

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

House Bill 391
 Judiciary

(Delegate Rosenberg, *et al.*)

Office of the Public Defender - Eligibility for Services

This bill requires the Office of the Public Defender (OPD) to investigate the financial status of all applicants for OPD services and prohibits OPD from continuing legal representation of an individual after a bail review hearing unless the individual’s eligibility for OPD services is determined. OPD must require applicants to provide specified authorizations allowing OPD access to confidential records needed to evaluate eligibility, unless the applicant is unable to do so because of a mental disability. OPD must submit requests to the Department of Labor, Licensing, and Regulation (DLLR) and the Comptroller for information regarding the employment status and income of applicants.

Fiscal Summary

State Effect: General fund expenditures increase by \$850,900 in FY 2016 for the development of automated access systems between OPD, DLLR, and the Comptroller. Future year estimates reflect only ongoing costs. Revenues are not affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	850,900	90,700	94,500	98,300	102,400
Net Effect	(\$850,900)	(\$90,700)	(\$94,500)	(\$98,300)	(\$102,400)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: An individual may apply for OPD services as an indigent individual, if the individual states in writing under oath or affirmation that the individual, without undue financial hardship, cannot provide the full payment of an attorney and all other necessary expenses of representation in specified proceedings.

For an individual whose assets and net annual income are less than 100% of the federal poverty guidelines, eligibility for OPD services may be determined without an assessment regarding the need of the applicant. For an individual whose assets and net annual income equal or exceed 100% of the federal poverty guidelines, eligibility for OPD services must be determined by the need of the applicant. Need must be measured according to the financial ability of the applicant to engage and compensate a competent private attorney and to provide all other necessary expenses of representation.

An applicant's financial ability must be determined by (1) the nature, extent, and liquidity of assets; (2) the disposable net income of the applicant; (3) the nature of the offense; (4) the length and complexity of the proceedings; (5) the effort and skill required to gather pertinent information; and (6) any other foreseeable expense. If eligibility cannot be determined before OPD or a panel attorney begins representation, OPD may represent an applicant provisionally. If OPD subsequently determines that an applicant is ineligible, OPD must inform the applicant of his/her ineligibility and the applicant must be required to engage the applicant's own attorney and reimburse OPD for the cost of the representation provided. OPD must investigate the financial status of an applicant *when the circumstances warrant*.

OPD *may* (1) require an applicant to execute and deliver written requests or authorizations that are necessary under law to provide OPD with access to confidential records of public or private sources that are needed to evaluate eligibility and (2) on request, obtain information without charge from a public record office or other unit of the State, county, or municipal corporation.

OPD *may* submit requests to DLLR and the Comptroller for information regarding the employment status and income of applicants. Each of these requests must be accompanied by an authorization for release of information that is signed by the applicant and in a form acceptable to the agency to which the request is submitted.

DLLR and the Comptroller must comply with requests for information made by OPD. Information may be exchanged by facsimile transmission.

State Expenditures: General fund expenditures increase by \$850,938 in fiscal 2016, which accounts for the bill’s October 1, 2015 effective date. This estimate reflects the cost of developing automated or web-based access systems between OPD and DLLR and the Comptroller, as discussed below. Future year expenditures are annualized and adjusted for inflation and only reflect ongoing costs. This analysis does not reflect any savings that could occur for OPD to the extent the bill reduces the number of individuals deemed eligible for OPD legal representation.

OPD/DLLR: General fund expenditures for OPD increase by \$8,100 in fiscal 2016 for development and maintenance of an automated system allowing OPD access to databases in the Unemployment Insurance Division of DLLR. According to DLLR, the cost associated with establishing this access is \$3,100 in one-time start-up costs in fiscal 2016, plus an annual maintenance cost of \$5,000. DLLR plans to bill OPD up front for the entire \$8,100 for fiscal 2016 access at the beginning of fiscal 2016. Future year expenditures are adjusted for inflation and reflect only ongoing maintenance of the system.

OPD and DLLR are in the process of finalizing an agreement to provide OPD intake staff with access to databases of DLLR’s Unemployment Insurance Division. The expenditures mentioned above are to ensure that federal grants are not used to access the system, since the Division of Unemployment Insurance is 100% federally funded and federal law prohibits unemployment insurance grants from being used for purposes other than administration of the unemployment insurance program.

Comptroller’s Office: General fund expenditures for the Comptroller increase by \$842,838 in fiscal 2016, which accounts for the bill’s October 1, 2015 effective date. This estimate reflects the cost of developing a web-based access program between OPD and the Comptroller. The Comptroller advises that a completely new system must be developed, if automated, and a web developer is needed as a permanent position. The estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$56,957
Contractual Computer Programming Services	570,000
Software and Hardware Maintenance	211,157
Operating Expenses	<u>4,724</u>
Total FY 2016 Comptroller Expenditures	\$842,838

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

As previously mentioned, under current law, OPD is *authorized* to submit income verification requests to the Comptroller and DLLR. The bill now *requires* OPD to submit these requests to both offices. Historically, OPD has not made these requests to the Comptroller. As a result of this bill, the Comptroller's Office estimates that it needs to run up to 140,000 inquiries per year.

The Comptroller's Office advises that if it is required to provide information to OPD regarding every application for OPD services, the office incurs significant costs that may be of little utility for income-verification purposes. The Comptroller's Office advises that it does not maintain "real-time" tax data. The office's information relates only to the most recently filed tax year. Also, many individuals are exempt from filing taxes due to income thresholds. For example, the filing threshold for a married couple younger than age 65 is \$20,300 of Maryland gross income. The Comptroller's Office does not have information regarding individuals exempt from filing State taxes. A portion, perhaps a significant portion, of OPD's potential clients may fall into this category.

The Comptroller's Office also advises that there are individuals who might be considered wealthy but have negative or relatively low federal adjusted income. An example of this is a person who owns a limited liability company and has a wage income. Such an individual may report high wages, but because his/her business income is negative (regardless of the reason), the taxpayer has a reduced or negative federally adjusted gross income. Finally, the Comptroller's Office advises that it has no information regarding assets.

If the Comptroller creates an automated system through a web application that is only accessible from an OPD IP address, the office estimates that the level of effort required involves approximately 3,000 hours of computer programming, at a cost of \$570,000 in fiscal 2016 only, in addition to \$211,157 in hardware and software costs for servers and related software and \$7,500 annually beginning in fiscal 2017 for ongoing software and licensing upgrades.

The above estimate assumes that an automated process can be implemented. The Comptroller advises that should a manual process be implemented, the general fund expenditures could total more than \$1.2 million per year for additional staffing and coverage needs.

The Comptroller's Office advises that it encountered a similar scenario during its integration with the Motor Vehicle Administration regarding driver's license verification for undocumented individuals; that process resulted in a significant deficiency appropriation for the office when costs proved far more expensive than expected.

Additional Information

Prior Introductions: HB 985 of 2014 passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: None.

Information Source(s): Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Maryland Association of Counties; Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Department of Legislative Services

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