Unofficial Copy

1998 Regular Session 8lr1035

By: Delegate Montague

Introduced and read first time: February 13, 1998

Assigned to: Judiciary

## A BILL ENTITLED

4	4 % T		•
	$\Delta N$	A( "I	concerning

- 2 Public Defender Bail Review Hearings Representation of Indigent
  3 Defendants
- 4 FOR the purpose of requiring the Public Defender to provide legal representation to
- 5 indigent defendants during bail review hearings; requiring the Office of the
- 6 Public Defender to report to the Senate Judicial Proceedings Committee and the
- 7 House of Delegates Judiciary Committee on or before certain dates; and
- 8 generally relating to representation of indigent defendants.
- 9 BY repealing and reenacting, with amendments,
- 10 Article 27A Public Defender
- 11 Section 4
- 12 Annotated Code of Maryland
- 13 (1997 Replacement Volume and 1997 Supplement)
- 14 Preamble
- WHEREAS, Individuals charged with a crime usually are not represented by
- 16 counsel when a commissioner first decides to order pretrial release or set bail; and
- 17 WHEREAS, Except in Montgomery and Harford counties, indigent defendants
- 18 remain without counsel when the commissioner's bail decision is reviewed by a
- 19 District Court judge, usually 24 hours after arrest; and
- WHEREAS, Without representation by counsel at the bail review hearing, many
- 21 defendants remain incarcerated pending trial because they are unable to post bail of
- 22 under \$1,000; and
- 23 WHEREAS, Indigent defendants usually do not meet their court-appointed
- 24 counsel until the initial District Court trial date, which commonly is 30 days after
- 25 arrest; and
- 26 WHEREAS, With representation by counsel, most District Court cases are
- 27 resolved between the 30th and 60th day after arrest; and

- WHEREAS, During Fiscal Year 1996, more than one-half of the 178,935
- 2 individuals prosecuted ultimately had their criminal charges dismissed or stetted,
- 3 and were not convicted of any crime; and
- 4 WHEREAS, Representation by counsel at bail review hearings would identify
- 5 individuals who are being held unnecessarily in pretrial detention, thus reducing
- 6 detention center overcrowding and resulting in a safer and healthier environment for
- 7 correctional officers and detainees; and
- 8 WHEREAS, Representation by counsel at bail review hearings would identify
- 9 cases that could be resolved at the earliest stages of a criminal proceeding, thus
- 10 reducing court congestion; and
- WHEREAS, The immediate identification of cases for speedier resolution would
- 12 permit prosecutors and appointed counsel to devote their limited resources to more
- 13 serious crime; and
- 14 WHEREAS, Representation by counsel at bail review hearings would lead to
- 15 cost savings that would more than offset the expense of providing counsel at the bail
- 16 review stage; and
- WHEREAS, The early provision of counsel would further the legal system's
- 18 deeply rooted values of fairness and equal justice, and promote public confidence in
- 19 the impartial administration of justice; now, therefore,
- 20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
- 21 MARYLAND, That the Laws of Maryland read as follows:
- 22 Article 27A Public Defender
- 23 4.
- 24 (a) It shall be the primary duty of the Public Defender to provide legal
- 25 representation for any indigent defendant eligible for services under this article.
- 26 Legal representation may be provided by the Public Defender, or, subject to the
- 27 supervision of the Public Defender, by his deputy, by district public defenders, by
- 28 assistant public defenders, or by panel attorneys as hereinafter provided for.
- 29 (b) Legal representation shall be provided indigent defendants or parties in 30 the following proceedings:
- 31 (1) Any criminal or juvenile proceeding constitutionally requiring the
- 32 presence of counsel prior to presentment before a commissioner or judge;
- 33 (2) Criminal or juvenile proceedings, where the defendant is charged
- 34 with a serious crime, before the District Court of Maryland, the various circuit courts
- 35 within the State of Maryland, and the Court of Special Appeals;

## **HOUSE BILL 1092**

- 1 (3) Postconviction proceedings under Article 27, Annotated Code of
- 2 Maryland, when the defendant has a right to counsel pursuant to § 645A of that
- 3 article:
- 4 (4) Any other proceeding where possible incarceration pursuant to a
- 5 judicial commitment of individuals in institutions of a public or private nature may
- 6 result; [and]
- 7 (5) An involuntary termination of parental rights proceeding or a
- 8 hearing under § 5-319 of the Family Law Article, if the party is entitled to Public
- 9 Defender representation under § 5-323 of the Family Law Article; AND
- 10 (6) ANY BAIL REVIEW HEARING UNDER MARYLAND RULE 4-216, WHEN A
- 11 DEFENDANT HAS BEEN DENIED PRETRIAL RELEASE BY A COMMISSIONER.
- 12 (c) This article applies only to representation in or with respect to the courts
- 13 of this State. It does not prohibit the Public Defender's Office from representing an
- 14 indigent person in a federal court of the United States at federal expense, if the
- 15 matter arises out of, or is related to, an action pending or recently pending in a court
- 16 of criminal jurisdiction of this State. Any compensation paid by the federal court to
- 17 the Public Defender, his deputy, district public defenders, or assistant public
- 18 defenders shall be remitted to the general funds of the State.
- 19 (d) Representation by the Office of the Public Defender, or by an attorney
- 20 appointed by the Office of the Public Defender, shall extend to all stages in the
- 21 proceedings, including custody, interrogation, preliminary hearing, BAIL REVIEW
- 22 HEARING, arraignment, trial, a hearing in an involuntary termination of parental
- 23 rights proceeding, a hearing under § 5-319 of the Family Law Article, and appeal, if
- 24 any, and shall continue until the final disposition of the cause, or until the assigned
- 25 attorney is relieved by the Public Defender or by order of the court in which the cause
- 26 is pending.
- 27 SECTION 2. AND BE IT FURTHER ENACTED, That the Office of the Public
- 28 Defender shall report to the Senate Judicial Proceedings Committee and the House of
- 29 Delegates Judiciary Committee of the General Assembly on or before December 1,
- 30 2000, and every 2 years thereafter, in accordance with § 2-1246 of the State
- 31 Government Article, on:
- 32 (i) how many individuals were provided counsel at bail review hearings;
- 33 (ii) how many individuals were released by release on recognizance, reduced
- 34 bail, and bail posted prior to trial; and
- 35 (iii) the number of days it takes District Court cases to be completed as
- 36 compared to the number of days it took for District Court cases to be completed before
- 37 this Act took effect.
- 38 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 39 October 1, 1998.