

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 618

(Senators Stone and Frosh)

Judicial Proceedings

Criminal Procedure - Violation of Crime Victim Rights - Sentencing

This bill requires a trial court or juvenile court to hold a hearing if a victim or victim's representative ("victim/representative") alleges that a right of the victim/representative to address the court during a sentencing or disposition hearing was violated. If the court finds that a right was violated, the court is required to allow the victim/representative to address the court or submit an updated victim impact statement or recommendation and consider that information when deciding to reaffirm or change the sentence or disposition of a defendant or child respondent. The court is authorized to reaffirm, modify, or vacate a prior sentence or disposition of a defendant or child respondent in the interests of justice.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: Potential minimal increase in circuit court expenditures to hold additional hearings generated by this bill. The number of additional circuit court hearings and the rate at which victims will avail themselves of the opportunity to address a court under this bill cannot be reliably determined at this time.

Small Business Effect: None.

Analysis

Bill Summary: After hearing from the victim/representative, or considering updated information provided by the victim/representative, the court must consider information presented by the State, defendant or child respondent, and the victim/representative

before deciding whether to reaffirm, modify, or vacate a prior sentence or disposition of a defendant or child respondent in the interests of justice.

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 a specified amount of time. The prosecuting attorney is also required to certify compliance with this requirement to the clerk of the circuit court or certify that the victim/representative could not be identified.

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, Rule 8-111 allows the victim/representative to participate in the appeal in a manner similar to a party. 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.”

Local Fiscal Effect: In general, misdemeanors are heard in the District Court and felonies are heard in circuit court. It is more likely that an additional hearing generated by this bill will take place in a circuit court rather than the District Court because: (1) circuit courts typically handle more serious criminal cases involving lengthier sentences; (2) a juvenile court is part of the circuit court in each jurisdiction; and (3) current law requires that victims in relevant cases in the circuit court be sent a victim notification form within a certain amount of time, thus making them more likely to fill out the form and formally request notification.

Additional Information

Prior Introductions: None.

Cross File: HB 1189 (Delegates Waldstreicher and Vallario) - Judiciary.

Information Source(s): Commission on Criminal Sentencing Policy, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, State’s Attorneys’ Association, Maryland Crime Victim’s Resource Center, Department of Legislative Services

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Analysis by: Amy A. Devadas

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