

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

Senate Bill 646

(Senator Muse)

Judicial Proceedings

Office of the Public Defender - Caseload Standards

This bill establishes that an indigent defendant or party may not be provided legal representation under the Maryland Public Defender Act by the Public Defender, a deputy public defender, a district public defender, or an assistant public defender if the representation would violate caseload standards established by the Maryland Attorney and Staff Workload Assessment of 2005. In these cases, an indigent defendant or party must be represented by a panel attorney, as specified in the Maryland Public Defender Act.

Fiscal Summary

State Effect: General fund expenditures increase, perhaps significantly, to pay for panel attorneys, as discussed below. Revenues are not affected.

Local Effect: The bill does not materially affect local finances.

Small Business Effect: Potential meaningful impact on attorneys in small business firms who are able to work as panel attorneys.

Analysis

Current Law/Background: When the Office of the Public Defender (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. Pursuant to Criminal Procedure Article, § 16-208(d)(5), panel attorneys are compensated by OPD from funds appropriated by the State budget.

OPD caseloads have been a chronic problem, and the office has had a difficult time meeting caseload standards established by the Maryland Attorney and Staff Workload Assessment of 2005. **Exhibit 1** shows the extent to which OPD is exceeding its caseload standards and the number of attorneys that would be needed for the office to meet caseload standards.

State Expenditures: General fund expenditures increase, perhaps significantly, if the bill results in increased appropriations to OPD to meet panel attorney needs. OPD currently pays for panel attorneys through budgeted funds, so the extent to which the provisions of the bill can be accommodated depends on the funds for panel attorneys allocated through the budget process.

The Maryland Attorney and Staff Workload Assessment of 2005 established caseload standards by tracking the work volume of OPD attorneys and assigning case weights to various categories of cases. Case weights are the estimated time (in minutes) needed to complete a specific type of case. The case weights used in the study varied greatly by case type and location (rural, urban, or suburban).

For illustrative purposes only, if District Court cases are given a case weight of 30 minutes and circuit court cases are given a case weight of one hour, then based on the numbers in the exhibit, OPD needs to compensate panel attorneys for 35,820 hours annually. Using the current \$50 per hour rate for panel attorneys, the increased expenditures associated with this effort total approximately \$1.8 million annually.

Local Fiscal Impact: Assuming that the appointment of a panel attorney does not result in delays in the circuit courts, the bill does not materially impact local finances.

Additional Comments: This estimate assumes that the bill's provisions do not affect payment of attorneys in the Judiciary's Appointed Attorneys Program, which provides State-funded legal representation to indigent defendants at an initial appearance before a District Court commissioner. The program, which was developed as a result of a recent decision by the Court of Appeals, uses panel attorneys. OPD does not provide representation at initial appearances and does not administer the program. However, the Judiciary advises that under the Maryland Rules, OPD may enter an appearance for a defendant at these hearings. The Judiciary advises that the bill could have an impact on the Judiciary to the extent that an indigent defendant who would otherwise utilize a public defender at an initial appearance is required to use a panel attorney due to high OPD caseloads and the attorney is to be compensated through the Appointed Attorneys Program.

As previously stated, Criminal Procedure Article, § 16-208(d) states that OPD must pay panel attorneys through "...funds appropriated by the State budget." If this provision is interpreted as requiring panel attorneys to be paid out of funds appropriated *to OPD* in the State budget, then the Judiciary is likely not impacted. However, if this provision is

interpreted as requiring panel attorneys to be funded by funds appropriated in the State budget *in general*, then the Judiciary may be impacted if it is required to pay for panel attorneys in these instances. However, the Department of Legislative Services advises that any such impact is likely to be minimal given OPD's current lack of involvement in legal representation at initial appearances.

Additional Information

Prior Introductions: None.

Cross File: HB 1119 (Delegate C. Wilson) - Rules and Executive Nominations.

Information Source(s): Kent and Worcester counties, Judiciary (Administrative Office of the Courts), Maryland Association of Counties, Office of the Public Defender, National Center for State Courts, Department of Legislative Services

Fiscal Note History: First Reader - March 2, 2015
md/kdm

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Exhibit 1
Attorneys Needed to Meet Standard
Calendar 2013 Caseloads

District Court						Circuit Court						
<u>District</u>	<u>Attorneys</u>	<u>Eligible Cases</u>	<u>Standard Caseload</u>	Number of Cases Handled Beyond Standard		<u>Attorneys Needed to Meet Standard</u>	<u>Attorneys</u>	<u>Eligible Cases</u>	<u>Standard Caseload</u>	Number of Cases Handled Beyond Standard		<u>Attorneys Needed to Meet Standard</u>
				<u>Standard</u>	<u>Beyond Standard</u>					<u>Standard</u>	<u>Beyond Standard</u>	
1 Baltimore City	48.00	35,934	728	990	1.00	85.00	16,496	156	3,236	21.00		
2 Lower Shore	8.25	9,350	630	4,153	7.00	12.00	2,362	191	70	0.00		
3 Upper Shore	10.25	7,797	630	1,340	2.00	7.50	3,348	191	1,916	10.00		
4 Southern MD	9.00	10,888	630	5,218	8.00	11.00	3,534	191	1,433	8.00		
5 Prince George's	14.00	19,506	705	9,636	14.00	28.00	5,901	140	1,981	14.00		
6 Montgomery	11.00	15,061	705	7,306	10.00	14.00	2,023	140	63	0.00		
7 Anne Arundel	12.00	14,853	705	6,393	9.00	12.00	2,754	140	1,074	8.00		
8 Baltimore	16.50	14,286	705	2,654	4.00	23.00	5,453	140	2,233	16.00		
9 Harford	6.00	4,499	630	719	1.00	7.00	2,098	191	761	4.00		
10 Howard and Carroll	11.00	8,627	630	1,697	3.00	10.00	2,604	191	694	4.00		
11 Frederick and Washington	11.00	7,939	630	1,009	2.00	11.00	3,391	191	1,290	7.00		
12 Allegany and Garrett	4.50	4,128	630	1,293	2.00	4.00	902	191	138	1.00		
		152,868		42,407	63.00		50,866		14,889	92.00		

Note: Totals may not add due to rounding.

Source: Office of the Public Defender