
By: **Delegate Montague**
Introduced and read first time: February 9, 2001
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Adoption and Guardianship - Representation of Indigent**
3 **Parents**

4 FOR the purpose of limiting the duty of the Public Defender to provide legal
5 representation to indigent parents in certain adoption and guardianship
6 proceedings; requiring the court in an adoption or guardianship proceeding to
7 appoint counsel to represent an indigent parent under certain circumstances;
8 providing for the application of this Act; and generally relating to adoption and
9 guardianship proceedings and the representation of indigent parents.

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 2000 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article - Family Law
17 Section 5-323
18 Annotated Code of Maryland
19 (1999 Replacement Volume and 2000 Supplement)

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.

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 or a
15 hearing under § 5-319 of the Family Law Article, if the party is entitled to Public
16 Defender representation under[§ 5-323] § 5-323(B) of the Family Law Article.

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

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

31 **Article - Family Law**

32 5-323.

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

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

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

3 (iii) a minor parent; [and]

4 (iv) in an involuntary termination of parental rights, an individual
5 who is the subject of the proceeding; AND

6 (V) AN INDIGENT PARENT IN AN ADOPTION OR GUARDIANSHIP
7 PROCEEDING, IF REQUESTED BY THE INDIGENT PARENT.

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

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

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

18 (b) The public defender shall represent:

19 (1) in an involuntary termination of parental rights PROCEEDING IN
20 WHICH A LOCAL DEPARTMENT OF SOCIAL SERVICES IS A PARTY, an indigent parent;
21 and

22 (2) in a hearing under § 5-319 of this subtitle IN WHICH A LOCAL
23 DEPARTMENT OF SOCIAL SERVICES IS A PARTY, an indigent natural parent who has
24 not waived the right to receive notice of the child's status.

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

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

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

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply only
2 to petitions for adoption or guardianship filed on or after the effective date of this Act.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2001.