

SENATE BILL 78

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SB 138/00 - JPR

2001 Regular Session
11r0260
CF 11r2482

By: **Senator Green**

Introduced and read first time: January 11, 2001

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: February 13, 2001

CHAPTER _____

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 2000 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

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

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

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

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

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

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

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

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

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

25 **Article 27A - Public Defender**

26 4.

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

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

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

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

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

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

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

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

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

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

25 [(d)] (E) 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, BAIL REVIEW HEARING, preliminary
28 hearing, arraignment, trial, a hearing in an involuntary termination of parental
29 rights proceeding, a hearing under § 5-319 of the Family Law Article, and appeal, if
30 any, and shall continue until the final disposition of the cause, or until the assigned
31 attorney is relieved by the Public Defender or by order of the court in which the cause
32 is pending.

33 SECTION 2. AND BE IT FURTHER ENACTED, That the Office of the Public
34 Defender shall provide a statistical report to the Senate Judicial Proceedings
35 Committee and the House of Delegates Judiciary Committee of the General Assembly
36 on or before December 15, 2002, in accordance with § 2-1246 of the State Government
37 Article, and shall make similar reports for each 2-year period thereafter, on the
38 efficacy of representation of indigent defendants at bail review hearings.

39 SECTION 3. AND BE IT FURTHER ENACTED, That this Act is contingent
40 on an appropriation of general funds in the State budget for the Office of the Public
41 Defender to be used to provide legal representation at bail review hearings. If the

1 funds are not appropriated, this Act shall be null and void without the necessity of
2 further action by the General Assembly.

3 SECTION 4. AND BE IT FURTHER ENACTED, That, subject to the provisions
4 of Section 3 of this Act, this Act shall take effect October 1, 2001.