

SENATE BILL 15

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1998 Regular Session
8lr0036
CF 8lr0109

(PRE-FILED)

By: **Senator Boozer**
Requested: July 14, 1997
Introduced and read first time: January 14, 1998
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Soliciting or Marketing Legal Services - Access to Records**

3 FOR the purpose of requiring a charging document to include a certain notice to the
4 defendant; providing for the form of the notice; requiring certain procedures
5 relating to charging documents and the initial appearance of a defendant in the
6 District Court or a circuit court; requiring a judicial officer of the District Court
7 and a circuit court to indicate in a certain manner whether a defendant consents
8 or withholds consent to inspection of certain records under certain
9 circumstances; providing that a defendant in certain criminal cases and traffic
10 cases may consent or withhold consent in a certain manner to inspection of
11 certain records by certain attorneys and other persons for the purpose of
12 soliciting or marketing legal services to the defendant; providing that, if a
13 defendant withholds consent initially, the defendant may later consent to
14 inspection of certain records for certain purposes; authorizing the Court of
15 Appeals to establish by rule the form of a certain consent; altering the
16 requirement that a custodian deny inspection of certain records by certain
17 attorneys and other persons to require denial only if the inspection is for the
18 purpose of soliciting or marketing legal services to a defendant in certain
19 criminal cases and traffic cases; prohibiting a custodian from denying inspection
20 of certain records for the purpose of soliciting or marketing legal services to a
21 defendant in a criminal case if the defendant consents to inspection; clarifying
22 language; defining certain terms; making the provisions of this Act severable;
23 and generally relating to access to certain records for the purpose of soliciting or
24 marketing legal services to a defendant in certain criminal and traffic cases
25 under certain circumstances.

26 BY adding to
27 Article 27 - Crimes and Punishments
28 Section 592A
29 Annotated Code of Maryland
30 (1996 Replacement Volume and 1997 Supplement)

31 BY repealing and reenacting, with amendments,
32 Article - State Government

1 Section 10-616(h)
2 Annotated Code of Maryland
3 (1995 Replacement Volume and 1997 Supplement)

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

6 **Article 27 - Crimes and Punishments**

7 592A.

8 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
9 INDICATED.

10 (2) (I) "CHARGING DOCUMENT" MEANS A WRITTEN ACCUSATION THAT
11 ALLEGES THAT A DEFENDANT HAS COMMITTED AN OFFENSE.

12 (II) "CHARGING DOCUMENT" INCLUDES A CITATION, AN
13 INDICTMENT, AN INFORMATION, AND A STATEMENT OF CHARGES.

14 (3) "CITATION" MEANS A CHARGING DOCUMENT, OTHER THAN AN
15 INDICTMENT, INFORMATION, OR STATEMENT OF CHARGES, ISSUED TO A
16 DEFENDANT BY A PEACE OFFICER OR OTHER PERSON AUTHORIZED BY LAW TO DO
17 SO.

18 (4) "DEFENDANT" MEANS A PERSON WHO HAS BEEN ARRESTED FOR AN
19 OFFENSE OR CHARGED WITH AN OFFENSE IN A CHARGING DOCUMENT.

20 (5) "INDICTMENT" MEANS A CHARGING DOCUMENT RETURNED BY A
21 GRAND JURY AND FILED IN A CIRCUIT COURT.

22 (6) "INFORMATION" MEANS A CHARGING DOCUMENT FILED IN A COURT
23 BY A STATE'S ATTORNEY.

24 (7) "JUDICIAL OFFICER" MEANS A JUDGE OR DISTRICT COURT
25 COMMISSIONER.

26 (8) "OFFENSE" MEANS A VIOLATION OF THE CRIMINAL LAWS OF THIS
27 STATE OR A POLITICAL SUBDIVISION OF THIS STATE.

28 (9) "STATEMENT OF CHARGES" MEANS A CHARGING DOCUMENT, OTHER
29 THAN A CITATION, FILED IN THE DISTRICT COURT BY A PEACE OFFICER OR BY A
30 JUDICIAL OFFICER.

31 (10) "STATE'S ATTORNEY" MEANS A PERSON AUTHORIZED TO PROSECUTE
32 AN OFFENSE.

33 (B) THE REQUIREMENTS OF THIS SECTION ARE IN ADDITION TO THE
34 PROVISIONS OF THE MARYLAND RULES RELATING TO CHARGING DOCUMENTS AND
35 THE INITIAL APPEARANCE OF A DEFENDANT.

1 (C) A CHARGING DOCUMENT SHALL INCLUDE A NOTICE TO THE DEFENDANT
2 IN THE FOLLOWING FORM:

3 "TO THE PERSON CHARGED:

4 1. THIS PAPER CHARGES YOU WITH COMMITTING A CRIME.

5 2. IF YOU HAVE BEEN ARRESTED, YOU HAVE THE RIGHT TO HAVE A
6 JUDICIAL OFFICER DECIDE WHETHER YOU SHOULD BE RELEASED FROM JAIL UNTIL
7 YOUR TRIAL.

8 3. YOU HAVE THE RIGHT TO HAVE A LAWYER.

9 4. A LAWYER CAN BE HELPFUL TO YOU BY:

10 (A) EXPLAINING THE CHARGES IN THIS PAPER;

11 (B) TELLING YOU THE POSSIBLE PENALTIES;

12 (C) HELPING YOU AT TRIAL;

13 (D) HELPING YOU PROTECT YOUR CONSTITUTIONAL RIGHTS; AND

14 (E) HELPING YOU TO GET A FAIR PENALTY IF CONVICTED.

15 5. EVEN IF YOU PLAN TO PLEAD GUILTY, A LAWYER CAN BE HELPFUL.

16 6. IF YOU WANT A LAWYER BUT DO NOT HAVE THE MONEY TO HIRE ONE,
17 THE PUBLIC DEFENDER MAY PROVIDE A LAWYER FOR YOU. THE COURT CLERK WILL
18 TELL YOU HOW TO CONTACT THE PUBLIC DEFENDER.

19 7. IF YOU WANT A LAWYER BUT YOU CANNOT GET ONE AND THE PUBLIC
20 DEFENDER WILL NOT PROVIDE ONE FOR YOU, CONTACT THE COURT CLERK AS SOON
21 AS POSSIBLE.

22 8. YOU HAVE THE RIGHT TO CONSENT OR TO WITHHOLD CONSENT TO
23 LAWYERS AND OTHER PERSONS WHO MIGHT REQUEST INSPECTION OF PUBLIC
24 RECORDS THAT RELATE TO CHARGES IN THIS PAPER FOR A CRIMINAL OFFENSE, OR A
25 TRAFFIC OFFENSE THAT IS PUNISHABLE BY IMPRISONMENT, FOR THE PURPOSE OF
26 SOLICITING OR MARKETING THE SERVICES OF LAWYERS.

27 9. IF YOU WITHHOLD YOUR CONSENT TO THE INSPECTION OF THOSE
28 RECORDS FOR THE PURPOSE OF SOLICITING OR MARKETING THE SERVICES OF
29 LAWYERS, INSPECTION OF THOSE RECORDS FOR THAT PURPOSE WILL BE DENIED. IF
30 YOU WANT TO CONSENT TO THE INSPECTION OF THOSE RECORDS FOR THAT
31 PURPOSE, YOU MAY DO SO AT THIS TIME OR YOU MAY CONTACT THE COURT CLERK
32 AT A LATER TIME TO FILE A WRITTEN CONSENT TO ALLOW INSPECTION OF THOSE
33 RECORDS.

34 ____DEFENDANT CONSENTS

____DEFENDANT WITHHOLDS CONSENT

1 10. DO NOT WAIT UNTIL THE DATE OF YOUR TRIAL TO GET A LAWYER. IF YOU
2 DO NOT HAVE A LAWYER BEFORE THE TRIAL DATE, YOU MAY HAVE TO GO TO TRIAL
3 WITHOUT ONE."

4 (D) (1) WHEN A DEFENDANT INITIALLY APPEARS BEFORE A JUDICIAL
5 OFFICER OF THE DISTRICT COURT PURSUANT TO AN ARREST, THE JUDICIAL
6 OFFICER SHALL:

7 (I) 1. REQUIRE THE DEFENDANT TO READ THE NOTICE
8 REQUIRED TO BE PRINTED ON THE CHARGING DOCUMENT UNDER THIS SECTION; OR

9 2. READ THE NOTICE TO A DEFENDANT WHO IS UNABLE TO
10 DO SO FOR ANY REASON; AND

11 (II) INDICATE ON THE NOTICE REQUIRED TO BE PRINTED ON THE
12 CHARGING DOCUMENT WHETHER THE DEFENDANT CONSENTS OR WITHHOLDS
13 CONSENT TO INSPECTION OF PUBLIC RECORDS THAT RELATE TO CHARGES IN THE
14 CHARGING DOCUMENT FOR A CRIMINAL OFFENSE, OR A TRAFFIC OFFENSE THAT IS
15 PUNISHABLE BY IMPRISONMENT, FOR THE PURPOSE OF SOLICITING OR MARKETING
16 THE SERVICES OF LAWYERS.

17 (2) A COPY OF THE NOTICE SHALL BE FURNISHED TO A DEFENDANT
18 WHO HAS NOT RECEIVED A COPY OF THE CHARGING DOCUMENT.

19 (E) WHEN A DEFENDANT INITIALLY APPEARS BEFORE THE DISTRICT COURT
20 PURSUANT TO A SUMMONS, THE COURT SHALL:

21 (1) MAKE CERTAIN THAT THE DEFENDANT HAS BEEN FURNISHED WITH
22 A COPY OF THE CHARGING DOCUMENT; AND

23 (2) INDICATE ON THE NOTICE REQUIRED TO BE PRINTED ON THE
24 CHARGING DOCUMENT WHETHER THE DEFENDANT CONSENTS OR WITHHOLDS
25 CONSENT TO INSPECTION OF PUBLIC RECORDS THAT RELATE TO CHARGES IN THE
26 CHARGING DOCUMENT FOR A CRIMINAL OFFENSE, OR A TRAFFIC OFFENSE THAT IS
27 PUNISHABLE BY IMPRISONMENT, FOR THE PURPOSE OF SOLICITING OR MARKETING
28 THE SERVICES OF LAWYERS.

29 (F) IF A DEFENDANT INITIALLY APPEARS IN A CIRCUIT COURT, THE COURT
30 SHALL:

31 (1) MAKE CERTAIN THAT THE DEFENDANT HAS BEEN FURNISHED WITH
32 A COPY OF THE CHARGING DOCUMENT; AND

33 (2) INDICATE ON THE NOTICE REQUIRED TO BE PRINTED ON THE
34 CHARGING DOCUMENT WHETHER THE DEFENDANT CONSENTS OR WITHHOLDS
35 CONSENT TO INSPECTION OF PUBLIC RECORDS THAT RELATE TO CHARGES IN THE
36 CHARGING DOCUMENT FOR A CRIMINAL OFFENSE, OR A TRAFFIC OFFENSE THAT IS
37 PUNISHABLE BY IMPRISONMENT, FOR THE PURPOSE OF SOLICITING OR MARKETING
38 THE SERVICES OF LAWYERS.

1 (G) (1) IF A DEFENDANT INITIALLY WITHHOLDS CONSENT TO INSPECTION
2 UNDER THIS SECTION, THE DEFENDANT MAY CONSENT AT ANY LATER TIME TO
3 WAIVE THE REQUIREMENT THAT A CUSTODIAN DENY INSPECTION OF RECORDS
4 UNDER THE PROVISIONS OF § 10-616(H) OF THE STATE GOVERNMENT ARTICLE IN
5 ORDER TO ALLOW INSPECTION OF THOSE RECORDS FOR THE PURPOSE OF
6 SOLICITING OR MARKETING LEGAL SERVICES TO THE DEFENDANT.

7 (2) A DEFENDANT MAY EXERCISE THE DEFENDANT'S RIGHT TO
8 CONSENT UNDER THIS SUBSECTION BY FILING A CONSENT, IN WRITING, WITH THE
9 CLERK OF THE COURT WITH JURISDICTION OF THE OFFENSE CHARGED.

10 (3) THE COURT OF APPEALS MAY ESTABLISH BY RULE THE FORM OF
11 THE WRITTEN CONSENT.

12 **Article - State Government**

13 10-616.

14 (h) (1) This subsection applies only to public records that relate to:

15 (i) police reports of traffic accidents;

16 (ii) SUBJECT TO ITEM (III) OF THIS PARAGRAPH, criminal charging
17 documents[, prior to service on the defendant named in the document]; and

18 (iii) traffic citations FOR OFFENSES THAT ARE SUBJECT TO A
19 PERIOD OF INCARCERATION filed in the Maryland Automated Traffic System.

20 (2) [A] EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (3) OF THIS
21 SUBSECTION, A custodian shall deny inspection of a record described in paragraph (1)
22 of this subsection to any of the following persons who request inspection of records for
23 the purpose of soliciting or marketing legal services TO A DEFENDANT DESCRIBED
24 UNDER ARTICLE 27, § 592A OF THE CODE:

25 (i) an attorney who is not an attorney of record of a person named
26 in the record; or

27 (ii) a person who is employed by, retained by, associated with, or
28 acting on behalf of an attorney described in this paragraph.

29 (3) IF A DEFENDANT CONSENTS PURSUANT TO ARTICLE 27, § 592A OF
30 THE CODE TO THE INSPECTION OF A RECORD DESCRIBED IN PARAGRAPH (1) OF THIS
31 SUBSECTION, A CUSTODIAN MAY NOT DENY INSPECTION OF A RECORD TO A PERSON
32 DESCRIBED UNDER PARAGRAPH (2) OF THIS SUBSECTION WHO REQUESTS
33 INSPECTION OF RECORDS FOR THE PURPOSE OF SOLICITING OR MARKETING LEGAL
34 SERVICES TO THE DEFENDANT.

35 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
36 Act or the application thereof to any person or circumstance is held invalid for any
37 reason in a court of competent jurisdiction, the invalidity does not affect other

1 provisions or any other application of this Act which can be given effect without the
2 invalid provision or application, and for this purpose the provisions of this Act are
3 declared severable.

4 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 1998.