

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 1108
Judiciary

(Delegate Sophocleus)

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 only 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, 2007 effective date.

Fiscal Summary

State Effect: Decrease in State expenditures on circuit court costs to the extent the bill reduces the number of jury trials by requiring criminal defendants to make binding elections concerning jury trial prayers that will prohibit defendants from electing jury trials on certain criminal appeals. Although the bill is not expected to reduce the need for judgeships or clerk's office positions, there could be operational efficiencies and reduced expenditures on stipends for jury service.

Local Effect: Decrease in local expenditures and increase in operational efficiencies for circuit courts and State's Attorneys to the extent the bill reduces the number of jury trials in circuit court.

Small Business Effect: None.

Analysis

Current Law: The District Court of Maryland was created by an amendment to the Maryland Constitution in 1970, and began operating as a court of record in 1971. Located in all counties and Baltimore City, it operates as a unified system with a statewide jurisdiction. In the District Court, the rules of discovery are somewhat cursory and limited, and judges operate as triers of law and fact. 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.

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. 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 2004-2005*, there were 33,239 jury trial prayers in the State in fiscal 2005, compared to 32,202 in fiscal 2004.

Additional Information

Prior Introductions: HB 982 of 2006, an identical bill, received an unfavorable report in the House Judiciary Committee.

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

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