

HOUSE BILL 889

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1999 Regular Session
9r1024
CF 9r1216

By: **Delegates Montague, Giannetti, Menes, Rosenberg, Hecht, Love,
Grosfeld, Burns, Turner, R. Baker, Zirkin, K. Kelly, Marriott, Franchot,
and O'Donnell**

Introduced and read first time: February 12, 1999

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT 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 submit certain reports on or before certain dates; requiring a
7 certain portion of certain costs to be paid by certain State funds and a certain
8 portion of the costs to be paid by county or private funds; and generally relating
9 to representation of indigent defendants.

10 BY repealing and reenacting, with amendments,
11 Article 27A - Public Defender
12 Section 4
13 Annotated Code of Maryland
14 (1997 Replacement Volume and 1998 Supplement)

15 Preamble

16 WHEREAS, Individuals charged with a crime usually are not represented by
17 counsel when a commissioner first decides to order pretrial release or set bail; and

18 WHEREAS, Except in Montgomery and Harford Counties, indigent defendants
19 remain without counsel when the commissioner's bail decision is reviewed by a
20 District Court judge, usually 24 hours after arrest; and

21 WHEREAS, Without representation by counsel at the bail review hearing, many
22 defendants remain incarcerated pending trial because they are unable to post bail of
23 under \$500; and

24 WHEREAS, Indigent defendants usually do not meet their assigned counsel
25 until the initial District Court trial date, which commonly is 30 days after arrest; and

1 WHEREAS, With representation by counsel, most District Court cases are
2 resolved between 30 and 60 days after arrest; and

3 WHEREAS, During fiscal year 1998 more than one-half of the 210,465 cases
4 prosecuted ultimately were dismissed or steted, and the individuals prosecuted were
5 not convicted of any crime; and

6 WHEREAS, Representation by counsel at bail review hearings would identify
7 individuals who are being held unnecessarily in pretrial detention, thus reducing
8 detention center overcrowding and resulting in a safer and healthier environment for
9 correctional officers and detainees; and

10 WHEREAS, Representation by counsel at bail review hearings would identify
11 cases that could be resolved at the earliest stages of a criminal proceeding, thus
12 reducing court congestion; and

13 WHEREAS, The immediate identification of cases for speedier resolution would
14 permit prosecutors and appointed counsel to devote their limited resources to more
15 serious crimes; and

16 WHEREAS, Representation by counsel at bail review hearings would lead to
17 cost savings that would more than offset the expense of providing counsel at the bail
18 review stage; and

19 WHEREAS, The early provision of counsel would further the State's system
20 deeply rooted values of fairness and equal justice, and would promote public
21 confidence in the impartial administration of justice; now, therefore,

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

24 **Article 27A - Public Defender**

25 4.

26 (a) It shall be the primary duty of the Public Defender to provide legal
27 representation for any indigent defendant eligible for services under this article.
28 Legal representation may be provided by the Public Defender, or, subject to the
29 supervision of the Public Defender, by his deputy, by district public defenders, by
30 assistant public defenders, or by panel attorneys as hereinafter provided for.

31 (b) Legal representation shall be provided indigent defendants or parties in
32 the following proceedings:

33 (1) Any criminal or juvenile proceeding constitutionally requiring the
34 presence of counsel prior to presentment before a commissioner or judge;

35 (2) Criminal or juvenile proceedings, where the defendant is charged
36 with a serious crime, before the District Court of Maryland, the various circuit courts
37 within the State of Maryland, and the Court of Special Appeals;

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 WHEN A DEFENDANT HAS NOT BEEN
11 RELEASED ON BAIL AS SET BY A COMMISSIONER. REPRESENTATION BY THE OFFICE
12 OF THE PUBLIC DEFENDER AT A BAIL REVIEW HEARING SHALL NOT CONSTITUTE
13 ENTRY OF APPEARANCE OF THE OFFICE OF THE PUBLIC DEFENDER FOR ANY OTHER
14 PURPOSE.

15 (c) This article applies only to representation in or with respect to the courts
16 of this State. It does not prohibit the Public Defender's Office from representing an
17 indigent person in a federal court of the United States at federal expense, if the
18 matter arises out of, or is related to, an action pending or recently pending in a court
19 of criminal jurisdiction of this State. Any compensation paid by the federal court to
20 the Public Defender, his deputy, district public defenders, or assistant public
21 defenders shall be remitted to the general funds of the State.

22 (d) Representation by the Office of the Public Defender, or by an attorney
23 appointed by the Office of the Public Defender, shall extend to all stages in the
24 proceedings, including custody, interrogation, BAIL REVIEW HEARING, preliminary
25 hearing, arraignment, trial, a hearing in an involuntary termination of parental
26 rights proceeding, a hearing under § 5-319 of the Family Law Article, and appeal, if
27 any, and shall continue until the final disposition of the cause, or until the assigned
28 attorney is relieved by the Public Defender or by order of the court in which the cause
29 is pending.

30 SECTION 2. AND BE IT FURTHER ENACTED, That the Office of Public
31 Defender shall provide a statistical report to the Senate Judicial Proceedings
32 Committee and the House of Delegates Judiciary Committee of the General Assembly
33 on or before December 15, 2000, in accordance with § 2-1246 of the State Government
34 Article, and shall make similar reports for each 2-year period thereafter, on the
35 efficacy of representation of indigent defendants at bail review hearings.

36 SECTION 3. AND BE IT FURTHER ENACTED, That an appropriation of
37 general funds in the State budget for the Office of Public Defender shall be used to
38 pay not more than 67% of the costs of providing legal representation at bail review
39 hearings, and that the remaining costs shall be paid by the counties or private
40 funding sources, in amounts proportionate to the use of legal representation at bail
41 review hearings in each county.

1 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 1999.