

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 945
Judiciary

(Delegate Atterbeary, *et al.*)

Criminal Procedure - Sentencing and Disposition - Community Impact
Statement

This bill authorizes a community representative to submit a community impact statement at the sentencing or disposition hearing of a defendant or child respondent. The court must consider the community impact statement in determining the appropriate sentence or disposition. A community representative who has been denied the right to submit a statement may file an application for leave to appeal.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures for the Office of the Public Defender (OPD), as discussed below. Otherwise, the bill's requirements can be handled with existing budgeted resources. Revenues are not affected.

Local Effect: The bill is not expected to materially affect local finances or operations.

Small Business Effect: None.

Analysis

Current Law: At a sentencing or disposition hearing, the court, if practicable, must allow the victim or the victim's representative (victim/representative) to address the court under oath before the imposition of sentence or other disposition at the request of the prosecutor, the victim/representative, or if the victim/representative filed a victim notification request form. The defendant or child respondent may cross-examine the victim/representative on factual statements made to the court. A victim/representative has a right not to address the court and a person may not coerce the victim/representative to address the court.

If a victim/representative fails to appear at a hearing on a motion for a revision, modification, or reduction of a sentence or disposition, the prosecuting attorney must state on the record that proceeding without the appearance of the victim/representative is justified because (1) the victim/representative was contacted by the prosecuting attorney and waived the right to attend the hearing; (2) efforts were made to contact the victim/representative and to the best knowledge and belief of the prosecuting attorney, the victim/representative cannot be located; or (3) the victim/representative has not filed a victim notification request form.

If the court is not satisfied by the statement that proceeding without the appearance of the victim/representative is justified, or if no statement is made, the court may postpone the sentencing or disposition hearing.

A victim/representative who has been denied any of these rights may file an application for leave to appeal.

State Expenditures: General fund expenditures for OPD may increase minimally to address community impact statements made against OPD clients.

OPD advises that the bill will result in a substantial increase in litigation costs associated with increased time to cross-examine community representatives and to develop any mitigating evidence that may be required to effectively represent a client at risk of an increased sentence due to a community impact statement. OPD notes that these expenses may include costs associated with the use of experts and social workers. OPD also notes the possibility of procedural and evidentiary challenges, such as eligibility to submit a community impact statement, admissible content for such a statement, and the weight given to a statement. OPD further advises that additional appellate resources will be needed for constitutional and legal challenges until standards and precedence are established.

However, OPD did not provide any information on the potential number of cases in which a community impact statement may be at issue, current practices and efforts for OPD challenges to impact statements authorized under current law, and current costs incurred in sentencing and disposition hearings. Furthermore, the Department of Legislative Services advises that (1) a victim impact statement is more likely to be submitted than a community impact statement; (2) a victim impact statement is likely to be submitted in a proceeding featuring a community impact statement; (3) there is likely to be an overlap between a victim's statement and a community's statement; and (4) OPD is already engaging the services of experts and social workers. Thus, any additional efforts generated by the bill are likely to mimic ongoing efforts, and any potential costs associated with these efforts are likely minimal.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Juvenile Services; Department of Legislative Services

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