

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1231  
Judiciary

(Delegate Barron)

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Indigent Defendants - Caseloads - Panel Attorney Program

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This bill (1) requires the Office of the Public Defender (OPD) to establish caseload standards; (2) prohibits OPD attorneys from representing an indigent defendant or party if the representation violates the caseload standard; (3) requires a panel attorney to provide representation when OPD denies representation due to the caseload standards; (4) authorizes a public defender to provide representation in violation of the caseload standards if the State budget does not include sufficient funding for panel attorney representation; and (5) makes conforming changes to existing statutory provisions governing appointment and compensation of panel attorneys by OPD.

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Fiscal Summary

**State Effect:** Assuming that the bill increases the budgetary appropriation for OPD panel attorneys, general fund expenditures increase significantly to pay for panel attorneys, as discussed below. Revenues are not affected.

**Local Effect:** None. Assuming that the appointment of a panel attorney does not result in delays in the circuit courts, the bill does not materially impact local finances.

**Small Business Effect:** Potential meaningful impact on attorneys in small business law firms who are able to work as panel attorneys.

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Analysis

**Current Law/Background:** When OPD cannot represent a criminal defendant because of a conflict of interest, the office employs panel attorneys, who are private attorneys reimbursed by OPD. However, OPD only employs panel attorneys if OPD has already determined that the defendant is eligible for OPD services. Pursuant to § 16-208(d)(5) of

the Criminal Procedure Article, panel attorneys are compensated by OPD from funds appropriated in the State budget.

OPD caseloads have been a chronic problem, and the office has had a difficult time meeting caseload standards established by the Maryland Attorney and Staff Workload Assessment of 2005. The **Appendix – Attorneys Needed to Meet Standards** shows the extent to which OPD is exceeding its caseload standards and the number of attorneys that are needed for the office to meet caseload standards.

**State Expenditures:** General fund expenditures increase, perhaps significantly, if the bill results in increased appropriations to OPD to meet panel attorney needs. OPD currently pays for panel attorneys through budgeted funds, so the extent to which the provisions of the bill can be accommodated depends on the funds for panel attorneys allocated through the budget process. The proposed fiscal 2018 budget allocates approximately \$8 million to OPD panel attorney fees.

The Maryland Attorney and Staff Workload Assessment of 2005 established caseload standards by tracking the work volume of OPD attorneys and assigning case weights to various categories of cases. Case weights are the estimated time (in minutes) needed to complete a specific type of case. The case weights used in the study varied greatly by case type and location (rural, urban, or suburban).

*For illustrative purposes only*, if District Court cases are given a case weight of one hour and circuit court cases are given a case weight of two hours, then, based on the numbers in the Appendix, OPD needs to compensate panel attorneys for 30,904 hours annually. Using the current \$50 per hour rate for panel attorneys, the increased expenditures associated with this effort total \$1.55 million annually.

OPD advises that it needs \$2.5 million in additional funding in fiscal 2017, \$5 million in fiscal 2018, and \$7.5 million in fiscal 2019 to compensate panel attorneys in accordance with the bill. OPD did not provide any additional information as to how it calculated these figures.

**OPD did not respond to requests for the following information in time for the preparation of this fiscal and policy note:** (1) costs incurred by OPD to develop the 2005 caseload standards; (2) the estimated cost to develop new caseload standards; and (3) realistic and appropriate time standards for District Court and circuit court cases.

**Additional Comments:** This analysis assumes that the bill's provisions do not affect payment of attorneys in the Judiciary's Appointed Attorneys Program, which provides State-funded legal representation to indigent defendants at an initial appearance before a District Court commissioner. The program, which was developed as a result of a decision by the Court of Appeals, uses panel attorneys. OPD does not provide representation at

initial appearances and does not administer the program. However, the Judiciary advises that under the Maryland Rules, OPD may enter an appearance for a defendant at these hearings. The Judiciary advises that the bill could have an impact on the Judiciary to the extent that an indigent defendant who would otherwise utilize a public defender at an initial appearance is required to use a panel attorney due to high OPD caseloads and that attorney is to be compensated through the Appointed Attorneys Program.

As previously stated, § 16-208(d) of the Criminal Procedure Article states that OPD must pay panel attorneys through "...funds appropriated by the State budget." If this provision is interpreted as requiring panel attorneys to be paid out of funds appropriated *to OPD* in the State budget, then the Judiciary is likely not impacted. However, if this provision is interpreted as requiring panel attorneys to be funded by funds appropriated in the State budget *in general*, then the Judiciary may be impacted if it is required to pay for panel attorneys in these instances. However, the Department of Legislative Services advises that any such impact is likely to be minimal given OPD's lack of involvement in legal representation at initial appearances. District Court commissioners conducted 147,194 initial appearances during fiscal 2016. OPD represented defendants at 87 initial appearances during fiscal 2016, compared to 45,731 appearances by appointed attorneys and 992 appearances by private attorneys.

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### **Additional Information**

**Prior Introductions:** Similar bills have been introduced during previous legislative sessions. HB 1582 of 2016 was referred to the House Rules and Executive Nominations Committee. No further action was taken on the bill. Its cross file, SB 1071, received a hearing in the Senate Judicial Proceeding Committee. No further action was taken on the bill. SB 646 of 2015 received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill. Its cross file, HB 1119, received a hearing in the House Judiciary Committee. No further action was taken on the bill.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2017  
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**Appendix – Attorneys Needed to Meet Standards  
Based on Calendar 2015 Caseloads**

<u>District</u>	<u>District Court</u>					<u>Circuit Court</u>				
	<u>Attorneys*</u>	<u>Eligible Cases</u>	<u>Standard Caseload</u>	<u>Cases Handled Beyond Standard</u>	<u>Attorneys Needed to Meet Standard</u>	<u>Attorneys*</u>	<u>Eligible Cases</u>	<u>Standard Caseload</u>	<u>Cases Handled Beyond Standard</u>	<u>Attorneys Needed to Meet Standard</u>
1. Baltimore City	42	22,553	728	-7,659	-11	83	10,722	156	-2,226	-14
2. Lower Shore	8	8,167	630	3,127	5	12	1,918	191	-374	-2
3. Upper Shore	12	5,780	630	-1,780	-3	8	2,842	191	1,314	7
4. Southern Maryland	11	11,840	630	4,910	8	12	3,235	191	943	5
5. Prince George's	11	19,010	705	11,255	16	30	4,421	140	221	2
6. Montgomery	13	13,896	705	4,731	7	17	1,555	140	-825	-6
7. Anne Arundel	12	14,319	705	5,859	8	12	2,762	140	1,082	8
8. Baltimore	18	13,133	705	796	1	23	5,269	140	2,049	15
9. Harford	5	4,120	630	970	2	8	1,913	191	385	2
10. Howard and Carroll	10	6,139	630	-161	0	10	2,144	191	234	1
11. Frederick and Washington	11	7,955	630	1,025	2	11	2,935	191	834	4
12. Allegany and Garrett	4	3,235	630	558	1	5	859	191	-1	0
<b>Total</b>	<b>156</b>	<b>130,147</b>		<b>23,630</b>	<b>35</b>	<b>231</b>	<b>40,575</b>		<b>3,637</b>	<b>21</b>

\*Filled regular positions as of December 31, 2015

Source: Office of the Public Defender