

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader

House Bill 918
Judiciary

(Delegate Wilson)

Judicial Proceedings

Criminal Procedure - Office of the Public Defender - Definition of Serious
Offense

This bill alters the definition of a “serious offense” under provisions governing representation by the Office of the Public Defender (OPD) by removing the requirement that a misdemeanor or offense be punishable by confinement for more than three months or a fine of more than \$500. Under the bill, a serious offense includes a misdemeanor or offense punishable by confinement. The bill retains all other components of the existing statutory definition.

Fiscal Summary

State Effect: The bill does not materially affect State expenditures but may lead to operational efficiencies for OPD, as discussed below. Revenues are not affected.

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: In general, OPD provides State-funded legal representation to indigent individuals in criminal and juvenile proceedings. Section 16-204 of the Criminal Procedure Article specifies the types of proceedings in which OPD must provide representation to indigent defendants or parties, including a criminal or juvenile proceeding in which a defendant or party is alleged to have committed a “serious offense.” A “serious offense” is defined as (1) a felony; (2) a misdemeanor or offense punishable by confinement *for more than three months or a fine of more than \$500*; (3) a delinquent act that would be a serious

offense if committed by an adult; or (4) an offense in which, in the opinion of the court, the complexity of the matter of the youth, inexperience, or mental capacity of the accused requires representation of the accused by an attorney.

State Expenditures: OPD has historically advised that the current definition of “serious offense” is outdated and does not comply with constitutional requirements. In 2019, OPD advised that it represents indigent individuals facing *any term of confinement*; thus, the bill’s removal of the three-month incarceration provision does not affect its caseloads. However, the bill’s removal of the requirement of fine-based eligibility for representation decreases OPD caseloads. The office did not provide comprehensive data to estimate the effect of the bill on OPD caseloads. However, the Department of Legislative Services advises that resources devoted to cases that are no longer eligible for OPD representation under the bill can be redirected to other OPD cases, which may result in operational efficiencies for OPD. OPD caseloads have been a recurring issue over the past several years, even with declines in the number of overall cases.

In calendar 2019, OPD’s estimated caseload was 191,122. After a five-year decline in the overall cases, actual OPD cases in 2018 were higher than expected, particularly for District Court (the most likely location for a case involving a crime punishable by only a fine). This increase is partially due to the fact that public defenders previously represented only individuals who applied for a defender at OPD offices; now, all individuals can apply at their initial appearance with a court commissioner.

The bill’s provisions are not expected to have a material effect on District Court operations. District Court commissioners conduct OPD indigency determinations for OPD for individuals charged with a crime that carries a penalty of incarceration.

Additional Information

Prior Introductions: SB 1017 of 2019 passed the Senate and was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Designated Cross File: SB 1048 (Senators Miller and Smith) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Department of Legislative Services

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Analysis by: Amy A. Devadas

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