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By: Senators Kelley, Britt, Della, Exum, Frosh, Gladden, Grosfeld, Lawlah, McFadden, and Teitelbaum <u>Teitelbaum</u>, Forehand, and Green

Introduced and read first time: January 23, 2004 Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments Senate action: Adopted Read second time: February 17, 2004

CHAPTER_____

1 AN ACT concerning

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Juvenile Law - Waiver of Counsel

3 FOR the purpose of prohibiting a child from waiving the right to the assistance of

4 counsel <u>in certain proceedings</u> 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; and generally relating to the right to the

14 assistance of counsel in juvenile proceedings.

15 BY repealing and reenacting, with amendments,

- 16 Article Courts and Judicial Proceedings
- 17 Section 3-8A-20
- 18 Annotated Code of Maryland
- 19 (2002 Replacement Volume and 2003 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

21 MARYLAND, That the Laws of Maryland read as follows:

2	SENATE BILL 163
1	Article - Courts and Judicial Proceedings
2	3-8A-20.
3 4	(a) Except as provided in subsection [(c)] (D) of this section, a party is entitled to the assistance of counsel at every stage of any proceeding under this subtitle.
	(b) (1) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A CHILD MAY NOT WAIVE THE RIGHT TO THE ASSISTANCE OF COUNSEL <u>IN A</u> <u>PROCEEDING UNDER THIS SUBTITLE</u> .
8 9	(2) A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD MAY NOT WAIVE THE CHILD'S RIGHT TO THE ASSISTANCE OF COUNSEL.
	(3) AFTER A PETITION OR CITATION HAS BEEN FILED WITH THE COURT UNDER THIS SUBTITLE, IF A CHILD INDICATES A DESIRE TO WAIVE THE RIGHT TO THE ASSISTANCE OF COUNSEL, THE COURT MAY NOT ACCEPT THE WAIVER UNLESS:
13 14	(I) THE CHILD IS IN THE PRESENCE OF COUNSEL AND HAS CONSULTED WITH COUNSEL; AND
15 16	(II) THE COURT DETERMINES THAT THE WAIVER IS KNOWING AND VOLUNTARY.
	(4) IN DETERMINING WHETHER THE WAIVER IS KNOWING AND VOLUNTARY, THE COURT SHALL CONSIDER, AFTER APPROPRIATE QUESTIONING IN OPEN COURT AND ON THE RECORD, WHETHER THE CHILD FULLY COMPREHENDS:
20 21	(I) THE NATURE OF THE ALLEGATIONS AND THE PROCEEDINGS, AND THE RANGE OF ALLOWABLE DISPOSITIONS;
	(II) THAT COUNSEL MAY BE OF ASSISTANCE IN DETERMINING AND PRESENTING ANY DEFENSES TO THE ALLEGATIONS OF THE PETITION, OR OTHER MITIGATING CIRCUMSTANCES;
27	(III) THAT THE RIGHT TO THE ASSISTANCE OF COUNSEL IN A DELINQUENCY CASE, OR A CHILD IN NEED OF SUPERVISION CASE, INCLUDES THE RIGHT TO THE PROMPT ASSIGNMENT OF AN ATTORNEY, WITHOUT CHARGE TO THE CHILD IF THE CHILD IS FINANCIALLY UNABLE TO OBTAIN PRIVATE COUNSEL;
31	(IV) THAT EVEN IF THE CHILD INTENDS NOT TO CONTEST THE CHARGE OR PROCEEDING, COUNSEL MAY BE OF SUBSTANTIAL ASSISTANCE IN DEVELOPING AND PRESENTING MATERIAL THAT COULD AFFECT THE DISPOSITION; AND
35	(V) THAT AMONG THE CHILD'S RIGHTS AT ANY HEARING ARE THE RIGHT TO CALL WITNESSES ON THE CHILD'S BEHALF, THE RIGHT TO CONFRONT AND CROSS-EXAMINE WITNESSES, THE RIGHT TO OBTAIN WITNESSES BY COMPULSORY PROCESS, AND THE RIGHT TO REQUIRE PROOF OF ANY CHARGES.

SENATE BILL 163

1 (C) Compensation for the services of an attorney appointed to represent a child 2 in an action under this subtitle may be assessed by the court against any party or 3 against a parent of the child.

4 [(c)] (D) (1) A party is not entitled to the assistance of counsel at a peace 5 order proceeding.

6 (2) Paragraph (1) of this subsection does not affect the entitlement of a 7 respondent to the assistance of counsel in a contempt proceeding as provided by law.

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

14 (2) THE CLERK SHALL ISSUE A NOTICE OF THE DATE, TIME, AND
15 LOCATION OF THE HEARING AT LEAST 10 DAYS PRIOR TO THE DATE OF THE
16 HEARING.

17 (3) THE OFFICE OF THE PUBLIC DEFENDER SHALL ENTER AN 18 APPEARANCE FOR THE CHILD.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effectOctober 1, 2004.