

Calendar No. 618

110TH CONGRESS
2D SESSION

S. 352

To provide for media coverage of Federal court proceedings.

IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2007

Mr. GRASSLEY (for himself, Mr. SCHUMER, Mr. LEAHY, Mr. SPECTER, Mr. GRAHAM, Mr. FEINGOLD, Mr. CORNYN, Mr. DURBIN, Mr. CRAIG, and Mr. ALLARD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MARCH 13, 2008

Reported by Mr. LEAHY, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To provide for media coverage of Federal court proceedings.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the *“Sunshine in the Court-*
5 *room Act of 2007 2008”*

6 **SEC. 2. FEDERAL APPELLATE AND DISTRICT COURTS.**

7 (a) DEFINITIONS.—In this section:

1 (1) PRESIDING JUDGE.—The term “presiding
2 judge” means the judge presiding over the court
3 proceeding concerned. In proceedings in which more
4 than 1 judge participates, the presiding judge shall
5 be the senior active judge so participating or, in the
6 case of a circuit court of appeals, the senior active
7 circuit judge so participating, except that—

8 (A) in en banc sittings of any United
9 States circuit court of appeals, the presiding
10 judge shall be the chief judge of the circuit
11 whenever the chief judge participates; and

12 (B) in en banc sittings of the Supreme
13 Court of the United States, the presiding judge
14 shall be the Chief Justice whenever the Chief
15 Justice participates.

16 (2) APPELLATE COURT OF THE UNITED
17 STATES.—The term “appellate court of the United
18 States” means any United States circuit court of ap-
19 peals and the Supreme Court of the United States.

20 (b) AUTHORITY OF PRESIDING JUDGE TO ALLOW
21 MEDIA COVERAGE OF COURT PROCEEDINGS.—

22 (1) AUTHORITY OF APPELLATE COURTS.—

23 (A) IN GENERAL.—Except as provided
24 under subparagraph (B), the presiding judge of
25 an appellate court of the United States may, at

1 the discretion of that judge, permit the
 2 photographing, electronic recording, broad-
 3 casting, or televising to the public of any court
 4 proceeding over which that judge presides.

5 (B) EXCEPTION.—The presiding judge
 6 shall not permit any action under subparagraph
 7 (A), if—

8 (i) in the case of a proceeding involv-
 9 ing only the presiding judge, that judge de-
 10 termines the action would constitute a vio-
 11 lation of the due process rights of any
 12 party; or

13 (ii) in the case of a proceeding involv-
 14 ing the participation of more than 1 judge,
 15 a majority of the judges participating de-
 16 termine that the action would constitute a
 17 violation of the due process rights of any
 18 party.

19 (2) AUTHORITY OF DISTRICT COURTS.—

20 (A) IN GENERAL.—

21 (i) AUTHORITY.—Notwithstanding
 22 any other provision of law, except as pro-
 23 vided under clause (iii), the presiding judge
 24 of a district court of the United States
 25 may, at the discretion of that judge, per-

1 mit the photographing, electronic record-
2 ing, broadcasting, or televising to the pub-
3 lic of any court proceeding over which that
4 judge presides.

5 (ii) OBSCURING OF WITNESSES.—Ex-
6 cept as provided under clause (iii)—

7 (I) upon the request of any wit-
8 ness (other than a party) in a trial
9 proceeding, the court shall order the
10 face and voice of the witness to be
11 disguised or otherwise obscured in
12 such manner as to render the witness
13 unrecognizable to the broadcast audi-
14 ence of the trial proceeding; and

15 (II) the presiding judge in a trial
16 proceeding shall inform each witness
17 who is not a party that the witness
18 has the right to request the image and
19 voice of that witness to be obscured
20 during the witness' testimony.

21 (iii) EXCEPTION.—The presiding
22 judge shall not permit any action under
23 this subparagraph, if that judge deter-
24 mines the action would constitute a viola-
25 tion of the due process rights of any party.

1 (iii) *EXCEPTION.*—*The presiding judge*
 2 *shall not permit any action under this sub-*
 3 *paragraph—*

4 (I) *if that judge determines the*
 5 *action would constitute a violation of*
 6 *the due process rights of any party;*
 7 *and*

8 (II) *until the Judicial Conference*
 9 *of the United States promulgates man-*
 10 *datory guidelines under paragraph (5).*

11 ~~(B) NO TELEVISIONING OF JURORS.~~—*The*
 12 *presiding judge shall not permit the televising*
 13 *of any juror in a trial proceeding.*

14 (B) *NO MEDIA COVERAGE OF JURORS.*—*The*
 15 *presiding judge shall not permit the*
 16 *photographing, electronic recording, broad-*
 17 *casting, or televising of any juror in a trial pro-*
 18 *ceeding, or of the jury selection process.*

19 (C) *DISCRETION OF THE JUDGE.*—*The pre-*
 20 *siding judge shall have the discretion to obscure*
 21 *the face and voice of an individual, if good cause*
 22 *is shown that the photographing, electronic re-*
 23 *coding, broadcasting, or televising of the indi-*
 24 *vidual would threaten—*

25 (i) *the safety of the individual;*

- 1 (ii) the security of the court;
 2 (iii) the integrity of future or ongoing
 3 law enforcement operations; or
 4 (iv) the interest of justice.

5 (D) SUNSET OF DISTRICT COURT AUTHOR-
 6 ITY.—The authority under this paragraph shall
 7 terminate 3 years after the date of the enactment
 8 of this Act.

9 (3) INTERLOCUTORY APPEALS BARRED.—The de-
 10 cision of the presiding judge under this subsection of
 11 whether or not to permit, deny, or terminate the
 12 photographing, electronic recording, broadcasting, or
 13 televising of a court proceeding may not be challenged
 14 through an interlocutory appeal.

15 ~~(3)~~(4) ADVISORY GUIDELINES.—The Judicial
 16 Conference of the United States may promulgate ad-
 17 visory guidelines to which a presiding judge, at the
 18 discretion of that judge, may refer in making deci-
 19 sions with respect to the management and adminis-
 20 tration of photographing, recording, broadcasting, or
 21 televising described under paragraphs (1) and (2).

22 ~~(4)~~ SUNSET OF DISTRICT COURT AUTHORITY.—
 23 The authority under paragraph ~~(2)~~ shall terminate
 24 3 years after the date of the enactment of this Act.

1 (5) *MANDATORY GUIDELINES.*—Not later than 6
2 months after the date of enactment of this Act, the Ju-
3 dicial Conference of the United States shall promul-
4 gate mandatory guidelines which a presiding judge is
5 required to follow for obscuring of certain vulnerable
6 witnesses, including crime victims, minor victims,
7 families of victims, cooperating witnesses, undercover
8 law enforcement officers or agents, witnesses subject to
9 section 3521 of title 18, United States Code, relating
10 to witness relocation and protection, or minors under
11 the age of 18 years. The guidelines shall include pro-
12 cedures for determining, at the earliest practicable
13 time in any investigation or case, which witnesses
14 should be considered vulnerable under this section.

15 (6) *PROCEDURES.*—In the interests of justice
16 and fairness, the presiding judge of the court in which
17 media use is desired has discretion to promulgate
18 rules and disciplinary measures for the courtroom use
19 of any form of media or media equipment and the ac-
20 quisition or distribution of any of the images or
21 sounds obtained in the courtroom. The presiding
22 judge shall also have discretion to require written ac-
23 knowledgment of the rules by anyone individually or
24 on behalf of any entity before being allowed to acquire
25 any images or sounds from the courtroom.

1 (7) *NO BROADCAST OF CONFERENCES BETWEEN*
2 *ATTORNEYS AND CLIENTS.*—*There shall be no audio*
3 *pickup or broadcast of conferences which occur in a*
4 *court proceeding between attorneys and their clients,*
5 *between co-counsel of a client, between adverse coun-*
6 *sel, or between counsel and the presiding judge, if the*
7 *conferences are not part of the official record of the*
8 *proceedings.*

9 (8) *EXPENSES.*—*A court may require that any*
10 *accommodations to effectuate this Act be made with-*
11 *out public expense.*

12 (9) *INHERENT AUTHORITY.*—*Nothing in this Act*
13 *shall limit the inherent authority of a court to protect*
14 *witnesses or clear the courtroom to preserve the deco-*
15 *rum and integrity of the legal process or protect the*
16 *safety of an individual.*

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