

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 43
Judiciary

(Delegate Conaway)

Criminal Procedure - Cameras in the Courtroom - Criminal Sentencing Hearings

This bill repeals a prohibition against recording or broadcasting a “criminal sentencing hearing.” A media organization wishing to record or broadcast coverage of such a proceeding must file a request with the clerk of the court. The presiding judge may then grant, deny, or limit this request based on specified considerations.

Fiscal Summary

State Effect: Assuming that the bill’s requirements can be met without the acquisition of new equipment by the Judiciary for the District Court, then the bill’s requirements can be handled with existing resources.

Local Effect: Assuming that the bill’s requirements can be met without the acquisition of new equipment by counties for circuit courts, then the bill’s requirements can be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill permits the visual or audio recording of criminal sentencing hearings under specified conditions. To record or broadcast such a hearing, a media organization must submit to the clerk of the court, at least 24 hours before the hearing, a request that:

- identifies the hearing to be covered;

- identifies the dates of media coverage requested;
- describes any pooling arrangements made by the media organization;
- describes the equipment to be used; and
- identifies the representatives of the media organization who will be present during the proceeding.

On receipt of the request, the clerk must give prompt notice of the request to all parties involved in the proceeding.

In deciding to grant or deny the request, the presiding judge may consider the importance of promoting public access to the judicial system; the privacy and security of minors, witnesses, and jurors; and the maintenance of orderly conduct during the proceeding. The judge may grant the request, order interested media organizations to make pooling arrangements, and/or limit media in any manner at any time on a finding of fact on the record that, without limitation, the coverage would:

- deny a defendant the right to a fair and impartial trial;
- substantially compromise the civil rights or safety of a party involved in the proceeding; or
- disrupt access to information by other news-gathering organizations.

The bill specifies that a judge may not grant a request for coverage of:

- a criminal proceeding closed to the public by law or judicial order;
- a sentencing hearing if the request does not comply with the requirements set forth in the bill;
- any criminal matter other than a sentencing hearing;
- a grand jury proceeding;
- a juvenile proceeding; or
- a proceeding related to the prosecution of certain specified sexual crimes.

Current Law: The recording of criminal proceedings in Maryland courts, whether by television, radio, photograph, or other recording equipment, is generally prohibited by statute. Exceptions include recording done to take the testimony of a victim of child abuse or to perpetuate a court record. The exceptions are inapplicable to media organizations.

Recording of civil proceedings is permitted in limited circumstances under Maryland Rule 16-109. Media coverage may not be permitted in a trial court unless all

parties (with the exception of specific governmental entities) consent in writing to the coverage. While a consenting party may not withdraw consent, any party may move to terminate or limit the coverage at any time. While the written consent of all parties is not required for media coverage in the appellate courts, a party may move to terminate or limit coverage at any time.

The rule also contains provisions on restrictions on media coverage and standards of conduct and technology for media coverage of court proceedings.

Background: Maryland has not always statutorily banned extended media coverage in criminal courts. Prior to 1980, the ban was a result of provisions in the Maryland Code of Judicial Conduct. In response to a 1978 resolution adopted by the National Conference of State Chief Justices authorizing each state to regulate extended media coverage in its courts, a divided Court of Appeals instituted an 18-month pilot program that permitted extended coverage in almost all proceedings in the State's trial and appellate courts. However, the program was cut short when, months later, the legislature amended State law to prohibit such coverage of criminal trial proceedings in State courts.

In February 2008, the Maryland Judicial Conference's Committee to Study Extended Media Coverage of Criminal Trial Proceedings issued its report. The committee was established in August 2007 and charged with studying the propriety of allowing extended media coverage in criminal trial courts in Maryland. After receiving testimony from various stakeholders and conducting a public hearing, the committee concluded unanimously to retain the statutory ban on cameras in criminal trial courts. The committee determined that "...the putative benefits of electronic media coverage are illusory, while the adverse impacts on the criminal justice process are real."

The committee cited many factors in its analysis, including (1) the lack of educational value provided by extended media coverage of criminal proceedings; (2) research showing that the amount of information about the trial process varies inversely with the amount of camera footage in a broadcast; and (3) the adverse effects of media coverage in criminal proceedings on trial participants, particularly jurors and witnesses.

State Fiscal Effect: This estimate assumes that the Administrative Office of the Courts (AOC) is able to fulfill the bill's requirements without acquiring new equipment for use by media organizations. The Judiciary advises that the bill has a significant operational impact and results in increased general fund expenditures to accommodate hearings for parties to address media requests within a short notice period and to install cameras in courtrooms.

The bill defines a "media organization" to include an entity that is capable of (1) establishing a visual or audio feed with visual or audio equipment provided by the court or (2) providing its own visual or audio equipment for the purpose of providing media

coverage or educational recordings of criminal proceedings. The bill does not appear to require a court to provide visual or audio equipment or require the Judiciary to install audiovisual equipment in its courtrooms.

According to the Judiciary, tripod and handheld cameras can interfere with wheelchair access and security in courtrooms, many of which are historic buildings. The Judiciary advises that, to comply with safety concerns, preserve the dignity of the courtroom, and implement the bill's requirements in the most unobtrusive manner possible, it incurs additional expenditures of approximately \$2.9 million to install cameras and wiring for live audio/video feeds in 124 courtrooms in the District Court, plus ongoing maintenance costs. The Department of Legislative Services (DLS) advises, however, that complying with the bill's requirements does not, in and of itself, necessitate the installation of a new audio/video system. Also, the bill gives broad authority to the presiding judge to limit or deny a request for media coverage.

Local Fiscal Effect: AOC estimates costs of approximately \$4.9 million to install a new audio/video system in 208 circuit courtrooms in the State, plus ongoing maintenance costs. Local jurisdictions are responsible for costs associated with installing these cameras in circuit courtrooms. For the reasons stated above, DLS advises that complying with the bill's requirements does not, in and of itself, necessitate the installation of a new audio/video system.

Additional Information

Prior Introductions: HB 81 of 2016 received an unfavorable report from the House Judiciary Committee. HB 856 of 2009, a similar bill, was scheduled for a hearing in the House Judiciary Committee, but the hearing was canceled. HB 77 of 2008 and HB 207 of 2007 both received unfavorable reports from the House Judiciary Committee.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); State's Attorneys' Association; Department of Legislative Services

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