

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 974  
Judiciary

(Delegate Menes)

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District Court - Jury Demand in Criminal Cases

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This bill requires that a jury demand in a criminal case in District Court must be made by written motion at least 15 days before trial.

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

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Fiscal Summary

**State Effect:** Potential operational efficiencies for the District Court to the extent that the time limits on jury demands imposed by this bill allow the District Court to better plan its docket. Any increase in requested and granted postponements in the District Court as a result of this bill could be handled by the existing resources of the Judiciary.

**Local Effect:** Potential operational efficiencies for circuit courts to the extent that this bill reduces the number of jury trial prayers.

**Small Business Effect:** None.

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Analysis

**Current Law:** 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. The defendant may file a “jury trial prayer,” which transfers the case to circuit 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.

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### 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  
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