

SENATE BILL 515

E2

11r1229

By: **Senators Zirkin and Miller**

Introduced and read first time: February 4, 2011

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Public Defender – Representation – Income Eligibility and Appointment by a**
3 **Court**

4 FOR the purpose of establishing that certain individuals may be eligible for services
5 from the Office of the Public Defender without an assessment regarding the
6 need of the individual; establishing that the determination of eligibility for
7 services from the Office of the Public Defender based on need applies for an
8 individual whose assets and net annual income equal or exceed a certain
9 amount; establishing that certain courts are prohibited from appointing an
10 attorney through the Office of the Public Defender under certain circumstances;
11 and generally relating to representation by the Office of the Public Defender.

12 BY repealing and reenacting, with amendments,
13 Article – Criminal Procedure
14 Section 16–210 and 16–213
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2010 Supplement)

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

19 **Article – Criminal Procedure**

20 16–210.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(B) FOR AN INDIVIDUAL WHOSE ASSETS AND NET ANNUAL INCOME ARE**
2 **LESS THAN 100 PERCENT OF THE FEDERAL POVERTY GUIDELINES, ELIGIBILITY**
3 **FOR SERVICES OF THE OFFICE MAY BE DETERMINED WITHOUT AN ASSESSMENT**
4 **REGARDING THE NEED OF THE APPLICANT.**

5 **[(b)] (C) (1) [Eligibility] FOR AN INDIVIDUAL WHOSE ASSETS AND**
6 **NET ANNUAL INCOME EQUAL OR EXCEED 100 PERCENT OF THE FEDERAL**
7 **POVERTY GUIDELINES, ELIGIBILITY** for the services of the Office shall be
8 determined by the need of the applicant.

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

12 (3) Financial ability shall be determined by:

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

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

15 (iii) the nature of the offense;

16 (iv) the length and complexity of the proceedings;

17 (v) the effort and skill required to gather pertinent information;

18 and

19 (vi) any other foreseeable expense.

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

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

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

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

27 **[(c)] (D) (1) The Office shall investigate the financial status of an**
28 **applicant when the circumstances warrant.**

29 (2) The Office may:

30 (i) require an applicant to execute and deliver written requests
31 or authorizations that are necessary under law to provide the Office with access to

1 confidential records of public or private sources that are needed to evaluate eligibility;
2 and

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

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

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

10 1. in a form acceptable to the agency to which the
11 request is submitted; and

12 2. signed by the applicant.

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

16 (iv) Requests and responsive information may be exchanged by
17 facsimile transmission.

18 16–213.

19 This subtitle does not prohibit the appointment of an attorney, **OTHER THAN**
20 **THROUGH THE OFFICE**, to represent an indigent individual by the District Court, a
21 circuit court, or the Court of Special Appeals if:

22 (1) there is a conflict in legal representation in a matter involving
23 multiple defendants, and one of the defendants is represented by or through the
24 Office; or

25 (2) the Office declines to provide representation to an indigent
26 individual entitled to representation under this subtitle.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2011.