

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 122
Judiciary

(Delegate Anderson, *et al.*)

Judicial Proceedings

Office of the Public Defender - Board of Trustees - Membership

This bill repeals a provision of law that requires the Public Defender to serve at the pleasure of the Board of Trustees of the Office of the Public Defender (OPD) and instead establishes a six-year term of office and authorizes the board of trustees to remove the Public Defender from office only under specified circumstances. The bill alters the composition of the board and specifies the manner in which members are to be appointed.

The bill takes effect June 1, 2010.

Fiscal Summary

State Effect: None. Altering the composition of the board or the manner in which the Public Defender can be removed from office will not affect State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes that, only by a vote of at least seven members, the board of trustees is authorized to remove the Public Defender from office for (1) misconduct in office; (2) persistent failure to perform the duties of the office; or (3) conduct prejudicial to the proper administration of justice.

The board must consist of 13 members. Eleven members must be appointed by the Governor with the advice and consent of the Senate and must include a representative of each of the State's judicial circuits. Of the remaining members, one must be appointed

by the President of the Senate and one must be appointed by the Speaker of the House of Delegates. All members of the board must be active attorneys admitted to practice before the State Court of Appeals.

Each appointed member must have significant experience in criminal defense or other matters relevant to the work of the board or have a demonstrated commitment to quality representation of indigent defendants, including juvenile respondents. Current members or employees of the Judicial Branch or a law enforcement agency in the State, prosecutors, the Attorney General, and the State Prosecutor are specifically excluded from being members of the board. The terms of board members are to be staggered, and a member may be reappointed. A member continues to serve until a qualified successor is appointed. Seven members of the Board of Trustees constitute a quorum.

Under the bill, the initial members of the board must be appointed on or before December 31, 2010. The bill sets forth terms of office for the initial board members and establishes that a current member of the board must continue to serve until a successor is appointed and qualified. A Public Defender who is serving on the effective date of this bill (June 1, 2010) may continue to serve until six years after the effective date and may be reappointed after the expiration of the term.

Current Law: OPD was created by the State Legislature on July 1, 1971. The Public Defender is the head of OPD and is appointed by and serves at the pleasure of the board. The board is comprised of three members who are appointed by the Governor and serve three-year terms. Each member must be a resident of the State, and two must be active attorneys admitted to practice before the Maryland Court of Appeals. The board annually elects a chair. A board member may not receive compensation, but is entitled to reimbursement for travel expenses.

Background: The authority for state boards or commissions charged with overseeing the work of a public defender's office (or equivalent agency) to remove a state public defender (or equivalent position) from office varies as shown in **Exhibit 1**, which illustrates a representative group of 12 states. Similarly, the composition of the board or commission varies among states. Of the six states represented in Exhibit 1 that have specified term limits for the public defender (or equivalent position), five have a four-year term (North Carolina, Illinois, Connecticut, Kentucky, Missouri); Colorado specifies a five-year term.

Maryland's current Public Defender was appointed after the board voted in August 2009 to remove his predecessor from office.

Exhibit 1
State Boards/Commissions for Indigent Services

<u>State Board/Commission</u>			<u>Authority to Remove Head of Public Defender Services</u>
Arkansas Commission (7 members)	Public Defender	Defender	The commission may remove the executive director only for just cause, which includes willful misconduct in office, willful and persistent failure to perform duties, habitual intemperance, or conduct prejudicial to the administration of justice.
Colorado Commission (5 members)	Public Defender	Defender	The commission may discharge the state Public Defender for cause.
Connecticut Services Commission (7 members)	Public Defender	Defender	The Chief Public Defender may not be removed or suspended from office except by order of the commission for just cause after due notice and a hearing.
Illinois Commission (9 members)	State Appellate Defender	Defender	The commission may recommend the removal of the state Appellate Defender if there are reasonable grounds for making the recommendation, but the state Supreme Court may remove only for cause and after a hearing.
Kentucky Commission (12 members)	Public Advocacy	Advocacy	A majority vote of the commission is required to recommend to the Governor the removal of the Public Advocate.
Michigan Commission (7 members)	Appellate Defender	Defender	The Appellate Defender serves at the pleasure of the commission and can only be dismissed for cause determined after a hearing and by a majority vote of the commission.
Missouri Commission (7 members)	Public Defender	Defender	The commission may remove the director for good cause shown after notice and a hearing.
North Carolina (13 members)	Commission on Indigent Defense Services	Services	The director may be removed at the discretion of the commission by a two-thirds vote.
Ohio (9 members)	Public Defender Commission	Commission	The Public Defender serves at the pleasure of the commission.
South Carolina Indigent Defense (13 members)	Commission on Indigent Defense	Commission	The executive director can be removed for cause by a majority vote of the commission.
Virginia Commission (14 members)	Indigent Defense	Defense	The executive director can be removed at the pleasure of the commission as it deems necessary.
Wisconsin (9 members)	Public Defender Board	Board	The state Public Defender serves at the pleasure of the board.

Source: Annotated Code of Arkansas, Colorado Revised Statutes, General Statutes of Connecticut, Compiled Statutes of Illinois, Kentucky Revised Statutes, Compiled Laws of Michigan, Missouri Revised Statutes, North Carolina General Statutes, Ohio Revised Code, Annotated Code of South Carolina, Annotated Code of Virginia, Wisconsin Statutes

Additional Information

Prior Introductions: None.

Cross File: Although not designated as a cross file, SB 97 (Senator Mooney, *et al.*) – Judicial Proceedings, is identical.

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

Fiscal Note History: First Reader - January 29, 2010
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