

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 561
Judiciary

(Delegate Kramer, *et al.*)

Judicial Proceedings

**Criminal Procedure - Sentencing or Disposition Hearing - Appearance of Victim
or Victim's Representative**

This bill establishes that if a victim or victim's representative (victim/representative) fails to appear at a sentencing or disposition hearing, 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 had not filed a victim notification 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 must postpone the sentencing or disposition hearing.

Fiscal Summary

State Effect: The bill is procedural in nature, and any additional hearings that are rescheduled can be handled within the existing resources of the District Court.

Local Effect: The bill is procedural in nature, and any additional hearings that are rescheduled can be handled within the existing resources of the circuit courts.

Small Business Effect: None.

Analysis

Current Law: Article 47 of the Maryland Declaration of Rights grants victims of crime in cases originating in a circuit court “...the right to be informed of the rights established in this Article and, upon request and if practicable, to be notified of, to attend, and to be heard at a criminal justice proceeding....” However, Article 47 also notes that any rights afforded victims of crime under the Declaration of Rights do not authorize victims to take any action to stay a criminal proceeding.

Upon first contact with a victim/representative, a law enforcement officer, District Court commissioner, or juvenile intake officer is required to give a victim/representative a pamphlet informing the victim/representative of the victim’s rights under Article 47. For circuit court cases and juvenile court cases (involving offenses that are heard in the circuit court if committed by an adult), a prosecuting attorney is required to deliver or mail the informational pamphlet and a victim notification form to the victim/representative within 10 days after the filing or the unsealing of an indictment or information in circuit court, whichever is later. The prosecuting attorney must also certify compliance with this requirement to the clerk of the circuit court or certify that the victim/representative cannot be identified. A victim/representative who files a victim notification form has complied with Article 47 and every section of Maryland law requiring a victim/representative to request notice to be notified prior to certain proceedings and/or address the court.

If practicable, a court must allow a victim/representative to address the court under oath at a hearing in which the court is imposing a sentence, considering the disposition of a juvenile court proceeding, or altering a sentence or disposition. A victim/representative is afforded this right through: (1) a request by the prosecuting attorney; or (2) filing a victim notification request form. Courts may authorize a similar request if asked to do so by the victim/representative. The defendant or child respondent may cross-examine a victim/representative on the factual statements made to the court. A victim/representative has the right not to address the court and a person may not attempt to coerce a victim/representative to address the court. A victim of a violent crime or the victim’s representative who has been denied the right of notification and participation, as specified, may file an application for leave to appeal to the Court of Special Appeals from an interlocutory or final order that denies or fails to consider the victim’s right to address the court. Even though a victim/representative is technically not a party in the appeal. The victim/representative is allowed to participate in a manner similar to a party under the Maryland Rules. This enhanced participation is limited to matters in the appeal that concern the rights of the victim/representative.

Background: In a recent decision, the Court of Appeals concluded that a trial court could not vacate an altered sentence because a victim who had filled out a victim notification form was not notified of the reconsideration hearing in which the defendant’s

sentence was reduced. See *Hoile v. State*, 404 Md. 591, 948 A.2d 30 (2008). In its opinion, the court also stated that "...there remains no effective tangible remedy for a victim to 'un-do' what already has been done in a criminal case. The Legislature has not amended the law to permit a victim, based on a violation of the victim's rights, to seek invalidation of an otherwise legal sentence. The victim's rights provisions in Maryland law still lack adult teeth."

Additional Information

Prior Introductions: None.

Cross File: SB 620 (Senator Simonaire, *et al.*) - Judicial Proceedings.

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

Fiscal Note History: First Reader - March 8, 2009
mcp/kdm Revised - House Third Reader - April 7, 2009

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