STATE OF NEW YORK

160--B

Cal. No. 937

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

Introduced by Sens. HOYLMAN-SIGAL, RAMOS, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, passed by Senate and delivered to the Assembly, recalled, vote reconsidered, restored to third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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 Section 218 of the judiciary law is REPEALED and a new section 218 is added to read as follows: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. Subject to the authority of the judge or justice presiding over the proceeding to exercise sound discretion to prohibit or limit filming or photographing of particular participants in judicial proceedings to ensure safety and the fair administration of justice, audio-visual and still photography coverage of public judicial proceedings in the appellate and trial courts of this state shall be allowed in accordance with this section.

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

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

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

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(b) "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, newspapers, 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.

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

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

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

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

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

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

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

6. Equipment movement during proceedings. News media photographic or audio equipment shall not be placed in, removed from, or moved about the authorized location as determined by the judge or justice presiding over

the proceeding, except before commencement or after adjournment of proceedings each day. Equipment may be moved during a recess only with the prior approval of the judge or justice presiding over the proceeding. Neither video cassettes or film magazines nor still camera film, digital media cards or lenses shall be changed within a courtroom except during a recess in the proceeding.

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

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

(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 such presiding trial judge's 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 officer 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 such victim's testimony, or in the alternative the victim can request that coverage of such victim's testimony be permitted but that such victim's image shall be visually obscured by the news media, and the presiding trial judge in such presiding trial judge's 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 such party's right to the aid of counsel pursuant to subdivision four of section 170.10 or 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; and

(k) 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.

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

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

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

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

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

13. 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. Section 52 of the civil rights law is REPEALED.

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

5. Where any member of the [~~news~~] media as [~~defined in subdivision two of~~] referenced in section two hundred eighteen of this chapter, willfully disobeys a lawful mandate of a court issued pursuant to such section, the punishment for each day that such contempt persists may be by a fine

fixed in the discretion of the court, but not to exceed five thousand dollars per day or imprisonment, not exceeding thirty days, in the jail of the county where the court is sitting or both, in the discretion of the court. In fixing the amount of the fine, the court shall consider all the facts and circumstances directly related to the contempt, including, but not limited to: (i) the extent of the willful defiance of or resistance to the court's mandate, (ii) the amount of gain obtained by the willful disobedience of the mandate, and (iii) the effect upon the public and the parties to the proceeding of the willful disobedience.

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