

**Department of Legislative Services**  
 Maryland General Assembly  
 2015 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 735

(Senator Zirkin)

Judicial Proceedings

Judiciary

**Office of the Public Defender - Eligibility - Requirements**

This bill requires the Office of the Public Defender (OPD) to investigate the financial status of each applicant for OPD services. OPD must require applicants to provide specified authorizations allowing OPD access to confidential records needed to evaluate eligibility, and on request, obtain information without charge from a public record office or other unit of the State, a county, or a municipal corporation. OPD *must* submit requests to the Department of Labor, Licensing, and Regulation (DLLR) for information regarding the employment status and income of each applicant. As under existing statute, OPD is authorized to submit requests to the Comptroller for such information. Requests and responsive information between OPD, DLLR, and the Comptroller may be exchanged by facsimile transmission or an electronic format approved by the agency to which the request is submitted.

**Fiscal Summary**

**State Effect:** General fund expenditures increase by \$78,100 in FY 2016 for the development of automated access systems between OPD and DLLR. Future year estimates reflect only ongoing costs. Revenues are not affected.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	78,100	18,700	18,900	19,100	19,300
Net Effect	(\$78,100)	(\$18,700)	(\$18,900)	(\$19,100)	(\$19,300)

*Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** None.

**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:** General fund expenditures increase by \$78,100 in fiscal 2016, which accounts for the bill's October 1, 2015 effective date. This estimate reflects the cost to

develop and maintain an automated system allowing OPD access to databases in the Unemployment Insurance Division of DLLR. According to DLLR, the cost associated with establishing this access is \$3,100 in one-time start-up costs in fiscal 2016, plus an annual maintenance cost of \$5,000. DLLR plans to bill OPD up front for the entire \$8,100 for fiscal 2016 access at the beginning of fiscal 2016.

In addition to the costs for OPD to obtain access to DLLR's automated system, OPD must purchase software to make its operating systems compatible with DLLR's system. OPD is in the process of transitioning to a new operating system and its new operating system will not be able to communicate with DLLR's system absent additional software. The cost to purchase the necessary software licenses is \$70,000 in fiscal 2016 and \$13,500 each year thereafter.

Future year expenditures are annualized and adjusted for inflation and only reflect ongoing costs. This analysis does not reflect any savings that could occur for OPD to the extent the bill reduces the number of individuals deemed eligible for OPD legal representation.

OPD and DLLR are in the process of finalizing an agreement to provide OPD intake staff with access to databases of DLLR's Unemployment Insurance Division. The expenditures mentioned above are 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Comptroller's Office; Department of Labor, Licensing, and Regulation; Office of the Public Defender; Department of Legislative Services

**Fiscal Note History:** First Reader - March 12, 2015  
md/kdm Revised - Senate Third Reader/Updated Information - April 11, 2015

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