

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 23

(Delegate Vallario)(Task Force to Study Laws Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender)

Judiciary

Task Force to Study the Laws Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender - Extension

This bill (1) extends the termination date of the Task Force to Study the Laws Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender from May 31, 2014, to May 31, 2015, and (2) alters the date by which the task force must submit a final report of its findings and recommendations to the Governor and the General Assembly from November 1, 2013, to December 1, 2014.

The bill takes effect June 1, 2014.

Fiscal Summary

State Effect: Any expense reimbursements for task force members and continued staffing costs for the Department of Legislative Services are assumed to be minimal and absorbable within existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: In *DeWolfe v. Richmond*, No. 34 (September Term 2011), the Maryland Court of Appeals held on January 4, 2012, that under the then-effective version of the Maryland Public Defender Act, no bail determination may be made by a

District Court commissioner concerning an indigent defendant without the presence of counsel, unless representation by counsel is waived (“*Richmond I*”).

The *Richmond I* opinion was based on the wording of the Maryland Public Defender Act, including language that the Office of the Public Defender (OPD) must represent an indigent defendant “in all stages” of a criminal proceeding. The court did not address the plaintiffs’ federal and State constitutional claims of a right to representation. However, the Circuit Court for Baltimore City had previously held, based on *Rothgery v. Gillespie County*, 554 U.S. 191 (2008), that indigent arrestees have a federal and State constitutional right to be appointed counsel at an initial appearance.

Richmond I sparked a heated debate during the 2012 session of the General Assembly. There was much concern about how the State would fund the obligation of OPD to begin representing people at an initial appearance phase. It was estimated that the cost to OPD alone (aside from costs that would be incurred by the Judiciary, the Department of Public Safety and Correctional Services, State’s Attorneys’ offices, law enforcement agencies, and local correctional facilities) would exceed \$27 million annually. On the other hand, serious questions were raised about whether people do possess a constitutional right to legal representation at an initial appearance, regardless of cost. This debate prompted broader questions about and scrutiny of Maryland’s criminal justice system, including the District Court commissioner and pretrial release systems. A number of bills were introduced to attempt to counteract or mitigate the effect of *Richmond I*. The House Judiciary and Senate Judicial Proceedings committees spent a considerable amount of time exploring these issues and dialoguing with stakeholders including OPD, the Judiciary, law enforcement agencies, State’s Attorneys, and civil liberties advocates.

Ultimately, the General Assembly passed Chapters 504 and 505 of 2012, which were signed into law by the Governor on May 22, 2012. Among other things, these Acts (1) amend the Public Defender Act to specify that OPD is required to provide legal representation to an indigent defendant at a bail hearing before a District Court or circuit court judge but is not required to represent an indigent criminal defendant at an initial appearance before a District Court commissioner and (2) establish the Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender.

The task force included members of the General Assembly, the Chief Judge of the District Court, the Public Defender for the State of Maryland, the Secretary of Public Safety and Correctional Services, counsel for the plaintiffs in the case (Mr. Richmond, *et al.*), members of law enforcement, local correctional representatives, and representatives of stakeholder organizations.

The task force met several times from October 2012 through December 2013. On September 25, 2013, the Court of Appeals issued an opinion in the *Richmond* case holding that, under the Due Process component of Article 24 of the Maryland Declaration of Rights, an indigent defendant has a right to State-furnished counsel at an initial appearance before a District Court commissioner (“*Richmond II*”). Task force meetings following *Richmond II* focused on the fiscal and procedural impact of *Richmond II* and issues of concern with the State’s current judicial and criminal justice systems.

Following a discussion at the task force’s October 9, 2013 meeting, the task force voted to delay the submission of its final report until December 2013 to enable it to fully evaluate and incorporate the implications of *Richmond II*. The task force also decided to pursue legislation during the 2014 legislative session to extend its termination date from May 31, 2014, to May 31, 2015. The task force issued its final report on December 13, 2013.

Additional Information

Prior Introductions: None.

Cross File: SB 63 (Senator Getty)(Task Force to Study Laws Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender) - Judicial Proceedings.

Information Source(s): Office of the Public Defender, Department of Public Safety and Correctional Services, Office of the Attorney General, Department of State Police, Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - January 16, 2014
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