

HOUSE BILL 985

E2

4lr2667

By: **Delegate Anderson**

Introduced and read first time: February 6, 2014

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 10, 2014

CHAPTER _____

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~~ continuing a certain representation ~~until~~ after a
7 certain bail hearing unless a certain eligibility is determined; requiring the
8 Office of the Public Defender to investigate the financial status of an applicant
9 under all circumstances; altering certain provisions of law so as to require,
10 rather than authorize, the Office of the Public Defender to require an applicant
11 to execute and deliver certain requests or authorizations, to obtain certain
12 information, and to submit certain requests for information to the Department
13 of Labor, Licensing, and Regulation, with a certain exception; ~~making a~~
14 ~~conforming change~~; and generally relating to eligibility for the services of the
15 Office of the Public Defender.

16 BY repealing and reenacting, with amendments,
17 Article – Criminal Procedure
18 Section 16–210
19 Annotated Code of Maryland
20 (2008 Replacement Volume and 2013 Supplement)

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

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 **Article – Criminal Procedure**

2 16–210.

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

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

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

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

17 (3) Financial ability shall be determined by:

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

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

20 (iii) the nature of the offense;

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

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

23 and

24 (vi) any other foreseeable expense.

25 (4) ~~¶ (I)~~ If eligibility cannot be determined before the Office or a
 26 panel attorney begins representation, the Office may represent an applicant
 27 provisionally.

28 **(II) THE OFFICE OR A PANEL ATTORNEY MAY NOT ~~BEGIN~~**
 29 **CONTINUE REPRESENTATION ~~UNTIL~~ AFTER THE BAIL HEARING UNLESS**
 30 **ELIGIBILITY IS DETERMINED.**

1 (5) If the Office ~~subsequently~~ determines that an applicant is
2 ineligible ~~AFTER MAKING AN INITIAL DETERMINATION THAT THE APPLICANT IS~~
3 ~~ELIGIBLE~~:

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

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

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

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

10 (i) require an applicant to execute and deliver written requests
11 or authorizations that are necessary under law to provide the Office with access to
12 confidential records of public or private sources that are needed to evaluate eligibility,
13 UNLESS THE APPLICANT IS UNABLE TO DO SO BECAUSE OF A MENTAL
14 DISABILITY; and

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

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

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

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

24 2. signed by the applicant.

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

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

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