

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 443
Judiciary

(Delegate Smigiel, *et al.*)

Cecil County - Representation of Indigent Defendants - Appointment of Public Defender

This bill authorizes the Circuit Court for Cecil County to appoint the Office of the Public Defender (OPD) to represent a defendant whom the court determines is indigent and entitled to representation by the Public Defender.

Fiscal Summary

State Effect: Minimal. If OPD had to provide representation to an additional number of persons in Cecil County due to a determination of indigence by the circuit court, rather than in accordance with current guidelines, costs could increase minimally, and would depend on whether those costs would be assumed by OPD or the court. It is assumed that this bill's provisions would apply to very few persons or cases.

Local Effect: Potential minimal increase or decrease in costs associated with representation of indigent defendants.

Small Business Effect: None.

Analysis

Current Law: It is the primary duty of OPD to provide legal representation for any indigent defendant eligible for services. Legal representation may be provided by district public defenders, assistant public defenders, or by panel attorneys. Legal representation must be provided indigent defendants or parties in the following proceedings: (1) any criminal or juvenile proceeding constitutionally requiring the presence of counsel prior to

presentment before a commissioner or judge; (2) criminal or juvenile proceedings, where the defendant is charged with a serious crime, before the District Court of Maryland, the circuit courts, and the Court of Special Appeals; (3) postconviction proceedings, when the defendant has a right to counsel pursuant to Title 7 of the Criminal Procedure Article; (4) any other proceeding where incarceration may result; and (5) an involuntary termination of parental rights proceeding or a hearing relating to a delay in adoption after a granting of guardianship, if the party is entitled OPD representation under certain provisions of the Family Law Article.

Representation by OPD, or by an attorney appointed by OPD, extends to all stages in the proceedings.

Eligibility for the services of OPD is determined on the basis of the need of the person seeking representation. Need must be measured according to the financial ability of the person to engage and compensate competent private counsel and to provide all other necessary expenses of representation. OPD must make an investigation of the financial status of each defendant, and the office has the authority to require a defendant to provide access to public and private records to evaluate eligibility.

In all cases where it appears that the defendant has or reasonably expects to have means to meet some part of the expenses for services rendered, the defendant is required to reimburse the office, either by a single payment or in installments.

A court exercising criminal jurisdiction must order a defendant to reimburse the State for services rendered by OPD as a term or condition of any sentence, judgment, or probation imposed, unless the court affirmatively finds that the defendant does not have the ability to make such reimbursement and waives the term or condition. The amount, time, and method of payment shall be established by the court. A court exercising other than criminal jurisdiction must order an individual represented by OPD to reimburse the State for the reasonable value of services rendered by OPD in an amount that the individual may reasonably be able to pay.

If the individual represented by OPD is a minor, the court must order the parents, guardian, or custodian of the minor to reimburse the State for the reasonable value of services rendered by OPD in an amount that the parents, guardian, or custodian may reasonably be able to pay. Before ordering reimbursement under these provisions, a court must grant an opportunity to be heard to the individual or the parents, guardian, or custodian of a minor.

Provisions relating to OPD do not apply in any county where the county's governing body, prior to September 1, 1971, implemented or maintained a separate or different system for providing counsel to indigent persons at the county's expense.

Background: Under current law, OPD is required to establish, and set forth in regulation, eligibility guidelines. Eligibility guidelines are set in reference to the federal poverty guidelines. Under this mandate, OPD must represent all eligible indigent defendants, but cannot represent those persons whose assertion of indigence has not been determined by those guidelines. OPD now represents indigent clients in Cecil County under provisions of current law and regulation. OPD believes that this bill is at odds with their mandate under both current law and regulation.

A person who does not qualify for representation by the Public Defender under the indigence guidelines may have private counsel appointed by the court, with a court determination of fees for counsel. The court would then be obligated for payment of the cost of representation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Cecil County, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

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ncs/jr

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