

SENATE BILL 9

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SB 78/01 - JPR

2002 Regular Session
2lr0224

(PRE-FILED)

By: **Senator Green**
Requested: July 2, 2001
Introduced and read first time: January 9, 2002
Assigned to: Judicial Proceedings

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 2001 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

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

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

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

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

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

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

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.

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

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

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

35 (3) Postconviction proceedings, when the defendant has a right to
36 counsel pursuant to Title 7 of the Criminal Procedure 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 the 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, 2003, 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 the 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, 2002.