

HOUSE BILL 591

E2
HB 391/15 – JUD

6lr2903

By: **Delegates Vallario, Anderson, Cluster, Conaway, Kittleman, Malone, Rey, and B. Wilson**

Introduced and read first time: February 3, 2016

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of prohibiting the Office of the Public Defender or a certain panel attorney
4 from continuing a certain representation after a certain bail hearing unless a certain
5 eligibility is determined; requiring the Office of the Public Defender to investigate
6 the financial status of an applicant under all circumstances; altering certain
7 provisions of law so as to require, rather than authorize, the Office of the Public
8 Defender to require an applicant to execute and deliver certain requests or
9 authorizations, to obtain certain information, and to submit certain requests for
10 information to the Department of Labor, Licensing, and Regulation, with a certain
11 exception; and generally relating to eligibility for the services of the Office of the
12 Public Defender.

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Procedure
15 Section 16–210
16 Annotated Code of Maryland
17 (2008 Replacement Volume and 2015 Supplement)

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

20 **Article – Criminal Procedure**

21 16–210.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 necessary expenses of representation in proceedings listed under § 16–204(b) of this
2 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 exceed
7 100 percent of the federal poverty guidelines, eligibility for the services of the Office shall
8 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 other
11 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; and

18 (vi) any other foreseeable expense.

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

21 (II) **THE OFFICE OR A PANEL ATTORNEY MAY NOT CONTINUE**
22 **REPRESENTATION AFTER THE BAIL HEARING UNLESS ELIGIBILITY IS DETERMINED.**

23 (5) If the Office subsequently determines that an applicant is 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 (d) (1) The Office shall investigate the financial status of an applicant [when
28 the circumstances warrant].

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

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

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

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

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

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

14 2. signed by the applicant.

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

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

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2016.