

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**

Senate Bill 515

(Senators Zirkin and Miller)

Judicial Proceedings

Judiciary

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**Public Defender - Representation - Income Eligibility and Appointment by a Court**

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This bill specifies that an individual whose assets and net annual income are less than 100% of the federal poverty guidelines may be determined eligible for services from the Office of the Public Defender (OPD) without an assessment.

The bill also clarifies that the District Court, a circuit court, and the Court of Special Appeals are prohibited from appointing an attorney through OPD to represent an indigent individual if (1) there is a conflict in legal representation in a matter involving multiple defendants and one of the defendants is being represented by or through OPD; or (2) OPD declines to provide representation to an indigent individual entitled to representation.

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**Fiscal Summary**

**State Effect:** Potential increase in general fund expenditures if the State has to pay for legal representation of indigent criminal defendants who have been declined representation by OPD. Revenues are not affected.

**Local Effect:** Potential increase in local expenditures if local jurisdictions have to pay for legal representation of indigent criminal defendants who have been declined representation by OPD. Local revenues are not affected.

**Small Business Effect:** None.

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## Analysis

**Current Law:** OPD determines eligibility for services by evaluating the financial ability of the applicant to pay for a competent private attorney and all other necessary expenses of representation. Financial ability is determined by a number of factors, including the individual's assets, income, the nature of the offense, and the length and complexity of the proceedings.

Regulations adopted by OPD establish that the maximum net annual income level for persons accepted for OPD representation in District Court cases, violation of probation, and contempt proceedings may not exceed 100% of the current official federal poverty income guidelines. The maximum net annual income level for persons accepted for OPD representation in all other cases may not exceed 110% of the current official federal poverty income guidelines. However, in cases where good cause is shown, a district public defender or division chief may exempt an applicant from these maximum income level requirements upon due consideration of factors used to determine financial ability.

OPD is required to investigate the financial status of an applicant when the circumstances merit. OPD may require an applicant to execute and deliver written requests or authorizations that are necessary to provide OPD with access to confidential records of public or private sources to determine eligibility. OPD, on request, may obtain information without charge from a public record office or other unit of the State or local government. OPD is also specifically authorized to submit requests to the Department of Labor, Licensing, and Regulation and the Comptroller's Office for information regarding the employment status and income of individuals applying for its legal representation services.

The District Court, a circuit court, or the Court of Special Appeals may appoint an attorney to represent an indigent individual if (1) there is a conflict in legal representation in a matter involving multiple defendants, and one of the defendants is represented by or through OPD; or (2) OPD declines to provide representation to an indigent individual entitled to representation.

**Background:** In *Workman v. State*, 413 Md. 475 (2010), the Maryland Court of Appeals held that a trial court has the authority to appoint an OPD attorney to represent an indigent individual if (1) OPD erroneously declines to represent a criminal defendant due to a failure to properly consider the statutorily mandated criteria for determining indigency; and (2) a court finds, upon its subsequent mandatory independent review, that the individual qualifies for OPD representation. According to the Court, the only exception to this authority is when an actual and unwaived or unwaivable conflict of interest would result from the appointment.

The case involved a criminal defendant who was denied OPD representation as a result of exceeding the specified maximum income levels. The trial court determined that after reviewing the defendant's circumstances and financial situation using the factors outlined in the law, the defendant's limited disposable income precluded her from obtaining private representation, and she was an indigent defendant entitled to legal representation through OPD. The trial court, believing that it did not have the authority to compel OPD to represent the defendant, eventually dismissed the charges against the defendant after failing to obtain representation through various methods.

The 2011 federal poverty guideline for a single individual is \$10,890 for the contiguous 48 states and the District of Columbia. The amount is adjusted depending on the number of persons in a family.

**State Fiscal Effect:** OPD advises that it currently does not conduct assessments on individuals who meet federal poverty guidelines.

When OPD cannot represent a criminal defendant because of a conflict of interest, the office employs panel attorneys, who are private attorneys reimbursed by OPD. However, OPD only employs panel attorneys if OPD has already determined that the defendant is eligible for OPD services. The bill would prohibit the appointment of an OPD attorney if OPD declines to provide representation to an indigent individual entitled to representation. OPD advises that in such cases, the attorney would be paid for by the court. Since the District Court is a unified State system, this estimate assumes that the State would pay for representation in District Court cases and (possibly) in situations where local jurisdictions do not have available funds (see below). The amount of this impact cannot be reliably determined at this time.

**Local Fiscal Effect:** Since the circuit courts are county courts, the estimate assumes that local jurisdictions will pay for legal representation of indigent criminal defendants in the circuit courts who have been declined representation by OPD. The amount of this impact cannot be reliably determined at this time.

In the *Workman* case, the trial court contacted the county commissioners for assistance in representation of the indigent criminal defendant. The county commissioners replied that they did not have available funds for that purpose. In such cases, it is unclear if the local jurisdiction is obligated to provide funding or if the expense shifts to the State.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Office of the Public Defender, U.S. Department of Health and Human Services, Department of Legislative Services

**Fiscal Note History:** First Reader - February 23, 2011  
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