriate order; (6) make arrangements for access to the courtroom to set up the broadcast equipment ; (7) establish 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 honored.**

Even if it were possible to accomplish 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 whose matters are pushed aside in order to meet the arbitrarily imposed timeline. HB 810, 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 810.

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 and should continue to govern any televised proceedings in Maryland courts.

There is also nothing in the bill to require commercial media organizations to reimburse the court and/or sheriff for their expenses, 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 810.

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