STATE OF NEW YORK

5039

2019-2020 Regular Sessions

IN SENATE

April 4, 2019

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to audio-visual recordings in the courtroom; to repeal section 218 of such law relating thereto; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 218 of the judiciary law is REPEALED and a new section 218 is added to read as follows:

§ 218. Audio-visual coverage of judicial proceedings. 1. Authorization. Notwithstanding the provisions of section fifty-two of the civil rights law and subject to the provisions of this section, the chief judge of the court of appeals or his or her designee may authorize an experimental program in which presiding trial judges, in their discretion, may permit audio-visual coverage of civil and criminal court proceedings, including trials.

2. Definitions. For purposes of this section:

(a) "Administrative judge" shall mean the administrative judge of each judicial district; the administrative judge of Nassau county or of Suffolk county; the administrative judge of the civil court of the city of New York or of the criminal court of the city of New York; or the presiding judge of the court of claims.

(b) "Audio-visual coverage" shall mean the electronic broadcasting or other transmission to the public of radio or television signals from the courtroom, the recording of sound or light in the courtroom for later transmission or reproduction, or the taking of still or motion pictures in the courtroom by the news media.

(c) "News media" shall mean any news reporting or news gathering agency and any employee or agent associated with such agency, including television, radio, radio and television networks, news services, newspa-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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pers, magazines, trade papers, in-house publications, professional journals or any other news reporting or news gathering agency, the function of which is to inform the public, or some segment thereof.

(d) "Presiding trial judge" shall mean the justice or judge presiding over proceedings at which audio-visual coverage is authorized pursuant to this section.

(e) "Covert or undercover capacity" shall mean law enforcement activity involving criminal investigation by peace or police officers who usually and customarily wear no uniform, badge or other official identification in public view.

(f) "Arraignment" shall have the same meaning as such term is defined in subdivision nine of section 1.20 of the criminal procedure law.

(g) "Suppression hearing" shall mean a hearing on a motion made pursuant to the provisions of section 710.20 of the criminal procedure law; a hearing on a motion to determine the admissibility of any prior criminal, vicious or immoral acts of a defendant and any other hearing held to determine the admissibility of evidence.

(h) "Nonparty witness" shall mean any witness in a criminal trial proceeding who is not a party to such proceeding; except an expert or professional witness, a peace or police officer who acted in the course of his or her duties and was not acting in a covert or undercover capacity in connection with the instant court proceeding, or any government official acting in an official capacity, shall not be deemed to be a "nonparty witness".

(i) "Visually obscured" shall mean that the face of a participant in a criminal trial proceeding shall either not be shown or shall be rendered visually unrecognizable to the viewer of such proceeding by means of special editing by the news media.

3. Requests for coverage of proceedings; administrative review. (a) Prior to the commencement of the proceedings, any news media interested in providing audio-visual coverage of court proceedings shall file a request with the presiding trial judge, if assigned, or if no assignment has been made, to the judge responsible for making such assignment. Requests for audio-visual coverage shall be made in writing and not less than seven days before the commencement of the judicial proceeding, and shall refer to the individual proceeding with sufficient identification to assist the presiding trial judge in considering the request. Where circumstances are such that an applicant cannot reasonably apply seven or more days before the commencement of the proceeding, the presiding trial judge may shorten the time period for requests.

(b) Permission for news media coverage shall be at the discretion of the presiding trial judge. An order granting or denying a request for audio-visual coverage of a proceeding shall be in writing and shall be included in the record of such proceeding. Such order shall contain any restrictions imposed by the judge on the audio-visual coverage and shall contain a statement advising the parties that any violation of the order is punishable by contempt pursuant to article nineteen of this chapter. Such order for initial access shall be subject only to review by the appropriate administrative judge; there shall be no further judicial review of such order or determination during the pendency of such proceeding before such trial judge. No order allowing audio-visual coverage of a proceeding shall be sealed.

(c) Subject to the provisions of subdivision seven of this section, upon a request for audio-visual coverage of court proceedings, the presiding trial judge shall, at a minimum, take into account the following factors: (i) the type of case involved; (ii) whether such coverage

would cause harm to any participant in the case or otherwise interfere with the fair administration of justice, the advancement of a fair trial or the rights of the parties; (iii) whether any order directing the exclusion of witnesses from the courtroom prior to their testimony could be rendered substantially ineffective by allowing audio-visual coverage that could be viewed by such witnesses to the detriment of any party; (iv) whether such coverage would interfere with any law enforcement activity; or (v) whether the subject matter involves lewd or scandalous matters.

(d) A request for audio-visual coverage made after the commencement of a trial proceeding in which a jury is sitting shall not be granted unless (i) counsel for all parties to the proceeding consent to such coverage, or (ii) the request is for coverage of the verdict and/or sentencing in such proceeding.

4. Supervision of audio-visual coverage; mandatory pretrial conference; judicial discretion. (a) Audio-visual coverage of a court proceeding shall be subject to the supervision of the presiding trial judge. In supervising audio-visual coverage of court proceedings, in particular any which involve lewd or scandalous matters, a presiding trial judge shall, where necessary for the protection of any participant or to preserve the welfare of a minor, prohibit all or any part of the audio-visual coverage of such participant, minor or exhibit.

(b) A pretrial conference shall be held in each case in which audio-visual coverage of a proceeding has been approved. At such conference the presiding trial judge shall review, with counsel and the news media who will participate in the audio-visual coverage, the restrictions to be imposed. Counsel shall convey to the court any concerns of prospective witnesses with respect to audio-visual coverage.

(c) There shall be no limitation on the exercise of discretion under this subdivision except as provided by law. The presiding trial judge may at any time modify or reverse any prior order or determination.

5. Consent. (a) Audio-visual coverage of judicial proceedings, except for arraignments and suppression hearings, shall not be limited by the objection of counsel, parties, or jurors, except for a finding by the presiding trial judge of good or legal cause.

(b) Audio-visual coverage of arraignments and suppression hearings shall be permitted only with the consent of all parties to the proceeding; provided, however, where a party is not yet represented by counsel consent may not be given unless the party has been advised of his or her right to the aid of counsel pursuant to subdivision four of section 170.10 or section 180.10 of the criminal procedure law and the party has affirmatively elected to proceed without counsel at such proceeding.

(c) Counsel to each party in a criminal trial proceeding shall advise each nonparty witness that he or she has the right to request that his or her image be visually obscured during said witness' testimony, and upon such request the presiding trial judge shall order the news media to visually obscure the visual image of the witness in any and all audio-visual coverage of the judicial proceeding.

6. Restrictions relating to equipment and personnel; sound and light criteria. Where audio-visual coverage of court proceedings is authorized pursuant to this section, the following restrictions shall be observed:

(a) Equipment and personnel:

(i) No more than two electronic or motion picture cameras and two camera operators shall be permitted in any proceeding.

(ii) No more than one photographer to operate two still cameras with not more than two lenses for each camera shall be permitted in any proceeding.

(iii) No more than one audio system for broadcast purposes shall be permitted in any proceeding. Audio pickup for all media purposes shall be effectuated through existing audio systems in the court facility. If no technically suitable audio system is available, microphones and related wiring essential for media purposes shall be supplied by those persons providing audio-visual coverage. Any microphones and sound wiring shall be unobtrusive and located in places designated by the presiding trial judge.

(iv) Notwithstanding the provisions of subparagraphs (i), (ii) and (iii) of this paragraph, the presiding trial judge may modify his or her original order to increase or decrease the amount of equipment that will be permitted into a courtroom on a finding of special circumstances so long as it will not impair the dignity of the court or the judicial process.

(v) Notwithstanding the provisions of subparagraphs (i), (ii) and (iii) of this paragraph, the equipment authorized therein shall not be admitted into a court proceeding unless all persons interested in providing audio-visual coverage of such proceedings shall have entered into pooling arrangements for their respective groups. Furthermore, a pool operator for the electronic and motion picture media and a pool operator for the still photography media shall be selected, and procedures for cost sharing and dissemination of audio-visual material established. The court shall not be called upon to mediate or resolve any dispute as to such arrangements. In making pooling arrangements, consideration shall be given to educational users' needs for full coverage of entire proceedings.

(b) Sound and light criteria:

(i) Only electronic and motion picture cameras, audio equipment and still camera equipment which do not produce distracting sound or light shall be employed to cover judicial proceedings. The chief administrator of the courts shall promulgate a list of acceptable equipment models.

(ii) No motorized drives shall be permitted, and no moving lights, flash attachments, or sudden lighting changes shall be permitted during judicial proceedings.

(iii) No light or signal visible or audible to trial participants shall be used on any equipment during audio-visual coverage to indicate whether it is operating.

(iv) It shall be the affirmative duty of any person desiring to use equipment other than that authorized by the chief administrator to demonstrate to the presiding trial judge, adequately in advance of any proceeding, that the equipment sought to be utilized meets acceptable sound and light criteria. A failure to obtain advance judicial approval for equipment shall preclude its use in any proceeding.

(v) With the concurrence of the presiding trial judge modifications and additions may be made to light sources existing in the facility, provided such modifications or additions are installed and maintained at the expense of the news media who are providing audio-visual coverage and provided they are not distracting or otherwise offensive.

(c) Location of equipment and personnel. Cameras, equipment and personnel shall be positioned in locations designated by the presiding trial judge.

(i) All audio-visual coverage operators shall assume their assigned, fixed position within the designated area and once established in such

position, shall act in a manner so as not to call attention to their activities.

(ii) The areas so designated shall provide reasonable access to coverage with the least possible interference with court proceedings. Equipment that is not necessary for audio-visual coverage from inside the courtroom shall be located in an area outside the courtroom.

(d) Movement of equipment during proceedings. Equipment shall not be placed in, moved about or removed from the courtroom, and related personnel shall not move about the courtroom, except prior to commencement or after adjournment of proceedings each day, or during a recess. Camera film and lenses shall be changed only during a recess in proceedings.

7. Restrictions on audio-visual coverage. Notwithstanding the initial approval of a request for audio-visual coverage of any court proceeding, the presiding trial judge shall have discretion throughout the proceeding to revoke such approval or limit such coverage, and may where appropriate exercise such discretion to limit, restrict or prohibit audio or video broadcast or photography of any part of the proceeding in the courtroom, or of the name or features of any participant therein. In any case, audio-visual coverage shall be limited as follows:

(a) no audio pickup or audio broadcast of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding trial judge, shall be permitted without the prior express consent of all participants in the conference;

(b) no conference in chambers shall be subject to audio-visual coverage;

(c) no audio-visual coverage of the selection of the prospective jury during voir dire shall be permitted;

(d) no audio-visual coverage of the jury, or of any juror or alternate juror, while in the jury box, in the courtroom, in the jury deliberation room during recess, or while going to or from the deliberation room at any time shall be permitted; provided, however, that, upon consent of the foreperson of a jury, the presiding trial judge may, in his or her discretion, permit audio coverage of such foreperson delivering a verdict;

(e) no audio-visual coverage shall be permitted of a witness, who as a peace or police officer acted in a covert or undercover capacity in connection with the instant court proceeding, without the prior written consent of such witness;

(f) no audio-visual coverage shall be permitted of a witness, who as a peace or police officer is currently engaged in a covert or undercover capacity, without the prior written consent of such witness;

(g) no audio-visual coverage shall be permitted of the victim in a prosecution for rape, criminal sexual act, sexual abuse or other sex offense under article one hundred thirty or section 255.25 of the penal law; notwithstanding the initial approval of a request for audio-visual coverage of such a proceeding, the presiding trial judge shall have discretion throughout the proceeding to limit any coverage which would identify the victim, except that said victim can request of the presiding trial judge that audio-visual coverage be permitted of his or her testimony, or in the alternative the victim can request that coverage of his or her testimony be permitted but that his or her image shall be visually obscured by the news media, and the presiding trial judge in his or her discretion shall grant the request of the victim for the coverage specified;

(h) no audio-visual coverage of any arraignment or suppression hearing shall be permitted without the prior consent of all parties to the proceeding; provided, however, where a party is not yet represented by counsel consent may not be given unless the party has been advised of his or her right to the aid of counsel pursuant to subdivision four of section 170.10 or section 180.10 of the criminal procedure law and the party has affirmatively elected to proceed without counsel at such proceeding;

(i) no judicial proceeding shall be scheduled, delayed, reenacted or continued at the request of, or for the convenience of the news media;

(j) no audio-visual coverage of any participant shall be permitted if the presiding trial judge finds that such coverage is liable to endanger the safety of any person;

(k) no audio-visual coverage of any judicial proceedings which are by law closed to the public, or which may be closed to the public and which have been closed by the presiding trial judge shall be permitted; and

(l) no audio-visual coverage shall be permitted which focuses on or features a family member of a victim or a party in the trial of a criminal case, except while such family member is testifying. Audio-visual coverage operators shall make all reasonable efforts to determine the identity of such persons, so that such coverage shall not occur.

8. Violations. Any violation of an order or determination issued under this section shall be punishable as a contempt pursuant to article nineteen of this chapter.

9. Review committee. (a) There shall be created a committee to review audio-visual coverage of court proceedings. The committee shall consist of twelve members of whom: three to be appointed by the governor, three to be appointed by the chief judge of the court of appeals, two to be appointed by the temporary president of the senate, two to be appointed by the speaker of the assembly, one to be appointed by the minority leader of the senate and one to be appointed by the minority leader of the assembly. The chair of the committee shall be appointed by the chief judge of the court of appeals. At least one member of the committee and no more than two members of the committee shall be a representative of the broadcast media, be employed by the broadcast media or receive compensation from the broadcast media. At least two members of the committee shall be members of the bar, engaged in the practice of law and regularly conduct trials and/or appellate arguments; and at least one member of the committee shall by professional training and expertise be qualified to evaluate and analyze research methodology relevant to analyzing the impact and effect of audio-visual coverage of judicial proceedings. No one who has served on an earlier committee established by law to review audio-visual coverage of judicial proceedings in this state may be appointed to such committee. No member or employee of the executive, legislative, or judicial branches of the state government may be appointed to such committee.

(b) The members of the committee shall serve without compensation for their services as members of the committee, except that each of the nonpublic members of the committee may be allowed the necessary and actual travel, meals and lodging expenses which he or she shall incur in the performance of his or her duties under this section. Any expenses incurred pursuant to this section shall be a charge against the office of court administration.

(c) The committee shall have the power, duty and responsibility to evaluate, analyze and monitor the provisions of this section. The office of court administration and all participants in proceedings where audi-

o-visual coverage was permitted, including judges, attorneys and jurors, shall cooperate with the committee in connection with the review of the impact of audio-visual coverage on such proceedings. The committee shall request participation and assistance from the New York state bar association and other bar associations. The committee shall issue a report to the legislature, the governor and the chief judge of the court of appeals evaluating the efficacy of the program and whether any public benefits accrue from the program, any abuses that occurred during the program and the extent to which and in what way the conduct of participants in court proceedings changes when audio-visual coverage is present. The committee shall expressly and specifically analyze and evaluate the degree of compliance by trial judges and the media with the provisions of this section and the effect of audio-visual coverage on the conduct of trial judges both inside and outside the courtroom. Such report shall be submitted to the legislature, the governor and the chief judge of the court of appeals by January thirty-first, two thousand twenty.

10. Rules and regulations. The chief administrator shall promulgate appropriate rules and regulations for the implementation of the provisions of this section after affording all interested persons, agencies and institutions an opportunity to review and comment thereon. Such rules and regulations shall include provisions to ensure that audio-visual coverage of trial proceedings shall not interfere with the decorum and dignity of courtrooms and court facilities.

§ 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall expire and be deemed repealed 5 years after such effective date.