

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE
Revised

House Bill 985
Judiciary

(Delegate Anderson)

Judicial Proceedings

Office of the Public Defender - Eligibility for Services

This bill requires the Office of the Public Defender (OPD) to investigate the financial status of all applicants for OPD services and prohibits OPD from continuing legal representation of an individual after a bail review hearing unless the individual's eligibility for OPD services is determined. OPD must require applicants to provide specified authorizations allowing OPD access to confidential records needed to evaluate eligibility, unless the applicant is unable to do so because of a mental disability. OPD must submit requests to the Department of Labor, Licensing, and Regulation (DLLR) and the Comptroller for information regarding the employment status and income of applicants.

Fiscal Summary

State Effect: Significant increase in general fund expenditures and operational delays for OPD, DLLR, and the Comptroller's Office to comply with the bill's requirements. Potential operational delays in the District Court to the extent that eligibility determinations delay court proceedings.

Local Effect: Potential significant operational delays in the circuit courts from delayed OPD operations.

Small Business Effect: None.

Analysis

Current Law: An individual may apply for OPD services as an indigent individual, if the individual states in writing under oath or affirmation that the individual, without undue financial hardship, cannot provide the full payment of an attorney and all other necessary expenses of representation in specified proceedings.

For an individual whose assets and net annual income are less than 100% of the federal poverty guidelines, eligibility for OPD services may be determined without an assessment regarding the need of the applicant. For an individual whose assets and net annual income equal or exceed 100% of the federal poverty guidelines, eligibility for OPD services must be determined by the need of the applicant. Need must be measured according to the financial ability of the applicant to engage and compensate a competent private attorney and to provide all other necessary expenses of representation.

An applicant's financial ability must be determined by (1) the nature, extent, and liquidity of assets; (2) the disposable net income of the applicant; (3) the nature of the offense; (4) the length and complexity of the proceedings; (5) the effort and skill required to gather pertinent information; and (6) any other foreseeable expense. If eligibility cannot be determined before OPD or a panel attorney begins representation, OPD may represent an applicant provisionally. If OPD subsequently determines that an applicant is ineligible, OPD must inform the applicant of his/her ineligibility and the applicant must be required to engage the applicant's own attorney and reimburse OPD for the cost of the representation provided. OPD must investigate the financial status of an applicant when the circumstances warrant.

OPD may (1) require an applicant to execute and deliver written requests or authorizations that are necessary under law to provide OPD with access to confidential records of public or private sources that are needed to evaluate eligibility and (2) on request, obtain information without charge from a public record office or other unit of the State, county, or municipal corporation.

OPD may submit requests to DLLR and the Comptroller for information regarding the employment status and income of applicants. Each of these requests must be accompanied by an authorization for release of information that is signed by the applicant and in a form acceptable to the agency to which the request is submitted.

DLLR and the Comptroller must comply with requests for information made by OPD. Information may be exchanged by facsimile transmission.

State Expenditures: OPD handles an estimated 180,000 cases annually (including bail reviews) and conducts intake in 50 locations. Currently, OPD submits approximately 240 requests to DLLR for information on the employment status and income of applicants each year. OPD forwards requests to DLLR, and DLLR personnel run inquiries in its database. Given the volume of inquiries generated by this bill, DLLR advises that it is not able to accommodate the increased volume of inquiries under the bill with the existing process and needs to set up an automated system whereby OPD can run inquiries without assistance from DLLR. DLLR estimates that development of an automated system providing limited access to its system requires \$5,000 in general fund expenditures annually in the form of a fee to be paid by OPD to DLLR. The fee is to ensure that federal grants are not used to access the system, since the Division of Unemployment Insurance is 100% federally funded and federal law prohibits unemployment insurance grants from being used for purposes other than administration of the unemployment insurance program. DLLR also advises that development of the system will require 0.01 of an administrative officer position and 0.01 of an assistant Attorney General position, at an estimated cost of \$2,871 in fiscal 2015. The Department of Legislative Services advises that this portion of the development costs can be absorbed with existing resources. According to DLLR, system inquiries take a few minutes to run.

However, OPD advises that for security reasons, DLLR's proposed system must consist of three monitors in one location, which would bring OPD intake operations to a halt, especially considering that in many instances, eligibility determinations must be done quickly so that OPD can file motions on a timely basis. OPD advises that DLLR's system is not workable and prohibits continued operations of the office. Should DLLR have to resort to a method other than the proposed automated process, the bill may result in a significant increase in expenditures for additional staff and operational delays for DLLR.

Even if the DLLR system is feasible, the bill may also result in a significant increase in general fund expenditures for OPD to the extent that additional intake workers are needed to handle inquiries and paperwork. The number of intake employees cannot be reliably determined at this time. However, *for illustrative purposes only*, the costs associated with hiring one intake employee is \$46,723 in fiscal 2015 and \$59,408 in fiscal 2016.

As previously mentioned, OPD is authorized to submit income verification requests to the Comptroller, as well as DLLR. The bill now *requires* OPD to submit these requests to both offices. Historically, OPD has not made these requests to the Comptroller. Given the issues with the system verification as proposed by DLLR, OPD may have to negotiate for a workable system with the Comptroller. Accordingly, the bill could result in significant operational constraints on the Comptroller's Office. As previously mentioned, OPD handles approximately 180,000 cases annually. OPD advises that it does not currently submit any requests to the Comptroller. As a result of this bill, the

Comptroller's Office would have to run up to 180,000 inquiries per year. The Comptroller's Office advises that absent a more technologically advanced solution, the bill results in a significant operational impact on the office. According to the Comptroller's Office, a similar requirement for consultation with the Motor Vehicle Administration resulted in a significant deficiency appropriation for the office. To the extent that an automated system that complements OPD's intake process cannot be developed, the increased volume in inquiries could result in a significant increase in general fund expenditures for the Comptroller.

Additional Comments: The Comptroller's Office also (1) expressed concern over the lack of a definition of "income" in the bill, since the office deals with several types of income, each with a different definition and (2) noted that because the office is required to comply with specified federal regulations regarding taxpayer data, a statutory authorization for the office to disclose information to OPD may need to be added to Tax General Article, § 13-203. The Comptroller's Office further advises that if an applicant for OPD services did not file a tax return in Maryland due to neglect or not being required to file, the Comptroller's Office would not have any income data to forward to OPD regarding the applicant.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of State Police; Office of the Public Defender; Comptroller's Office; State's Attorney's Association; Department of Legislative Services

Fiscal Note History: First Reader - February 23, 2014
ncs/kdm Revised - House Third Reader/Updated Information - March 24, 2014

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510