

Department of Legislative Services  
Maryland General Assembly  
2012 Session

FISCAL AND POLICY NOTE

House Bill 536  
Judiciary

(Delegate Wilson)

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Courts - Violation of Probation - Appeal on the Record

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This bill requires that when a criminal defendant appeals a determination by the District Court that the defendant violated probation, the appeal must be heard on the record made in the District Court.

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Fiscal Summary

**State Effect:** Minimal increase in general fund expenditures for the District Court to create and send compact discs of violation of probation proceedings to the circuit courts for appeals heard on the record. Revenues are not affected.

**Local Effect:** Though appeals heard on the record may require less court time than *de novo* appeals, the bill is not expected to have a material effect on local finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** In an appeal heard on the record, the appellate court reviews the record created in the lower court and the lower court's application of law to the facts presented at trial. When an appeal is heard on the record, parties are generally not allowed to introduce new evidence and cannot raise issues that were not raised at the trial level. In an appeal heard on the record in the circuit court, the circuit court reviews the case on both the law and the evidence, but will not set aside the judgment of the District Court on the evidence unless clearly erroneous.

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

**Background:** According to the Judiciary, there were 43,650 violation of probation cases in the District Court in fiscal 2011. Data is not available on the number of appeals to the circuit courts from a District Court determination that a criminal defendant had violated probation.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** SB 454 (Senator Stone) - Judicial Proceedings.

**Information Source(s):** Montgomery County, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of State Police, Department of Legislative Services

**Fiscal Note History:** First Reader - February 20, 2012  
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Analysis by: Amy A. Devadas

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510