

HOUSE BILL 511

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2004 Regular Session
4r1124
CF 4r1073

By: **Delegates Kelley, Amedori, Anderson, Carter, Gaines, Howard, Jones,
Marriott, Moe, Parker, Patterson, Proctor, Ramirez, V. Turner, Vallario,
Vaughn, and Zirkin**

Introduced and read first time: February 2, 2004
Assigned to: Judiciary

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 17, 2004

CHAPTER _____

1 AN ACT concerning

2

Juvenile Law - Waiver of Counsel

3 FOR the purpose of prohibiting a child from waiving the right to the assistance of
4 counsel in certain proceedings except under certain circumstances; prohibiting a
5 parent, guardian, or custodian of a child from waiving the child's right to the
6 assistance of counsel; prohibiting the juvenile court from accepting a waiver of
7 the child's right to the assistance of counsel except under certain circumstances;
8 requiring the court to consider certain factors in determining whether a waiver
9 is knowing and voluntary; requiring the court to continue and the clerk to
10 reschedule a waiver or adjudicatory hearing under certain circumstances;
11 requiring the clerk to issue a certain notice within a certain time period;
12 requiring the Office of the Public Defender to enter an appearance for the child
13 under certain circumstances; requiring the Office of the Public Defender, after
14 entry of its appearance, to verify eligibility for continued Public Defender
15 representation in a certain manner; establishing that the continuance of a
16 waiver or adjudicatory hearing may not be the sole basis for detaining the child;
17 and generally relating to the right to the assistance of counsel in juvenile
18 proceedings.

19 BY repealing and reenacting, with amendments,
20 Article - Courts and Judicial Proceedings
21 Section 3-8A-20
22 Annotated Code of Maryland
23 (2002 Replacement Volume and 2003 Supplement)

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

3 **Article - Courts and Judicial Proceedings**

4 3-8A-20.

5 (a) Except as provided in subsection [(c)] (D) of this section, a party is entitled
6 to the assistance of counsel at every stage of any proceeding under this subtitle.

7 (b) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A
8 CHILD MAY NOT WAIVE THE RIGHT TO THE ASSISTANCE OF COUNSEL IN A
9 PROCEEDING UNDER THIS SUBTITLE.

10 (2) A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD MAY NOT WAIVE
11 THE CHILD'S RIGHT TO THE ASSISTANCE OF COUNSEL.

12 (3) AFTER A PETITION OR CITATION HAS BEEN FILED WITH THE COURT
13 UNDER THIS SUBTITLE, IF A CHILD INDICATES A DESIRE TO WAIVE THE RIGHT TO
14 THE ASSISTANCE OF COUNSEL, THE COURT MAY NOT ACCEPT THE WAIVER UNLESS:

15 (I) THE CHILD IS IN THE PRESENCE OF COUNSEL AND HAS
16 CONSULTED WITH COUNSEL; AND

17 (II) THE COURT DETERMINES THAT THE WAIVER IS KNOWING AND
18 VOLUNTARY.

19 (4) IN DETERMINING WHETHER THE WAIVER IS KNOWING AND
20 VOLUNTARY, THE COURT SHALL CONSIDER, AFTER APPROPRIATE QUESTIONING IN
21 OPEN COURT AND ON THE RECORD, WHETHER THE CHILD FULLY COMPREHENDS:

22 (I) THE NATURE OF THE ALLEGATIONS AND THE PROCEEDINGS,
23 AND THE RANGE OF ALLOWABLE DISPOSITIONS;

24 (II) THAT COUNSEL MAY BE OF ASSISTANCE IN DETERMINING AND
25 PRESENTING ANY DEFENSES TO THE ALLEGATIONS OF THE PETITION, OR OTHER
26 MITIGATING CIRCUMSTANCES;

27 (III) THAT THE RIGHT TO THE ASSISTANCE OF COUNSEL IN A
28 DELINQUENCY CASE, OR A CHILD IN NEED OF SUPERVISION CASE, INCLUDES THE
29 RIGHT TO THE PROMPT ASSIGNMENT OF AN ATTORNEY, WITHOUT CHARGE TO THE
30 CHILD IF THE CHILD IS FINANCIALLY UNABLE TO OBTAIN PRIVATE COUNSEL;

31 (IV) THAT EVEN IF THE CHILD INTENDS NOT TO CONTEST THE
32 CHARGE OR PROCEEDING, COUNSEL MAY BE OF SUBSTANTIAL ASSISTANCE IN
33 DEVELOPING AND PRESENTING MATERIAL THAT COULD AFFECT THE DISPOSITION;
34 AND

35 (V) THAT AMONG THE CHILD'S RIGHTS AT ANY HEARING ARE THE
36 RIGHT TO CALL WITNESSES ON THE CHILD'S BEHALF, THE RIGHT TO CONFRONT AND

1 CROSS-EXAMINE WITNESSES, THE RIGHT TO OBTAIN WITNESSES BY COMPULSORY
2 PROCESS, AND THE RIGHT TO REQUIRE PROOF OF ANY CHARGES.

3 (C) Compensation for the services of an attorney appointed to represent a child
4 in an action under this subtitle may be assessed by the court against any party or
5 against a parent of the child.

6 [(c)] (D) (1) A party is not entitled to the assistance of counsel at a peace
7 order proceeding.

8 (2) Paragraph (1) of this subsection does not affect the entitlement of a
9 respondent to the assistance of counsel in a contempt proceeding as provided by law.

10 (E) (1) UNLESS THE CASE IS DISMISSED, IF A CHILD APPEARS IN COURT
11 WITHOUT COUNSEL FOR A WAIVER HEARING UNDER § 3-8A-06 OF THIS SUBTITLE, OR
12 AN ADJUDICATORY HEARING UNDER § 3-8A-18 OF THIS SUBTITLE, AND THE CHILD
13 HAS NOT PREVIOUSLY WAIVED THE RIGHT TO THE ASSISTANCE OF COUNSEL IN
14 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, THE COURT SHALL
15 CONTINUE AND THE CLERK SHALL RESCHEDULE THE WAIVER OR ADJUDICATORY
16 HEARING.

17 (2) THE CLERK SHALL ISSUE A NOTICE OF THE DATE, TIME, AND
18 LOCATION OF THE HEARING AT LEAST 10 DAYS PRIOR TO THE DATE OF THE
19 HEARING.

20 (3) (I) THE OFFICE OF THE PUBLIC DEFENDER SHALL ENTER AN
21 APPEARANCE FOR THE CHILD.

22 (II) AFTER ENTRY OF ITS APPEARANCE, THE OFFICE OF THE
23 PUBLIC DEFENDER SHALL VERIFY ELIGIBILITY FOR CONTINUED PUBLIC DEFENDER
24 REPRESENTATION IN ACCORDANCE WITH ARTICLE 27A, § 7 OF THE CODE AND THE
25 MARYLAND RULES.

26 (4) THE CONTINUANCE OF A WAIVER OR ADJUDICATORY HEARING
27 UNDER THIS SUBSECTION MAY NOT BE THE SOLE BASIS FOR DETAINING THE CHILD
28 UNDER § 3-8A-15 OF THIS SUBTITLE.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2004.