

SENATE BILL 138

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SB 335/99 - JPR

2000 Regular Session  
0lr0856

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By: **Senator Green**

Introduced and read first time: January 18, 2000

Assigned to: Judicial Proceedings

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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; making  
7 this Act contingent on the appropriation of certain funds; and generally relating  
8 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 1999 Supplement)

14 **Preamble**

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

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

20 WHEREAS, Without representation by counsel at the bail review hearing, many  
21 defendants remain incarcerated pending trial because they are unable to post bail  
22 between \$100 and \$1,000; and

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

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

27 WHEREAS, Representation by counsel at bail review hearings would identify  
28 individuals who are being held unnecessarily in pretrial detention, thus reducing

1 detention center overcrowding and resulting in a safer and healthier environment for  
2 correctional officers and detainees; and

3 WHEREAS, Allowing many to return to their jobs and homes while awaiting  
4 trial would be beneficial to both defendants and the general public;

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

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

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

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

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

19 **Article 27A - Public Defender**

20 4.

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

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

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

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

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

1 (4) Any other proceeding where possible incarceration pursuant to a  
2 judicial commitment of individuals in institutions of a public or private nature may  
3 result; [and]

4 (5) An involuntary termination of parental rights proceeding or a  
5 hearing under § 5-319 of the Family Law Article, if the party is entitled to Public  
6 Defender representation under § 5-323 of the Family Law Article; AND

7 (6) ANY BAIL REVIEW HEARING WHEN A DEFENDANT HAS NOT BEEN  
8 RELEASED ON BAIL AS SET BY A COMMISSIONER.

9 (C) REPRESENTATION BY THE OFFICE OF THE PUBLIC DEFENDER AT A BAIL  
10 REVIEW HEARING DOES NOT CONSTITUTE ENTRY OF APPEARANCE OF THE OFFICE  
11 OF THE PUBLIC DEFENDER FOR ANY OTHER PURPOSE.

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

19 [(d)] (E) 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, BAIL REVIEW HEARING, preliminary  
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 Public  
28 Defender shall provide a statistical report to the Senate Judicial Proceedings  
29 Committee and the House of Delegates Judiciary Committee of the General Assembly  
30 on or before December 15, 2001, in accordance with § 2-1246 of the State Government  
31 Article, and shall make similar reports for each 2-year period thereafter, on the  
32 efficacy of representation of indigent defendants at bail review hearings.

33 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is contingent  
34 on an appropriation of general funds in the State budget for the Office of Public  
35 Defender to be used to provide legal representation at bail review hearings. If the  
36 funds are not appropriated, this Act shall be null and void without the necessity of  
37 further action by the General Assembly.

38 SECTION 4. AND BE IT FURTHER ENACTED, That, subject to the provisions  
39 of Section 3 of this Act, this Act shall take effect October 1, 2000.