

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1063
Judiciary

(Delegate Clippinger, *et al.*)

Courts and Judicial Proceedings - Appeal on the Record - Violation of a Condition
of Probation

This bill requires that when a defendant appeals a District Court case in which the defendant has been charged with violating a condition of probation, the appeal must be heard on the record made in the District Court.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for the District Court to create and send transcripts of violation of probation proceedings to the circuit courts for appeals heard on the record, offset in part by revenues from transcript fees. Operational efficiencies may be experienced by the Department of Public Safety and Correctional Services from probation officers not having to appear in court for *de novo* appeals.

Local Effect: Although 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.

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 43,073 violation of probation cases in the District Court during fiscal 2012. 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.

State Fiscal Effect: General fund expenditures increase minimally for the District Court to create and send transcripts of violation of probation proceedings to the circuit courts for appeals heard on the record.

Currently, the District Court requires individuals requesting transcripts to pay a \$75 deposit. Once the deposit is received, the District Court sends a CD of the court proceedings to the transcripts office via courier. The transcripts office prepares the transcripts and sends them to the appropriate District Court via courier. The court sends one original transcript to the circuit court and one copy to the requestor. Transcripts cost \$3 per page, which is deducted from the deposit. Requestors receive the remaining balance if their transcript costs are less than the \$75 deposit and are billed for remaining balances if their transcript costs exceed the \$75 deposit. The District Court advises that civil cases involving large claims (amount in dispute is greater than \$5,000 or greater than \$2,500 for a case filed before October 2003) generate the most transcripts.

The District Court advises that each transcriber prepares an average of 4,268 transcript pages per year. Depending on the number of additional pages prepared for appeals in violation of probation cases, the District Court may need to hire additional personnel for the transcripts office. The cost associated with hiring one additional transcriber in fiscal 2014 is \$43,995, which accounts for the bill's October 1, 2013 effective date and includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. The cost associated with one additional transcriber in fiscal 2015 is \$56,021.

Local Expenditures: According to Maryland Rule 7-113, the circuit court must issue a concise opinion in every appeal heard on the record. While the number of opinions issued by the circuit court may increase as a result of this bill, it is assumed that the

additional court resources expended on the additional opinions are offset by a decrease in expended resources for conducting entirely new trials, as required by *de novo* appeals. Regardless, the bill is not expected to have a material effect on local finances.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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Analysis by: Amy A. Devadas

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