

STATE OF NEW YORK

712--B

2023-2024 Regular Sessions

IN ASSEMBLY

January 11, 2023

Introduced by M. of A. WEPRIN, SOLAGES, CRUZ, PAULIN, BURDICK, SEPTIMO, HEVESI, SIMON, AUBRY, SILLITTI, SIMONE, BICHOTTE HERMELYN, DICKENS, SHIMSKY, GUNTHER, GLICK, TAPIA, WALLACE, COOK, McMAHON, DAVILA -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the judiciary law, in relation to audio-visual coverage of judicial proceedings; and to repeal section 218 of the judiciary law and section 52 of the civil rights law relating thereto

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 Section 218 of the judiciary law is REPEALED and a new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. Subject to the authority of the judge or justice presiding over
5 the proceeding to exercise sound discretion to prohibit or limit filming
6 or photographing of particular participants in judicial proceedings to
7 ensure safety and the fair administration of justice, audio-visual and
8 still photography coverage of public judicial proceedings in the appel-
9 late and trial courts of this state shall be allowed in accordance with
10 this section.

11 2. Definitions. For purposes of this section, the following terms
12 shall have the following meanings:

13 (a) "Proceeding" shall mean any action or proceeding heard in a court
14 of competent jurisdiction in this state.

15 (b) "Media" shall mean any news reporting or news gathering agency and
16 any employee or agent associated with such agency, including television,

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

LBD01599-05-4

1 radio, radio and television networks, news services, newspapers, maga-
2 zines, trade papers, in-house publications, professional journals or any
3 other news reporting or news gathering agency, the function of which is
4 to inform the public, or some segment thereof.

5 3. Equipment and personnel. The following shall be permitted in any
6 trial court or appellate court proceeding other than a matrimonial
7 proceeding or a proceeding in family court:

8 (a) At least one compact video camera, operated by no more than one
9 camera person. Additional permitted cameras shall be within the sole
10 discretion and authority of the judge or justice presiding over the
11 proceeding.

12 (b) Not more than one audio system for radio broadcast purposes.
13 Audio pickup for all media purposes shall be provided by existing audio
14 systems present in the courtroom. If no technically suitable audio
15 system exists in the courtroom, microphones and related wiring essential
16 for media purposes shall be permissible provided they are unobtrusive
17 and shall be located in places designated in advance of any proceeding
18 by the judge or justice presiding over the proceeding. In the event
19 that the courtroom has existing cameras suitable for audio-visual cover-
20 age, upon request the judge or justice presiding over the proceeding
21 shall have sole discretion to provide a media feed from such cameras
22 instead of allowing video cameras in the courtroom.

23 (c) Additional permitted equipment or personnel shall be within the
24 sole discretion and authority of the judge or justice presiding over the
25 proceeding. All costs of all audio and visual coverage shall be borne
26 by the entity seeking to provide such coverage.

27 (d) Any pooling arrangements among members of the media concerning
28 equipment and personnel shall be the sole responsibility of such members
29 without calling upon the judge or justice presiding over the proceeding
30 to mediate any dispute as to the appropriate media representative or
31 equipment authorized to cover a particular proceeding. In the absence of
32 advance media agreement concerning disputed equipment or personnel
33 issues, the judge or justice presiding over the proceeding may exclude
34 all media personnel from a proceeding.

35 4. Sound and light criteria. Any video and audio equipment, including
36 still camera equipment, whether film or digital, shall be operated in a
37 manner to generate the least possible sound or light, and such equipment
38 shall not be permitted if it produces distracting sound or light. No
39 artificial lighting device of any kind shall be used in connection with
40 the video equipment or still camera.

41 5. Location of equipment personnel. Video camera equipment and still
42 camera photographers shall be positioned in such location or locations
43 in the courtroom as shall be designated by the judge or justice presid-
44 ing over the proceeding. The area designated shall provide reasonable
45 access to coverage of the proceedings, so long as such reasonable access
46 can be provided without interference with the proceedings. Video
47 cameras and operators, and any still cameras and photographers, if
48 permitted, shall assume a fixed position within the designated area and
49 shall not be permitted to move about to obtain photographs or video
50 recordings of court proceedings. Media representatives shall not move
51 about the court facility while proceedings are in session.

52 6. Equipment movement during proceedings. News media photographic or
53 audio equipment shall not be placed in, removed from, or moved about the
54 authorized location as determined by the judge or justice presiding over
55 the proceeding, except before commencement or after adjournment of
56 proceedings each day. Equipment may be moved during a recess only with

1 the prior approval of the judge or justice presiding over the proceed-
2 ing. Neither video cassettes or film magazines nor still camera film,
3 digital media cards or lenses shall be changed within a courtroom except
4 during a recess in the proceeding.

5 7. Courtroom light sources. With the concurrence of the administrative
6 judge or the presiding justice who oversees the court in which the
7 proceeding is occurring, modifications and additions may be made in
8 light sources existing in the courtroom, provided such modifications or
9 additions are installed and maintained without public expense.

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

18 (a) to protect the attorney-client privilege and the effective right
19 to counsel, there shall be no video or audio pickup or broadcast of
20 conferences that occur in a courtroom between attorneys and their
21 clients, between co-counsel of a client, or between counsel and the
22 presiding judge held at the bench;

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

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

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

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

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

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

54 (h) no audio-visual coverage of any arraignment or suppression hearing
55 shall be permitted without the prior consent of all parties to the
56 proceeding, provided, however, where a party is not yet represented by

1 counsel, consent may not be given unless the party has been advised of
2 such party's right to the aid of counsel pursuant to subdivision four of
3 section 170.10 or 180.10 of the criminal procedure law and the party has
4 affirmatively elected to proceed without counsel at such proceeding;

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

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

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

15 9. Impermissible use of media material. Film, digital files, vide-
16 otape, still photographs, or audio reproductions captured or recorded
17 during or by virtue of coverage of a judicial proceeding shall not be
18 admissible as evidence in the proceeding out of which it arose, or upon
19 retrial or appeal of such proceedings.

20 10. Written order. (a) An order restricting audio-visual coverage with
21 respect to a particular participant shall be in writing. The order must
22 state good cause why such coverage will have a substantial effect upon
23 the individual which would be qualitatively different from the effect on
24 members of the public in general and that such effect will be qualita-
25 tively different from coverage by other types of media. Before prohibit-
26 ing audio-visual coverage, the presiding judge must first consider the
27 imposition of special limitations, such as a delayed or modified still
28 or audio-visual coverage of the proceedings.

29 (b) A presumption of good cause shall exist with respect to the testi-
30 mony of minors and testimony of any individual covered by section
31 fifty-b of the civil rights law.

32 11. Closing the courtroom. No audio-visual coverage will be permitted
33 during any period in which the courtroom is lawfully closed to the
34 general public in accordance with the United States and New York Consti-
35 tutions, New York law and court rules.

36 12. Appellate review. Any order issued pursuant to this section shall
37 be subject to review pursuant to article seventy-eight of the civil
38 practice law and rules and any rules of the appellate courts promulgated
39 to provide expedited review of such order.

40 13. Regulations. The chief administrator shall promulgate appropriate
41 rules and regulations for the implementation of the provisions of this
42 section after affording all interested persons, agencies and insti-
43 tutions an opportunity to review and comment thereon. Such rules and
44 regulations shall include provisions to ensure that audio-visual cover-
45 age of trial proceedings shall not interfere with the decorum and digni-
46 ty of courtrooms and court facilities.

47 § 2. Section 52 of the civil rights law is REPEALED.

48 § 3. Subdivision 5 of section 751 of the judiciary law, as added by
49 chapter 187 of the laws of 1992, is amended to read as follows:

50 5. Where any member of the [~~news~~] media as [~~defined in subdivision two~~
51 ~~of~~] referenced in section two hundred eighteen of this chapter, willful-
52 ly disobeys a lawful mandate of a court issued pursuant to such section,
53 the punishment for each day that such contempt persists may be by a fine
54 fixed in the discretion of the court, but not to exceed five thousand
55 dollars per day or imprisonment, not exceeding thirty days, in the jail
56 of the county where the court is sitting or both, in the discretion of

1 the court. In fixing the amount of the fine, the court shall consider
2 all the facts and circumstances directly related to the contempt,
3 including, but not limited to: (i) the extent of the willful defiance of
4 or resistance to the court's mandate, (ii) the amount of gain obtained
5 by the willful disobedience of the mandate, and (iii) the effect upon
6 the public and the parties to the proceeding of the willful disobedi-
7 ence.

8 § 4. This act shall take effect on the ninetieth day after it shall
9 have become a law.