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By: **Delegate Montague**  
Introduced and read first time: February 7, 2000  
Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Involuntary Termination of Parental Rights Proceedings -**  
3 **Public Defender Representation**

4 FOR the purpose of eliminating the duty of the Public Defender to provide legal  
5 representation to indigent parents in certain involuntary termination of  
6 parental rights proceedings; and generally relating to the representation of  
7 indigent parents by the Public Defender in involuntary termination of parental  
8 rights proceedings.

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 1999 Supplement)

14 BY repealing and reenacting, with amendments,  
15 Article - Family Law  
16 Section 5-323  
17 Annotated Code of Maryland  
18 (1999 Replacement Volume and 1999 Supplement)

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

21 **Article 27A - Public Defender**

22 4.

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

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

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

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

8 (3) Postconviction proceedings under Article 27, Annotated Code of  
9 Maryland, when the defendant has a right to counsel pursuant to § 645A of that  
10 article;

11 (4) Any other proceeding where possible incarceration pursuant to a  
12 judicial commitment of individuals in institutions of a public or private nature may  
13 result; and

14 (5) An involuntary termination of parental rights proceeding UNDER §  
15 5-313 OF THE FAMILY LAW ARTICLE or a hearing under § 5-319 of the Family Law  
16 Article, if the party is entitled to Public Defender representation under § 5-323 of the  
17 Family Law Article.

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

25 (d) Representation by the Office of the Public Defender, or by an attorney  
26 appointed by the Office of the Public Defender, shall extend to all stages in the  
27 proceedings, including custody, interrogation, preliminary hearing, arraignment,  
28 trial, a hearing in an involuntary termination of parental rights proceeding UNDER §  
29 5-313 OF THE FAMILY LAW ARTICLE, a hearing under § 5-319 of the Family Law  
30 Article, and appeal, if any, and shall continue until the final disposition of the cause,  
31 or until the assigned attorney is relieved by the Public Defender or by order of the  
32 court in which the cause is pending.

33 **Article - Family Law**

34 5-323.

35 (a) (1) Subject to paragraph (2) of this subsection, in a proceeding for an  
36 adoption or guardianship, unless the public defender is required to provide  
37 representation, the court shall appoint separate counsel to represent:

1 (i) the individual to be adopted, if the consent of the individual to  
2 be adopted is required and the individual has a disability that renders the individual  
3 incapable of consenting and otherwise effectively participating in the proceedings;

4 (ii) a natural parent who has a disability that renders the natural  
5 parent incapable of consenting and effectively participating in the proceedings;

6 (iii) a minor parent; and

7 (iv) in an involuntary termination of parental rights, an individual  
8 who is the subject of the proceeding.

9 (2) In any action in which payment for the services of a court-appointed  
10 attorney for a child is the responsibility of the local department of social services,  
11 unless the court finds that it would not be in the best interests of the child, the court  
12 shall:

13 (i) appoint an attorney who has contracted with the Department of  
14 Human Resources to provide those services; and

15 (ii) in an action in which an attorney has previously been  
16 appointed, strike the appearance of the attorney previously appointed and appoint  
17 the attorney who is currently under contract with the Department of Human  
18 Resources.

19 (b) The public defender shall represent:

20 (1) in an involuntary termination of parental rights UNDER § 5-313 OF  
21 THIS SUBTITLE, an indigent parent; and

22 (2) in a hearing under § 5-319 of this subtitle, an indigent natural  
23 parent who has not waived the right to receive notice of the child's status.

24 (c) To determine whether an individual whose consent is required has a  
25 disability that renders the individual incapable of consenting and otherwise  
26 effectively participating in the proceedings, the court, on its own motion or on motion  
27 of a party, may order an examination of the individual.

28 (d) Counsel appointed under this section may be compensated for reasonable  
29 fees, as approved by the court. The court may assign the costs among the parties as  
30 the court considers appropriate.

31 (e) (1) An attorney or firm representing the adoptive parent or child  
32 placement agency may not represent the natural parent in the same adoption  
33 proceeding.

34 (2) An attorney or firm representing the natural parent may not  
35 represent the adoptive parent or child placement agency in the same adoption  
36 proceeding.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 October 1, 2000.