

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 856
Judiciary

(Delegate Smigiel, *et al.*)

Criminal Procedure - Media Coverage in the Courtroom - Criminal Sentencing
Hearings

This bill repeals a prohibition against recording or broadcasting a “criminal sentencing hearing.” A media organization wishing to record or broadcast coverage of such a proceeding must file a request with the clerk of the court. The presiding judge may then grant, deny, or limit this request based on specified considerations.

Fiscal Summary

State Effect: Assuming that the bill’s requirements can be met without the acquisition of new equipment by the Judiciary for the District Court, then the bill’s requirements can be handled with existing resources.

Local Effect: Assuming that the bill’s requirements can be met without the acquisition of new equipment by counties for circuit courts, then the bill’s requirements can be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill permits the visual or audio recording of criminal sentencing hearings under specified conditions. To record or broadcast such a hearing, a media organization must submit to the clerk of the court, at least 24 hours before the hearing, a request that:

- identifies the hearing to be covered;

- identifies the dates of media coverage requested;
- describes any pooling arrangements made by the media organizations;
- describes the equipment to be used; and
- identifies the representatives of the media organization who will be present during the criminal sentencing hearing.

On receipt of this request, the clerk must give prompt notice of the request to all parties involved in the proceeding.

In deciding to grant or deny the request, a presiding judge may consider the importance of promoting public access to the judicial system, the privacy and security of minors, witnesses, and jurors, and the maintenance of orderly conduct during the proceeding. The judge may grant the request, order interested media organizations to make pooling arrangements, and/or limit media in any manner at any time on a finding of fact that, without limitation, the coverage:

- denies a defendant the right to a fair and impartial trial;
- substantially compromises the civil rights or safety of a party involved in the proceeding; or
- disrupts access to information by other news-gathering organizations.

The bill specifies that a judge may not grant a request for coverage of:

- a criminal proceeding closed to the public by law or judicial order;
- a sentencing hearing if the request does not comply with the requirements set forth in the bill;
- any criminal matter other than a sentencing hearing;
- a grand jury proceeding;
- a juvenile proceeding; or
- a proceeding related to the prosecution of certain specified sexual crimes.

Upon request of a witness, a presiding judge must order that media coverage of a criminal sentencing hearing not include a visual or audio recording or broadcast of the witness.

Current Law: The recording of criminal proceedings, either by television, radio, photograph, or other recording equipment, is generally prohibited by statute. Exceptions include recording the testimony of a victim of child abuse or to perpetuate a court record. The exceptions are inapplicable to media organizations.

Recordings of civil proceedings are permitted in limited circumstances under Maryland Rule 16-109. A request for media coverage of a civil proceeding must be approved by all parties, and is limited to one portable camera from each media organization in trial court proceedings, and two cameras for each media organization in appellate proceedings. Requests for such media coverage must be made at least five days before the beginning of the proceeding.

Background: According to the Radio and Television News Directors of America, at least 35 states allow some media coverage in criminal trials or sentencing hearings. State rules vary widely as to the prohibitions on coverage (*e.g.*, many states require the consent of parties) and the extent to which trial judges may use discretion in allowing coverage.

Maryland has not always statutorily banned extended media coverage in criminal courts. Prior to 1980, the ban was a result of provisions in the Maryland Code of Judicial Conduct. In response to a 1978 resolution adopted by the National Conference of State Chief Justices authorizing each state to regulate extended media coverage in its courts, a divided Court of Appeals instituted an 18-month pilot program that permitted extended coverage in almost all proceedings in the State's trial and appellate courts. However, the program was cut short when months later, the legislature amended State law to prohibit such coverage of criminal trial proceedings in State courts.

In February 2008, the Maryland Judicial Conference's Committee to Study Extended Media Coverage of Criminal Trial Proceedings issued its report. The committee was established in August 2007 and charged with studying the propriety of allowing extended media coverage in criminal trial courts in Maryland. After receiving testimony from various stakeholders and conducting a public hearing, the committee concluded unanimously to retain the current statutory ban on cameras in criminal trial courts. The committee determined that "...the putative benefits of electronic media coverage are illusory, while the adverse impacts on the criminal justice process are real."

The committee cited many factors in its analysis, including: (1) the lack of educational value provided by extended media coverage of criminal proceedings; (2) research showing that the amount of information about the trial process varies inversely with the amount of camera footage in a broadcast; and (3) the adverse effects of media coverage in criminal proceedings on trial participants, particularly jurors and witnesses.

State Fiscal Effect: This estimate assumes that the Administrative Office of the Courts (AOC) is able to fulfill the bill's requirements without acquiring new equipment for use by media organizations. The Judiciary advises that the bill results in increased general fund expenditures to accommodate hearings for parties to address media requests within a short notice period and to install cameras in courtrooms. Though the bill does not require the Judiciary to provide equipment to media organizations, the Judiciary advises that to

comply with concerns of various fire marshals, preserve the dignity of the courtroom, and implement the bill's requirements *properly* in the most unobtrusive manner possible, it will incur additional expenditures of approximately \$2.6 million to install cameras and wiring for live audio/video feeds in 111 courtrooms in the District Court. The Department of Legislative Services advises, however, that complying with the bill's requirements does not in and of itself, necessitate the installation of a new audio/video system.

Local Fiscal Effect: AOC advises that it would cost about \$3.4 million to install a new audio/video system in 147 circuit courtrooms in the State. For the reasons stated above, the Department of Legislative Services advises that complying with the bill's requirements does not in and of itself, necessitate the installation of a new audio/video system.

Additional Information

Prior Introductions: HB 77 of 2008, HB 207 of 2007, and HB 81 of 2006 received unfavorable reports from the House Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); *Report of the Committee to Study Extended Media Coverage of Criminal Trial Proceedings in Maryland*, Office of the Public Defender; State's Attorneys' Association; National Center for State Courts; Radio and Television News Director of America; Department of Legislative Services

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