

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 982
Judiciary

(Delegates Menes and Anderson)

Criminal Appeals - Right to Jury Trial

This bill provides that in a criminal appeal that is tried *de novo*, a criminal defendant has a right to a jury trial if the offense charged entitled the defendant in the District Court to request a jury trial and the defendant has not previously waived the defendant's right to a jury trial in the District Court or a circuit court for that offense.

The bill applies prospectively to criminal offenses charged on or after the October 1, 2006 effective date.

Fiscal Summary

State Effect: None.

Local Effect: Potential decrease in local expenditures for circuit courts and State's Attorneys to the extent the bill decreases the number of jury trials in circuit court by requiring criminal defendants to make binding elections concerning jury trial prayers that will prohibit defendants from electing jury trials on criminal appeals tried *de novo* in circuit courts.

Small Business Effect: None.

Analysis

Current Law: Generally, appeals from District Court decisions are tried *de novo*. exceptions include: (1) criminal actions in which the parties agree to an appeal on the record; (2) an appeal from an order or judgment of direct criminal contempt if the

sentence imposed by the District Court was less than 90 days imprisonment; and (3) an appeal by the State from a judgment quashing or dismissing a charging document or granting a motion to dismiss in a criminal case.

In *de novo* appeals, the court hearing the appeal treats the appeal as if a previous trial never took place and conducts an entirely new trial.

Current law 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 or unless there is a constitutional right to a jury trial for that offense.

The right to a trial by jury is guaranteed in Articles 5, 21, and 23 of the Maryland Declaration of Rights. In general, cases involving misdemeanors are heard in the District Court and cases involving felonies are heard in circuit courts. However, the District Court and circuit courts share concurrent jurisdiction over offenses for which the authorized penalties are three years or more in prison, a fine of \$2,500 or more, or both.

A criminal defendant in District Court who is entitled to a jury trial may demand a jury trial at any time prior to trial in the District Court.

A criminal defendant in District Court is entitled to a jury trial if the offense charged permits imprisonment for a period in excess of 90 days. However, in spite of this provision, under the “Gerstung Rule” the District Court may deny a defendant’s request for a jury trial if: (1) the prosecutor recommends in open court that the judge not impose a penalty of imprisonment in excess of 90 days; (2) the judge agrees with the prosecutor’s recommendation; and (3) the judge agrees not to increase the defendant’s bond if an appeal is noted.

The Court of Appeals held the Gerstung 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 *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. However, these cases do not clearly distinguish which offenses originating in the District Court are entitled to a jury trial in circuit courts upon demand.

Background: According to the *Annual Report of the Maryland Judiciary 2003-2004*, there were 32,202 jury trial prayers in the State in fiscal 2004.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 27, 2006
ncs/jr

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