

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 1071 (Senator Muse)  
Judicial Proceedings

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Office of the Public Defender - Caseload Standards

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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, subject to funding in the State budget, an indigent defendant or party must be represented by a panel attorney, as specified in the Maryland Public Defender Act.

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Fiscal Summary

**State Effect:** Assuming that the bill increases the budgetary appropriation for Office of the Public Defender (OPD) panel attorneys, 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.

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Analysis

**Current Law/Background:** 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. Pursuant to § 16-208(d)(5) of the Criminal Procedure Article, 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. **Appendix 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 36,173 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.

OPD advises that it needs \$2.5 million in additional funding in fiscal 2017, \$5 million in fiscal 2018, and \$7.5 million in fiscal 2019 to compensate panel attorneys in accordance with the bill. OPD did not provide any additional information as to how it calculated these figures.

**Local Fiscal Effect:** 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, § 16-208(d) of the Criminal Procedure Article 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.

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### **Additional Information**

**Prior Introductions:** SB 646 of 2015, a substantially similar bill, received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill. Its cross file, HB 1119, received a hearing in the House Judiciary Committee. No further action was taken on the bill.

**Cross File:** HB 1582 (Delegate C. Wilson) - Rules and Executive Nominations.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Budget and Management, Department of Legislative Services

**Fiscal Note History:** First Reader - March 14, 2016  
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## Appendix 1 – Attorneys Needed to Meet Standards Calendar 2014 Caseloads

| <u>District</u>             | <b>District Court</b>        |                       |                          |  |  | <b>Circuit Court</b>         |                       |                          |  |  |
|-----------------------------|------------------------------|-----------------------|--------------------------|--|--|------------------------------|-----------------------|--------------------------|--|--|
|                             | <u>Attorneys<sup>1</sup></u> | <u>Eligible Cases</u> | <u>Standard Caseload</u> | <u>Number of Cases Handled Beyond Standard</u> | <u>Attorneys Needed to Meet Standard</u> | <u>Attorneys<sup>1</sup></u> | <u>Eligible Cases</u> | <u>Standard Caseload</u> | <u>Number of Cases Handled Beyond Standard</u> | <u>Attorneys Needed to Meet Standard</u> |
| 1 Baltimore City            | 49                           | 31,860                | 728                      | -3,448   | -5                                       | 81                           | 15,270                | 156                      | 2,634  | 17                                       |
| 2 Lower Shore               | 8                            | 9,454                 | 630                      | 4,257  | 7  | 12                           | 2,263                 | 191                      | -29  | 0  |
| 3 Upper Shore               | 11                           | 7,785                 | 630                      | 698  | 1  | 7                            | 3,613                 | 191                      | 2,324  | 12                                       |
| 4 Southern MD               | 10                           | 11,195                | 630                      | 4,895  | 8  | 11                           | 3,404                 | 191                      | 1,303  | 7  |
| 5 Prince George's           | 16                           | 20,213                | 705                      | 8,933  | 13                                       | 30                           | 5,559                 | 140                      | 1,359  | 10                                       |
| 6 Montgomery                | 11                           | 17,268                | 705                      | 9,513  | 13                                       | 14                           | 1,936                 | 140                      | -24  | 0  |
| 7 Anne Arundel              | 5                            | 15,322                | 705                      | 11,797   | 17                                       | 13                           | 3,014                 | 140                      | 1,194  | 9  |
| 8 Baltimore                 | 16                           | 14,044                | 705                      | 3,117  | 4  | 24                           | 5,581                 | 140                      | 2,221  | 16                                       |
| 9 Harford                   | 6                            | 4,442                 | 630                      | 662  | 1  | 7                            | 2,130                 | 191                      | 793  | 4  |
| 10 Howard and Carroll       | 11                           | 8,996                 | 630                      | 2,066  | 3  | 10                           | 2,784                 | 191                      | 874  | 5  |
| 11 Frederick and Washington | 12                           | 8,591                 | 630                      | 1,031  | 2  | 10                           | 3,234                 | 191                      | 1,324  | 7  |
| 12 Allegany and Garrett     | 5                            | 3,506                 | 630                      | 671  | 1  | 4                            | 868                   | 191                      | 104  | 1  |
| <b>Total</b>                | <b>159</b>                   | <b>152,676</b>        |                          | <b>44,191</b>                                  | <b>65</b>                                | <b>223</b>                   | <b>49,656</b>         |                          | <b>14,077</b>                                  | <b>86</b>                                |

<sup>1</sup>Filled full-time equivalents as of December 31, 2014.

Source: Office of the Public Defender; budget analysis, Department of Legislative Services