HB 615

Department of Legislative Services

Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 615 (Chairman, Judiciary Committee)
(By Request – Maryland Judicial Conference)

Judiciary

Circuit Courts - De Novo Review - Criminal Appeals

This bill provides that in a criminal appeal that is tried *de novo*, there is no right to a jury trial unless the offense charged is subject to a penalty of imprisonment of more than 90 days, or unless there is a constitutional right to a jury trial for the offense.

The bill applies prospectively only and does not apply to appeals rising out of offenses committed before the bill's October 1, 2004 effective date.

Fiscal Summary

State Effect: The bill is not expected to have a significant impact on District Court caseload or finances.

Local Effect: Potential decrease in circuit court expenditures if the number of jury trials decreases significantly.

Small Business Effect: None.

Analysis

Current Law: There is no right to a jury trial in a criminal appeal that is tried *de novo*, unless the offense charged is subject to a penalty of imprisonment or there is a constitutional right to a jury trial for that offense. A case tried *de novo* is tried anew, as though it was being tried for the first time.

Background: The right to a trial by jury is guaranteed in Articles 5, 21, and 23 of the Maryland Declaration of Rights. In the State's two-tiered trial court system, less serious cases (typically misdemeanors) generally originate in the District Court while felonies and other more serious cases originate in the circuit courts. However, jury trials are only available in circuit court. Therefore, if a criminal case originates in the District Court, and the defendant is entitled to a jury trial, the defendant may file a "jury trial prayer," which transfers the case to circuit court.

Beginning in the 1970s, the numbers of jury trial prayers increased significantly, causing a workload problem in the circuit courts. The problem has persisted since that time to varying degrees. It is known that jury trials are often requested for reasons other than to actually obtain a jury trial, including delay, avoidance of a particular judge or prosecutor, and convenience of defense counsel. Because most of these cases are resolved at the circuit court level prior to the trial phase, only a small fraction of jury demands ultimately result in jury trials. Nevertheless, a large number of jury demands does burden the system.

Judicial committees were formed in the late 1970s and mid-1980s to study this issue and recommend solutions, spawning a number of corrective efforts. In 1981, the so-called "Gerstung Rule" was enacted, which eliminates a defendant's right to a jury trial at the initial trial level if the judge agrees not to impose a sentence of imprisonment of more than 90 days. The extent to which the Gerstung Rule prompted a decrease in the number of jury demands in the years after its implementation is unclear. In any event, the Court of Appeals held the rule to be unconstitutional as applied to the specific offenses charged in three cases in the mid-1980s. See *Kawamura v. State*, 299 Md. 276 (1984); *Fisher v. State*, 305 Md. 357 (1986); and *State v. Huebner*, 305 Md. 601 (1986).

The codified Gerstung Rule was an attempt by the General Assembly to provide clear guidelines with respect to a defendant's right to a jury trial in the first instance (election of a jury trial in the circuit court in lieu of being tried without a jury in the District Court) versus obtaining a jury trial through a defendant's right to a *de novo* appeal to the circuit court following a conviction without a jury in the District Court. By establishing a 90-day penalty threshold, the General Assembly attempted to distinguish petty offenses that under common law historically did not trigger the right to be tried by a jury from other offenses to which the constitutional right applied. The General Assembly was trying to define the circumstances under which a defendant did not have a right to a jury trial in the first instance in order to reduce the number of jury trial prayers.

The *Kawamura*, *Fisher*, and *Huebner* holdings made clear that it is not merely the length of sentence that determines a petty offense or the right to deny a defendant the right to a jury trial at the initial trial level. In those cases, the Court of Appeals outlined the factors

that must be considered in determining whether the State constitutional right attaches to an offense at the initial trial level. The court analysis involves whether the offense: (1) had historically been considered a petty offense subject to the jurisdiction of justices of the peace or historically had been tried before juries; (2) is an infamous crime or is subject to infamous punishment; (3) is considered to be a "serious crime;" (4) has a significant maximum statutory penalty; and (5) is subject under statute to incarceration in the penitentiary. The relative lack of clarity in these cases as to which offenses are entitled to a jury trial in the first instance may be a contributing factor in the continued high numbers of jury trial prayers.

Jury demands have again increased significantly. Statewide, the number of jury trial prayers increased by over 24% between fiscal 1998 and 2002, and cases transferred to circuit court pursuant to jury trial prayers composed approximately 44% of the total number of criminal filings in circuit court in fiscal 2002. Consequently, at the request of the Conference of Circuit Judges, Chief Judge Bell of the Court of Appeals established an ad hoc committee, chaired by Judge William S. Horne, to study the issue and recommend possible solutions. Unlike the previous committees that studied this issue, which were composed almost exclusively of judges, this committee included representatives of all sectors of the criminal justice system. The committee convened on August 13, 2003, and held five meetings including an organizational meeting, two public hearings, and two work sessions. Among its recommendations is the approach taken in this bill, that *de novo* trials not be allowed in criminal appeals of cases in which there is no right to a jury trial in the first instance.

The Maryland Judicial Conference requested that this bill be introduced in the 2004 session.

Local Expenditures: The bill is expected to lead to fewer jury trials, which are held in circuit court. Any such decrease, and resulting savings, cannot be reliably estimated at this time.

Additional Information

Prior Introductions: None.

Cross File: SB 516 (Chairman, Judicial Proceedings Committee) (By Request – Maryland Judicial Conference) – Judicial Proceedings.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2004
mh/jr

Analysis by: Rita A. Reimer

Direct Inquiries to:
(410) 946-5510
(301) 970-5510