

Chapter 606

(Senate Bill 714)

AN ACT concerning

Criminal Procedure – Indigent Individual – ~~Bail Review and~~ Indigency Determination

FOR the purpose of ~~requiring a certain bail review hearing to be held at a certain time under certain circumstances to make certain determinations;~~ requiring a District Court commissioner to determine whether a certain individual qualifies as indigent; *authorizing a certain individual to apply for representation by the Office of the Public Defender to a District Court commissioner at a certain time; requiring a District Court commissioner to make a certain preliminary determination for a certain purpose; providing that a certain indigent individual shall be represented by the Office of the Public Defender under certain circumstances; providing that a certain representation at a certain initial appearance shall terminate at the conclusion of the proceeding, with a certain exception; requiring a commissioner to make a certain determination at a certain time; requiring a commissioner to notify a certain individual in writing of a certain determination under certain circumstances; authorizing a certain individual to submit additional information to a certain commissioner for a certain purpose;* making conforming changes; ~~defining a certain term;~~ and generally relating to indigent criminal defendants.

~~BY adding to~~
~~Article – Criminal Procedure~~
~~Section 5–205.1~~
~~Annotated Code of Maryland~~
~~(2008 Replacement Volume and 2016 Supplement)~~

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 16–210
Annotated Code of Maryland
(2008 Replacement Volume and 2016 Supplement)

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

Article – Criminal Procedure

~~5–205.1.~~

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

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

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

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

16-210.

(a) An individual may apply for services of the Office 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 proceedings listed under § 16-204(b) of this subtitle.

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

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

(2) Need shall 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.

(3) Financial ability shall be determined by:

- (i) the nature, extent, and liquidity of assets;
- (ii) the disposable net income of the applicant;
- (iii) the nature of the offense;
- (iv) the length and complexity of the proceedings;
- (v) the effort and skill required to gather pertinent information; and
- (vi) any other foreseeable expense.

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

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

(i) the Office shall inform the applicant; and

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

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

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

(3) (I) FOR THE PURPOSE OF AN INITIAL APPEARANCE PROCEEDING OR BAIL REVIEW, A DISTRICT COURT COMMISSIONER SHALL MAKE A PRELIMINARY DETERMINATION AS TO WHETHER AN INDIVIDUAL QUALIFIES AS INDIGENT.

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

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

(4) THE COMMISSIONER SHALL:

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

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

2. NOT QUALIFIED FOR SERVICES OF THE OFFICE; OR

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

(5) IF THE COMMISSIONER MAKES A FINAL DETERMINATION UNDER ITEM (4)(1) OF THIS SUBSECTION, THE COMMISSIONER SHALL NOTIFY THE INDIVIDUAL IN WRITING OF THE DETERMINATION.

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

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

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

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

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

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

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

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

2. signed by the applicant.

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

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

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

Approved by the Governor, May 25, 2017.