

# 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:

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 Section 218 of the judiciary law is REPEALED and a new  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

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

10 2. Definitions. For purposes of this section:

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

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

21 (c) "News media" shall mean any news reporting or news gathering agen-  
22 cy and any employee or agent associated with such agency, including  
23 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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1 pers, magazines, trade papers, in-house publications, professional jour-  
2 nals or any other news reporting or news gathering agency, the function  
3 of which is to inform the public, or some segment thereof.

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

7 (e) "Covert or undercover capacity" shall mean law enforcement activ-  
8 ity involving criminal investigation by peace or police officers who  
9 usually and customarily wear no uniform, badge or other official iden-  
10 tification in public view.

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

13 (g) "Suppression hearing" shall mean a hearing on a motion made pursu-  
14 ant to the provisions of section 710.20 of the criminal procedure law; a  
15 hearing on a motion to determine the admissibility of any prior crimi-  
16 nal, vicious or immoral acts of a defendant and any other hearing held  
17 to determine the admissibility of evidence.

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

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

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

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

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

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

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

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

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

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

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

36 (b) Audio-visual coverage of arraignments and suppression hearings  
37 shall be permitted only with the consent of all parties to the proceed-  
38 ing; provided, however, where a party is not yet represented by counsel  
39 consent may not be given unless the party has been advised of his or her  
40 right to the aid of counsel pursuant to subdivision four of section  
41 170.10 or section 180.10 of the criminal procedure law and the party has  
42 affirmatively elected to proceed without counsel at such proceeding.

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

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

52 (a) Equipment and personnel:

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

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

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

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

18 (v) Notwithstanding the provisions of subparagraphs (i), (ii) and  
19 (iii) of this paragraph, the equipment authorized therein shall not be  
20 admitted into a court proceeding unless all persons interested in  
21 providing audio-visual coverage of such proceedings shall have entered  
22 into pooling arrangements for their respective groups. Furthermore, a  
23 pool operator for the electronic and motion picture media and a pool  
24 operator for the still photography media shall be selected, and proce-  
25 dures for cost sharing and dissemination of audio-visual material estab-  
26 lished. The court shall not be called upon to mediate or resolve any  
27 dispute as to such arrangements. In making pooling arrangements, consid-  
28 eration shall be given to educational users' needs for full coverage of  
29 entire proceedings.

30 (b) Sound and light criteria:

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) no conference in chambers shall be subject to audio-visual cover-  
27 age;

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

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

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

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

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

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

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

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

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

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

22 8. Violations. Any violation of an order or determination issued under  
23 this section shall be punishable as a contempt pursuant to article nine-  
24 teen of this chapter.

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

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

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

1 o-visual coverage was permitted, including judges, attorneys and jurors,  
2 shall cooperate with the committee in connection with the review of the  
3 impact of audio-visual coverage on such proceedings. The committee shall  
4 request participation and assistance from the New York state bar associ-  
5 ation and other bar associations. The committee shall issue a report to  
6 the legislature, the governor and the chief judge of the court of  
7 appeals evaluating the efficacy of the program and whether any public  
8 benefits accrue from the program, any abuses that occurred during the  
9 program and the extent to which and in what way the conduct of partic-  
10 ipants in court proceedings changes when audio-visual coverage is pres-  
11 ent. The committee shall expressly and specifically analyze and evaluate  
12 the degree of compliance by trial judges and the media with the  
13 provisions of this section and the effect of audio-visual coverage on  
14 the conduct of trial judges both inside and outside the courtroom. Such  
15 report shall be submitted to the legislature, the governor and the chief  
16 judge of the court of appeals by January thirty-first, two thousand  
17 twenty.

18 10. Rules and regulations. The chief administrator shall promulgate  
19 appropriate rules and regulations for the implementation of the  
20 provisions of this section after affording all interested persons, agen-  
21 cies and institutions an opportunity to review and comment thereon. Such  
22 rules and regulations shall include provisions to ensure that audio-vi-  
23 sual coverage of trial proceedings shall not interfere with the decorum  
24 and dignity of courtrooms and court facilities.

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