

# SENATE BILL 1156

E2, D1

6lr3794

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By: **Senators Zirkin and Miller**

Introduced and read first time: March 7, 2016

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Determination of Eligibility for Services – Office of the**  
3 **Public Defender**

4 FOR the purpose of transferring certain provisions relating to the representation of  
5 indigent defendants by the Office of the Public Defender from the Criminal  
6 Procedure Article to the Courts and Judicial Proceedings Article; requiring a certain  
7 designated official instead of the Office to determine the eligibility of an applicant  
8 for representation by the Office; requiring the Court of Appeals to designate a person  
9 to determine the eligibility of an applicant for representation by the Office; repealing  
10 a certain provision establishing that representation is not required to be provided to  
11 an indigent individual at a certain initial appearance; providing that a person may  
12 apply in any District Court of the State for representation by the Office; requiring a  
13 certain application to be made on a certain form; prohibiting the Office or a panel  
14 attorney from continuing a certain representation after a certain bail hearing unless  
15 a certain eligibility is determined; requiring a person designated by the Court of  
16 Appeals to determine the eligibility of an applicant to perform certain investigations;  
17 requiring a certain designated official to appoint the Office to represent an individual  
18 under certain circumstances; establishing that nothing in this Act affects the ability  
19 of the Office to use certain panel attorneys or seek certain reimbursement; requiring  
20 the Court of Appeals to adopt rules to implement this Act; making certain conforming  
21 changes; defining certain terms; providing for a delayed effective date; and generally  
22 relating to eligibility for the services of the Office of the Public Defender.

23 BY repealing

24 Article – Criminal Procedure

25 Section 16–204 and 16–210

26 Annotated Code of Maryland

27 (2008 Replacement Volume and 2015 Supplement)

28 BY adding to

29 Article – Courts and Judicial Proceedings

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 1–801 through 1–805 to be under the new subtitle “Subtitle 8. Determination  
2 of Indigence”  
3 Annotated Code of Maryland  
4 (2013 Replacement Volume and 2015 Supplement)

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

7 **Article – Criminal Procedure**

8 [16–204.

9 (a) Representation of an indigent individual may be provided in accordance with  
10 this title by the Public Defender or, subject to the supervision of the Public Defender, by  
11 the deputy public defender, district public defenders, assistant public defenders, or panel  
12 attorneys.

13 (b) (1) Indigent defendants or parties shall be provided representation under  
14 this title in:

15 (i) a criminal or juvenile proceeding in which a defendant or party  
16 is alleged to have committed a serious offense;

17 (ii) a criminal or juvenile proceeding in which an attorney is  
18 constitutionally required to be present prior to presentment being made before a  
19 commissioner or judge;

20 (iii) a postconviction proceeding for which the defendant has a right  
21 to an attorney under Title 7 of this article;

22 (iv) any other proceeding in which confinement under a judicial  
23 commitment of an individual in a public or private institution may result;

24 (v) a proceeding involving children in need of assistance under §  
25 3–813 of the Courts Article; or

26 (vi) a family law proceeding under Title 5, Subtitle 3, Part II or Part  
27 III of the Family Law Article, including:

28 1. for a parent, a hearing in connection with guardianship or  
29 adoption;

30 2. a hearing under § 5–326 of the Family Law Article for  
31 which the parent has not waived the right to notice; and

32 3. an appeal.

1           (2) (i) Except as provided in subparagraph (ii) of this paragraph,  
2 representation shall be provided to an indigent individual in all stages of a proceeding listed  
3 in paragraph (1) of this subsection, including, in criminal proceedings, custody,  
4 interrogation, bail hearing before a District Court or circuit court judge, preliminary  
5 hearing, arraignment, trial, and appeal.

6           (ii) Representation is not required to be provided to an indigent  
7 individual at an initial appearance before a District Court commissioner.]

8 [16–210.

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

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

17           (c) (1) For an individual whose assets and net annual income equal or exceed  
18 100 percent of the federal poverty guidelines, eligibility for the services of the Office shall  
19 be determined by the need of the applicant.

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

23           (3) Financial ability shall be determined by:

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

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

26           (iii) the nature of the offense;

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

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

29           (vi) any other foreseeable expense.

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

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

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

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

4 (d) (1) The Office shall investigate the financial status of an applicant when  
5 the circumstances warrant.

6 (2) The Office may:

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

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

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

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

17 1. in a form acceptable to the agency to which the request is  
18 submitted; and

19 2. signed by the applicant.

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

23 (iv) Requests and responsive information may be exchanged by  
24 facsimile transmission.]

25 **Article – Courts and Judicial Proceedings**

26 **SUBTITLE 8. DETERMINATION OF INDIGENCE.**

27 **1-801.**

28 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
29 **INDICATED.**

1           **(B) “DESIGNATED OFFICIAL” MEANS A PERSON DESIGNATED BY THE**  
2 **COURT OF APPEALS TO DETERMINE THE ELIGIBILITY OF AN APPLICANT FOR**  
3 **REPRESENTATION BY THE OFFICE OF THE PUBLIC DEFENDER.**

4           **(C) “OFFICE” MEANS THE OFFICE OF THE PUBLIC DEFENDER.**

5 **1-802.**

6           **(A) REPRESENTATION OF AN INDIGENT INDIVIDUAL MAY BE PROVIDED IN**  
7 **ACCORDANCE WITH TITLE 16 OF THE CRIMINAL PROCEDURE ARTICLE BY THE**  
8 **PUBLIC DEFENDER OR, SUBJECT TO THE SUPERVISION OF THE PUBLIC DEFENDER,**  
9 **BY THE DEPUTY PUBLIC DEFENDER, DISTRICT PUBLIC DEFENDERS, ASSISTANT**  
10 **PUBLIC DEFENDERS, OR PANEL ATTORNEYS.**

11           **(B) (1) INDIGENT DEFENDANTS OR PARTIES SHALL BE PROVIDED**  
12 **REPRESENTATION UNDER THIS SUBTITLE IN:**

13                   **(I) A CRIMINAL OR JUVENILE PROCEEDING IN WHICH A**  
14 **DEFENDANT OR PARTY IS ALLEGED TO HAVE COMMITTED A SERIOUS OFFENSE;**

15                   **(II) A CRIMINAL OR JUVENILE PROCEEDING IN WHICH AN**  
16 **ATTORNEY IS CONSTITUTIONALLY REQUIRED TO BE PRESENT PRIOR TO**  
17 **PRESENTMENT BEING MADE BEFORE A COMMISSIONER OR JUDGE;**

18                   **(III) A POSTCONVICTION PROCEEDING FOR WHICH THE**  
19 **DEFENDANT HAS A RIGHT TO AN ATTORNEY UNDER TITLE 7 OF THE CRIMINAL**  
20 **PROCEDURE ARTICLE;**

21                   **(IV) ANY OTHER PROCEEDING IN WHICH CONFINEMENT UNDER**  
22 **A JUDICIAL COMMITMENT OF AN INDIVIDUAL IN A PUBLIC OR PRIVATE INSTITUTION**  
23 **MAY RESULT;**

24                   **(V) A PROCEEDING INVOLVING CHILDREN IN NEED OF**  
25 **ASSISTANCE UNDER § 3-813 OF THIS ARTICLE; OR**

26                   **(VI) A FAMILY LAW PROCEEDING UNDER TITLE 5, SUBTITLE 3,**  
27 **PART II OR PART III OF THE FAMILY LAW ARTICLE, INCLUDING:**

28                           **1. FOR A PARENT, A HEARING IN CONNECTION WITH**  
29 **GUARDIANSHIP OR ADOPTION;**

30                           **2. A HEARING UNDER § 5-326 OF THE FAMILY LAW**  
31 **ARTICLE FOR WHICH THE PARENT HAS NOT WAIVED THE RIGHT TO NOTICE; AND**



- 1           **(I) THE NATURE, EXTENT, AND LIQUIDITY OF ASSETS;**  
2           **(II) THE DISPOSABLE NET INCOME OF THE APPLICANT;**  
3           **(III) THE NATURE OF THE OFFENSE;**  
4           **(IV) THE LENGTH AND COMPLEXITY OF THE PROCEEDINGS;**  
5           **(V) THE EFFORT AND SKILL REQUIRED TO GATHER PERTINENT**  
6 **INFORMATION; AND**  
7           **(VI) ANY OTHER FORESEEABLE EXPENSE.**

8           **(4) (I) IF ELIGIBILITY CANNOT BE DETERMINED BEFORE THE**  
9 **OFFICE OR A PANEL ATTORNEY BEGINS REPRESENTATION, THE COURT MAY**  
10 **APPOINT THE OFFICE TO REPRESENT AN APPLICANT PROVISIONALLY.**

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

13           **(5) IF A DESIGNATED OFFICIAL SUBSEQUENTLY DETERMINES THAT**  
14 **AN APPLICANT IS INELIGIBLE:**

15           **(I) THE DESIGNATED OFFICIAL SHALL INFORM THE OFFICE**  
16 **AND THE APPLICANT; AND**

17           **(II) THE APPLICANT SHALL BE REQUIRED TO ENGAGE THE**  
18 **APPLICANT'S OWN ATTORNEY AND REIMBURSE THE OFFICE FOR THE COST OF THE**  
19 **REPRESENTATION PROVIDED.**

20           **(D) (1) THE DESIGNATED OFFICIAL SHALL INVESTIGATE THE FINANCIAL**  
21 **STATUS OF AN APPLICANT.**

22           **(2) THE DESIGNATED OFFICIAL SHALL:**

23           **(I) REQUIRE AN APPLICANT TO EXECUTE AND DELIVER**  
24 **WRITTEN REQUESTS OR AUTHORIZATIONS THAT ARE NECESSARY UNDER LAW TO**  
25 **PROVIDE THE COURT WITH ACCESS TO CONFIDENTIAL RECORDS OF PUBLIC OR**  
26 **PRIVATE SOURCES THAT ARE NEEDED TO EVALUATE ELIGIBILITY, UNLESS THE**  
27 **APPLICANT IS UNABLE TO DO SO BECAUSE OF A MENTAL DISABILITY; AND**

1                   **(II) ON REQUEST, OBTAIN INFORMATION WITHOUT CHARGE**  
2 **FROM A PUBLIC RECORD OFFICE OR OTHER UNIT OF THE STATE, COUNTY, OR**  
3 **MUNICIPAL CORPORATION.**

4                   **(3) (I) THE DESIGNATED OFFICIAL SHALL SUBMIT REQUESTS TO**  
5 **THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION AND THE**  
6 **COMPTROLLER FOR INFORMATION REGARDING THE EMPLOYMENT STATUS AND**  
7 **INCOME OF APPLICANTS.**

8                   **(II) EACH REQUEST SHALL BE ACCOMPANIED BY AN**  
9 **AUTHORIZATION FOR RELEASE OF INFORMATION THAT IS:**

10                   **1. IN A FORM ACCEPTABLE TO THE AGENCY TO WHICH**  
11 **THE REQUEST IS SUBMITTED; AND**

12                   **2. SIGNED BY THE APPLICANT.**

13                   **(III) THE DEPARTMENT OF LABOR, LICENSING, AND**  
14 **REGULATION AND THE COMPTROLLER SHALL COMPLY WITH REQUESTS FOR**  
15 **INFORMATION MADE BY THE DESIGNATED OFFICIAL UNDER THIS PARAGRAPH.**

16                   **(IV) REQUESTS AND RESPONSIVE INFORMATION MAY BE**  
17 **EXCHANGED BY FACSIMILE TRANSMISSION.**

18                   **(E) THE DESIGNATED OFFICIAL SHALL APPOINT THE OFFICE TO**  
19 **REPRESENT AN INDIVIDUAL FOUND TO BE ELIGIBLE FOR REPRESENTATION UNDER**  
20 **THIS SUBTITLE.**

21 **1-805.**

22                   **(A) NOTHING IN THIS SUBTITLE AFFECTS THE ABILITY OF THE OFFICE TO**  
23 **UTILIZE PANEL ATTORNEYS UNDER § 16-208 OF THE CRIMINAL PROCEDURE**  
24 **ARTICLE, OR TO SEEK REIMBURSEMENT FOR SERVICES OR LIENS UNDER §§ 16-211**  
25 **AND 16-212 OF THE CRIMINAL PROCEDURE ARTICLE.**

26                   **(B) THE COURT OF APPEALS SHALL ADOPT RULES FOR IMPLEMENTING THE**  
27 **REQUIREMENTS OF THIS SUBTITLE.**

28                   **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
29 **October 1, 2017.**