

HOUSE BILL 985

E2

4lr2667

By: **Delegate Anderson**

Introduced and read first time: February 6, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Office of the Public Defender – Eligibility for Services**

3 FOR the purpose of repealing a provision of law authorizing the Office of the Public
4 Defender to represent a certain applicant provisionally under certain
5 circumstances; prohibiting the Office of the Public Defender or a certain panel
6 attorney from beginning a certain representation until a certain eligibility is
7 determined; requiring the Office of the Public Defender to investigate the
8 financial status of an applicant under all circumstances; altering certain
9 provisions of law so as to require, rather than authorize, the Office of the Public
10 Defender to require an applicant to execute and deliver certain requests or
11 authorizations, to obtain certain information, and to submit certain requests for
12 information to the Department of Labor, Licensing, and Regulation; making a
13 conforming change; and generally relating to eligibility for the services of the
14 Office of the Public Defender.

15 BY repealing and reenacting, with amendments,
16 Article – Criminal Procedure
17 Section 16–210
18 Annotated Code of Maryland
19 (2008 Replacement Volume and 2013 Supplement)

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

22 **Article – Criminal Procedure**

23 16–210.

24 (a) An individual may apply for services of the Office as an indigent
25 individual, if the individual states in writing under oath or affirmation that the
26 individual, without undue financial hardship, cannot provide the full payment of an

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 attorney and all other necessary expenses of representation in proceedings listed
2 under § 16–204(b) of this subtitle.

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

6 (c) (1) For an individual whose assets and net annual income equal or
7 exceed 100 percent of the federal poverty guidelines, eligibility for the services of the
8 Office shall be 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 **THE OFFICE OR A PANEL ATTORNEY MAY NOT BEGIN REPRESENTATION UNTIL**
23 **ELIGIBILITY IS DETERMINED.**

24 (5) If the Office [subsequently] determines that an applicant is
25 ineligible **AFTER MAKING AN INITIAL DETERMINATION THAT THE APPLICANT IS**
26 **ELIGIBLE:**

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

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

30 (d) (1) The Office shall investigate the financial status of an applicant
31 [when the circumstances warrant].

1 (2) The Office [may] **SHALL**:

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

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

8 (3) (i) The Office [may] **SHALL** submit requests to the Department
9 of Labor, Licensing, and Regulation and the Comptroller for information regarding the
10 employment status and income of applicants.

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

13 1. in a form acceptable to the agency to which the
14 request is submitted; and

15 2. signed by the applicant.

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

19 (iv) Requests and responsive information may be exchanged by
20 facsimile transmission.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 October 1, 2014.