

SENATE BILL 1156

E2, D1

6lr3794

By: **Senators Zirkin and Miller**

Introduced and read first time: March 7, 2016

Assigned to: Rules

Re-referred to: Judicial Proceedings, March 10, 2016

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: April 2, 2016

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Determination of Eligibility for Services – Office of the**
3 **Public Defender**

4 FOR the purpose of ~~transferring certain provisions relating to the representation of~~
5 ~~indigent defendants by the Office of the Public Defender from the Criminal~~
6 ~~Procedure Article to the Courts and Judicial Proceedings Article; requiring a certain~~
7 ~~designated official instead of the Office to determine the eligibility of an applicant~~
8 ~~for representation by the Office; requiring the Court of Appeals to designate a person~~
9 ~~to determine the eligibility of an applicant for representation by the Office; repealing~~
10 ~~a certain provision establishing that representation is not required to be provided to~~
11 ~~an indigent individual at a certain initial appearance; providing that a person may~~
12 ~~apply in any District Court of the State for representation by the Office; requiring a~~
13 ~~certain application to be made on a certain form; prohibiting the Office or a panel~~
14 ~~attorney from continuing a certain representation after a certain bail hearing unless~~
15 ~~a certain eligibility is determined; requiring a person designated by the Court of~~
16 ~~Appeals to determine the eligibility of an applicant to perform certain investigations;~~
17 ~~requiring a certain designated official to appoint the Office to represent an individual~~
18 ~~under certain circumstances; establishing that nothing in this Act affects the ability~~
19 ~~of the Office to use certain panel attorneys or seek certain reimbursement; requiring~~
20 ~~the Court of Appeals to adopt rules to implement this Act; making certain conforming~~
21 ~~changes; defining certain terms; providing for a delayed effective date; requiring a~~
22 commissioner to determine the indigence of a certain individual at a certain
23 proceeding under certain circumstances; providing a presumption that a certain
24 individual qualified as indigent by a commissioner at a certain proceeding qualifies

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 for services of the Office of the Public Defender; and generally relating to eligibility
 2 for the services of the Office of the Public Defender.

3 BY repealing and reenacting, with amendments,
 4 Article – Criminal Procedure
 5 Section ~~16–204~~ and 16–210
 6 Annotated Code of Maryland
 7 (2008 Replacement Volume and 2015 Supplement)

8 ~~BY adding to~~
 9 ~~Article – Courts and Judicial Proceedings~~
 10 ~~Section 1–801 through 1–805 to be under the new subtitle “Subtitle 8. Determination~~
 11 ~~of Indigence”~~
 12 ~~Annotated Code of Maryland~~
 13 ~~(2013 Replacement Volume and 2015 Supplement)~~

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
 15 That the Laws of Maryland read as follows:

16 **Article – Criminal Procedure**

17 ~~§ 16–204.~~

18 (a) ~~Representation of an indigent individual may be provided in accordance with~~
 19 ~~this title by the Public Defender or, subject to the supervision of the Public Defender, by~~
 20 ~~the deputy public defender, district public defenders, assistant public defenders, or panel~~
 21 ~~attorneys.~~

22 (b) (1) ~~Indigent defendants or parties shall be provided representation under~~
 23 ~~this title in:~~

24 (i) ~~a criminal or juvenile proceeding in which a defendant or party~~
 25 ~~is alleged to have committed a serious offense;~~

26 (ii) ~~a criminal or juvenile proceeding in which an attorney is~~
 27 ~~constitutionally required to be present prior to presentment being made before a~~
 28 ~~commissioner or judge;~~

29 (iii) ~~a postconviction proceeding for which the defendant has a right~~
 30 ~~to an attorney under Title 7 of this article;~~

31 (iv) ~~any other proceeding in which confinement under a judicial~~
 32 ~~commitment of an individual in a public or private institution may result;~~

33 (v) ~~a proceeding involving children in need of assistance under §~~
 34 ~~3–813 of the Courts Article; or~~

1 ~~(vi) a family law proceeding under Title 5, Subtitle 3, Part II or Part~~
2 ~~III of the Family Law Article, including:~~

3 ~~1. for a parent, a hearing in connection with guardianship or~~
4 ~~adoption;~~

5 ~~2. a hearing under § 5-326 of the Family Law Article for~~
6 ~~which the parent has not waived the right to notice; and~~

7 ~~3. an appeal.~~

8 ~~(2) (i) Except as provided in subparagraph (ii) of this paragraph,~~
9 ~~representation shall be provided to an indigent individual in all stages of a proceeding listed~~
10 ~~in paragraph (1) of this subsection, including, in criminal proceedings, custody,~~
11 ~~interrogation, bail hearing before a District Court or circuit court judge, preliminary~~
12 ~~hearing, arraignment, trial, and appeal.~~

13 ~~(ii) Representation is not required to be provided to an indigent~~
14 ~~individual at an initial appearance before a District Court commissioner.]~~

15 ~~§16-210.~~

16 (a) An individual may apply for services of the Office as an indigent individual, if
17 the individual states in writing under oath or affirmation that the individual, without
18 undue financial hardship, cannot provide the full payment of an attorney and all other
19 necessary expenses of representation in proceedings listed under § 16-204(b) of this
20 subtitle.

21 (b) For an individual whose assets and net annual income are less than 100
22 percent of the federal poverty guidelines, eligibility for services of the Office may be
23 determined without an assessment regarding the need of the applicant.

24 (c) (1) For an individual whose assets and net annual income equal or exceed
25 100 percent of the federal poverty guidelines, eligibility for the services of the Office shall
26 be determined by the need of the applicant.

27 (2) Need shall be measured according to the financial ability of the
28 applicant to engage and compensate a competent private attorney and to provide all other
29 necessary expenses of representation.

30 (3) Financial ability shall be determined by:

31 (i) the nature, extent, and liquidity of assets;

32 (ii) the disposable net income of the applicant;

33 (iii) the nature of the offense;

- 1 (iv) the length and complexity of the proceedings;
- 2 (v) the effort and skill required to gather pertinent information; and
- 3 (vi) any other foreseeable expense.

4 (4) If eligibility cannot be determined before the Office or a panel attorney
5 begins representation, the Office may represent an applicant provisionally.

6 (5) If the Office subsequently determines that an applicant is ineligible:

7 (i) the Office shall inform the applicant; and

8 (ii) the applicant shall be required to engage the applicant's own
9 attorney and reimburse the Office for the cost of the representation provided.

10 (d) (1) The Office shall investigate the financial status of an applicant when
11 the circumstances warrant.

12 (2) The Office may:

13 (i) require an applicant to execute and deliver written requests or
14 authorizations that are necessary under law to provide the Office with access to confidential
15 records of public or private sources that are needed to evaluate eligibility; and

16 (ii) on request, obtain information without charge from a public
17 record office or other unit of the State, county, or municipal corporation.

18 (3) (i) The Office may submit requests to the Department of Labor,
19 Licensing, and Regulation and the Comptroller for information regarding the employment
20 status and income of applicants.

21 (ii) Each request shall be accompanied by an authorization for
22 release of information that is:

23 1. in a form acceptable to the agency to which the request is
24 submitted; and

25 2. signed by the applicant.

26 (iii) The Department of Labor, Licensing, and Regulation and the
27 Comptroller shall comply with requests for information made by the Office under this
28 paragraph.

29 (iv) Requests and responsive information may be exchanged by
30 facsimile transmission.†

1 ~~(III) A POSTCONVICTION PROCEEDING FOR WHICH THE~~
2 ~~DEFENDANT HAS A RIGHT TO AN ATTORNEY UNDER TITLE 7 OF THE CRIMINAL~~
3 ~~PROCEDURE ARTICLE;~~

4 ~~(IV) ANY OTHER PROCEEDING IN WHICH CONFINEMENT UNDER~~
5 ~~A JUDICIAL COMMITMENT OF AN INDIVIDUAL IN A PUBLIC OR PRIVATE INSTITUTION~~
6 ~~MAY RESULT;~~

7 ~~(V) A PROCEEDING INVOLVING CHILDREN IN NEED OF~~
8 ~~ASSISTANCE UNDER § 3-813 OF THIS ARTICLE; OR~~

9 ~~(VI) A FAMILY LAW PROCEEDING UNDER TITLE 5, SUBTITLE 3,~~
10 ~~PART II OR PART III OF THE FAMILY LAW ARTICLE, INCLUDING:~~

11 ~~1. FOR A PARENT, A HEARING IN CONNECTION WITH~~
12 ~~GUARDIANSHIP OR ADOPTION;~~

13 ~~2. A HEARING UNDER § 5-326 OF THE FAMILY LAW~~
14 ~~ARTICLE FOR WHICH THE PARENT HAS NOT WAIVED THE RIGHT TO NOTICE; AND~~

15 ~~3. AN APPEAL.~~

16 ~~(2) REPRESENTATION SHALL BE PROVIDED TO AN INDIGENT~~
17 ~~INDIVIDUAL IN ALL STAGES OF A PROCEEDING LISTED IN PARAGRAPH (1) OF THIS~~
18 ~~SUBSECTION, INCLUDING, IN CRIMINAL PROCEEDINGS, CUSTODY, INTERROGATION,~~
19 ~~BAIL HEARING BEFORE A DISTRICT COURT OR CIRCUIT COURT JUDGE,~~
20 ~~PRELIMINARY HEARING, ARRAIGNMENT, TRIAL, AND APPEAL.~~

21 ~~1-803.~~

22 ~~(A) AN INDIVIDUAL MAY APPLY IN ANY DISTRICT COURT OF MARYLAND~~
23 ~~FOR APPOINTMENT OF REPRESENTATION BY THE OFFICE AS AN INDIGENT~~
24 ~~INDIVIDUAL IF THE INDIVIDUAL STATES IN WRITING UNDER OATH OR AFFIRMATION~~
25 ~~THAT THE INDIVIDUAL, WITHOUT UNDUE FINANCIAL HARDSHIP, CANNOT PROVIDE~~
26 ~~THE FULL PAYMENT OF AN ATTORNEY AND ALL OTHER NECESSARY EXPENSES OF~~
27 ~~REPRESENTATION IN PROCEEDINGS LISTED UNDER § 1-802(B) OF THIS SUBTITLE.~~

28 ~~(B) AN APPLICATION MADE UNDER SUBSECTION (A) OF THIS SECTION~~
29 ~~SHALL BE ON A FORM PROVIDED BY THE COURT.~~

30 ~~1-804.~~

1 ~~(A) A DESIGNATED OFFICIAL SHALL DETERMINE AN INDIVIDUAL'S~~
2 ~~ELIGIBILITY FOR REPRESENTATION BY THE OFFICE IN ACCORDANCE WITH THIS~~
3 ~~SUBTITLE.~~

4 ~~(B) FOR AN INDIVIDUAL WHOSE ASSETS AND NET ANNUAL INCOME ARE LESS~~
5 ~~THAN 100% OF THE FEDERAL POVERTY GUIDELINES, ELIGIBILITY FOR SERVICES OF~~
6 ~~THE OFFICE MAY BE DETERMINED WITHOUT AN ASSESSMENT REGARDING THE NEED~~
7 ~~OF THE APPLICANT.~~

8 ~~(C) (1) FOR AN INDIVIDUAL WHOSE ASSETS AND NET ANNUAL INCOME~~
9 ~~EQUAL OR EXCEED 100% OF THE FEDERAL POVERTY GUIDELINES, ELIGIBILITY FOR~~
10 ~~THE SERVICES OF THE OFFICE SHALL BE DETERMINED BY THE NEED OF THE~~
11 ~~APPLICANT.~~

12 ~~(2) NEED SHALL BE MEASURED ACCORDING TO THE FINANCIAL~~
13 ~~ABILITY OF THE APPLICANT TO ENGAGE AND COMPENSATE A COMPETENT PRIVATE~~
14 ~~ATTORNEY AND TO PROVIDE ALL OTHER NECESSARY EXPENSES OF~~
15 ~~REPRESENTATION.~~

16 ~~(3) FINANCIAL ABILITY SHALL BE DETERMINED BY:~~

17 ~~(I) THE NATURE, EXTENT, AND LIQUIDITY OF ASSETS;~~

18 ~~(II) THE DISPOSABLE NET INCOME OF THE APPLICANT;~~

19 ~~(III) THE NATURE OF THE OFFENSE;~~

20 ~~(IV) THE LENGTH AND COMPLEXITY OF THE PROCEEDINGS;~~

21 ~~(V) THE EFFORT AND SKILL REQUIRED TO GATHER PERTINENT~~
22 ~~INFORMATION; AND~~

23 ~~(VI) ANY OTHER FORESEEABLE EXPENSE.~~

24 ~~(4) (I) IF ELIGIBILITY CANNOT BE DETERMINED BEFORE THE~~
25 ~~OFFICE OR A PANEL ATTORNEY BEGINS REPRESENTATION, THE COURT MAY~~
26 ~~APPOINT THE OFFICE TO REPRESENT AN APPLICANT PROVISIONALLY.~~

27 ~~(II) THE OFFICE OR A PANEL ATTORNEY MAY NOT CONTINUE~~
28 ~~REPRESENTATION AFTER A BAIL HEARING UNLESS ELIGIBILITY IS DETERMINED.~~

29 ~~(5) IF A DESIGNATED OFFICIAL SUBSEQUENTLY DETERMINES THAT~~
30 ~~AN APPLICANT IS INELIGIBLE:~~

~~(I) THE DESIGNATED OFFICIAL SHALL INFORM THE OFFICE AND THE APPLICANT; AND~~

~~(II) THE APPLICANT SHALL BE REQUIRED TO ENGAGE THE APPLICANT'S OWN ATTORNEY AND REIMBURSE THE OFFICE FOR THE COST OF THE REPRESENTATION PROVIDED.~~

~~(D) (1) THE DESIGNATED OFFICIAL SHALL INVESTIGATE THE FINANCIAL STATUS OF AN APPLICANT.~~

~~(2) THE DESIGNATED OFFICIAL SHALL:~~

~~(I) REQUIRE AN APPLICANT TO EXECUTE AND DELIVER WRITTEN REQUESTS OR AUTHORIZATIONS THAT ARE NECESSARY UNDER LAW TO PROVIDE THE COURT WITH ACCESS TO CONFIDENTIAL RECORDS OF PUBLIC OR PRIVATE SOURCES THAT ARE NEEDED TO EVALUATE ELIGIBILITY, UNLESS THE APPLICANT IS UNABLE TO DO SO BECAUSE OF A MENTAL DISABILITY; AND~~

~~(II) ON REQUEST, OBTAIN INFORMATION WITHOUT CHARGE FROM A PUBLIC RECORD OFFICE OR OTHER UNIT OF THE STATE, COUNTY, OR MUNICIPAL CORPORATION.~~

~~(3) (I) THE DESIGNATED OFFICIAL SHALL SUBMIT REQUESTS TO THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND THE COMPTROLLER FOR INFORMATION REGARDING THE EMPLOYMENT STATUS AND INCOME OF APPLICANTS.~~

~~(II) EACH REQUEST SHALL BE ACCOMPANIED BY AN AUTHORIZATION FOR RELEASE OF INFORMATION THAT IS:~~

~~1. IN A FORM ACCEPTABLE TO THE AGENCY TO WHICH THE REQUEST IS SUBMITTED; AND~~

~~2. SIGNED BY THE APPLICANT.~~

~~(III) THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND THE COMPTROLLER SHALL COMPLY WITH REQUESTS FOR INFORMATION MADE BY THE DESIGNATED OFFICIAL UNDER THIS PARAGRAPH.~~

~~(IV) REQUESTS AND RESPONSIVE INFORMATION MAY BE EXCHANGED BY FACSIMILE TRANSMISSION.~~

1 ~~(E) THE DESIGNATED OFFICIAL SHALL APPOINT THE OFFICE TO~~
2 ~~REPRESENT AN INDIVIDUAL FOUND TO BE ELIGIBLE FOR REPRESENTATION UNDER~~
3 ~~THIS SUBTITLE.~~

4 ~~1-805.~~

5 ~~(A) NOTHING IN THIS SUBTITLE AFFECTS THE ABILITY OF THE OFFICE TO~~
6 ~~UTILIZE PANEL ATTORNEYS UNDER § 16-208 OF THE CRIMINAL PROCEDURE~~
7 ~~ARTICLE, OR TO SEEK REIMBURSEMENT FOR SERVICES OR LIENS UNDER §§ 16-211~~
8 ~~AND 16-212 OF THE CRIMINAL PROCEDURE ARTICLE.~~

9 ~~(B) THE COURT OF APPEALS SHALL ADOPT RULES FOR IMPLEMENTING THE~~
10 ~~REQUIREMENTS OF THIS SUBTITLE.~~

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2017.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.