

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 31
Judiciary

(Delegates McDermott and Smigiel)

Judicial Proceedings

Sentencing Procedures - Statement by Victim or Victim's Representative (Alex's Law)

This bill *requires*, if practicable, a court, in a sentencing or disposition hearing, to allow a victim or the victim's representative (victim/representative), at the request of the victim/representative, to address the court before imposition of sentence or other disposition.

Fiscal Summary

State Effect: The bill is procedural and does not materially affect State finances.

Local Effect: The bill is procedural and does not materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: A "victim" is a person who suffers personal injury or property damage or loss directly resulting from a crime or delinquent act, or the person's representative in the event of the person's death.

Under Maryland law, a victim of a crime or delinquent act (or a representative in the event the victim is deceased, disabled, or a minor) has a broad range of specific rights during the criminal justice process. Law enforcement officers, District Court commissioners, and juvenile intake officers are responsible for giving an identified victim a pamphlet that advises the victim of the rights, services, and procedures available in the time before and after the filing of a charging document. Also, within 10 days after the

filing or unsealing of an indictment or information, the State's Attorney must provide a victim with a pamphlet that describes the rights, services, and procedures available to a victim after the indictment or information is filed and a notification request form by which a victim may request notice of various proceedings. The pamphlets are prepared by the State Board of Victim Services.

Many of the rights afforded a victim of crime depend on a victim completing a notification request form or otherwise requesting notifications and rights. Once a victim has filed the notification request form, the State's Attorney is required to notify the victim of (1) all court sentencing proceedings; (2) the terms of any plea agreement; and (3) the victim's right to file a victim impact statement. However, a victim who has not filed a notification request form is still entitled to submit a victim impact statement to the court.

In addition to the aforementioned rights, a court must, if practicable, 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.

If a victim/representative fails to appear at a hearing on a motion for a revision, modification, or reduction of a sentence or disposition in circuit court or juvenile court, 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 has not filed a notification request 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 may postpone the hearing.

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.

Additional Information

Prior Introductions: HB 1382 of 2013 passed the House as amended and received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: None.

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

Fiscal Note History: First Reader - January 14, 2014
ns/kdm

Analysis by: Amy A. Devadas

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