

SENATE BILL 714

E2

(7lr1747)

ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by **Senator McFadden**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – Indigent Individual – ~~Bail Review and~~ Indigency**
3 **Determination**

4 FOR the purpose of ~~requiring a certain bail review hearing to be held at a certain time~~
5 ~~under certain circumstances to make certain determinations;~~ requiring a District
6 Court commissioner to determine whether a certain individual qualifies as indigent;
7 *authorizing a certain individual to apply for representation by the Office of the Public*
8 *Defender to a District Court commissioner at a certain time; requiring a District Court*
9 *commissioner to make a certain preliminary determination for a certain purpose;*
10 *providing that a certain indigent individual shall be represented by the Office of the*
11 *Public Defender under certain circumstances; providing that a certain representation*
12 *at a certain initial appearance shall terminate at the conclusion of the proceeding,*
13 *with a certain exception; requiring a commissioner to make a certain determination*
14 *at a certain time; requiring a commissioner to notify a certain individual in writing*
15 *of a certain determination under certain circumstances; authorizing a certain*

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.

Italics indicate opposite chamber/conference committee amendments.



1 *individual to submit additional information to a certain commissioner for a certain*
 2 *purpose; making conforming changes; ~~defining a certain term;~~ and generally relating*
 3 *to indigent criminal defendants.*

4 ~~BY adding to~~

5 ~~Article – Criminal Procedure~~

6 ~~Section 5–205.1~~

7 ~~Annotated Code of Maryland~~

8 ~~(2008 Replacement Volume and 2016 Supplement)~~

9 BY repealing and reenacting, with amendments,

10 Article – Criminal Procedure

11 Section 16–210

12 Annotated Code of Maryland

13 (2008 Replacement Volume and 2016 Supplement)

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

16 **Article – Criminal Procedure**

17 ~~5–205.1.~~

18 ~~(A) IN THIS SECTION, “INDIGENT INDIVIDUAL” HAS THE MEANING STATED~~
 19 ~~IN § 16–101 OF THIS ARTICLE.~~

20 ~~(B) IF A DISTRICT COURT COMMISSIONER SETS BAIL FOR AN INDIGENT~~
 21 ~~INDIVIDUAL, A BAIL REVIEW HEARING SHALL BE HELD BEFORE A JUDGE WITHIN 24~~
 22 ~~HOURS TO DETERMINE:~~

23 ~~(1) IF THE INDIVIDUAL IS INDIGENT AND WITHOUT ANY RESOURCES~~
 24 ~~FOR THE PURPOSES OF BAIL; AND~~

25 ~~(2) WHETHER BAIL IS NECESSARY TO ENSURE THAT THE INDIVIDUAL~~
 26 ~~RETURNS TO COURT OR FOR PUBLIC SAFETY REASONS.~~

27 16–210.

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

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

4 (c) (1) For an individual whose assets and net annual income equal or exceed
5 100 percent of the federal poverty guidelines, eligibility for the services of the Office shall
6 be determined by the need of the applicant.

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

10 (3) Financial ability shall be determined by:

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

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

13 (iii) the nature of the offense;

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

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

16 (vi) any other foreseeable expense.

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

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

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

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

23 (D) **(1) A DISTRICT COURT COMMISSIONER SHALL DETERMINE**
24 **WHETHER AN INDIVIDUAL QUALIFIES AS INDIGENT.**

25 **(2) AN INDIVIDUAL CHARGED WITH A CRIME THAT CARRIES A**
26 **PENALTY OF INCARCERATION MAY APPLY FOR REPRESENTATION BY THE OFFICE TO**
27 **A DISTRICT COURT COMMISSIONER DURING COMMISSIONER OPERATING HOURS.**

28 **(3) (1) FOR THE PURPOSE OF AN INITIAL APPEARANCE**
29 **PROCEEDING OR BAIL REVIEW, A DISTRICT COURT COMMISSIONER SHALL MAKE A**

1 PRELIMINARY DETERMINATION AS TO WHETHER AN INDIVIDUAL QUALIFIES AS
 2 INDIGENT.

3 (II) AN INDIGENT INDIVIDUAL SHALL BE REPRESENTED BY THE
 4 OFFICE IF THE INITIAL APPEARANCE OR BAIL REVIEW IS BEFORE A JUDGE.

5 (III) REPRESENTATION AT THE INITIAL APPEARANCE SHALL
 6 TERMINATE AT THE CONCLUSION OF THE PROCEEDING, UNLESS THE COMMISSIONER
 7 HAS MADE A FINAL DETERMINATION THAT THE INDIVIDUAL QUALIFIES AS INDIGENT
 8 AND THE OFFICE HAS ENTERED A GENERAL APPEARANCE.

9 (4) THE COMMISSIONER SHALL:

10 (I) MAKE A FINAL DETERMINATION AS TO WHETHER AN
 11 INDIVIDUAL IS:

12 1. INDIGENT AND QUALIFIED FOR SERVICES OF THE
 13 OFFICE; OR

14 2. NOT QUALIFIED FOR SERVICES OF THE OFFICE; OR

15 (II) DETERMINE THAT THE INDIVIDUAL'S FINANCIAL STATUS IS
 16 SUBJECT TO FURTHER VERIFICATION.

17 (5) IF THE COMMISSIONER MAKES A FINAL DETERMINATION UNDER
 18 ITEM (4)(I) OF THIS SUBSECTION, THE COMMISSIONER SHALL NOTIFY THE
 19 INDIVIDUAL IN WRITING OF THE DETERMINATION.

20 (6) AN INDIVIDUAL WHOSE FINANCIAL STATUS IS SUBJECT TO
 21 FURTHER VERIFICATION MAY SUBMIT TO THE COMMISSIONER ADDITIONAL
 22 INFORMATION TO BE QUALIFIED FOR SERVICES OF THE OFFICE.

23 [(d)] (E) (1) [The Office] A DISTRICT COURT COMMISSIONER shall
 24 investigate the financial status of an applicant when the circumstances warrant.

25 (2) [The Office] A DISTRICT COURT COMMISSIONER may:

26 (i) require an applicant to execute and deliver written requests or
 27 authorizations that are necessary under law to provide the [Office] COMMISSIONER with
 28 access to confidential records of public or private sources that are needed to evaluate
 29 eligibility; and

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

1 (3) (i) [The Office] **A DISTRICT COURT COMMISSIONER** may submit
2 requests to the Department of Labor, Licensing, and Regulation and the Comptroller for
3 information regarding the employment status and income of applicants.

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

6 1. in a form acceptable to the agency to which the request is
7 submitted; and

8 2. signed by the applicant.

9 (iii) The Department of Labor, Licensing, and Regulation and the
10 Comptroller shall comply with requests for information made by [the Office] **A DISTRICT**
11 **COURT COMMISSIONER** under this paragraph.

12 (iv) Requests and responsive information may be exchanged by
13 facsimile transmission.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2017.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.