



POSITION ON PROPOSED LEGISLATION

BILL: SB 1048 - Criminal Procedure - Office of the Public Defender - Definition of Serious Offense

POSITION: SUPPORT

DATE: March 12, 2020

When, several years ago, the General Assembly transferred eligibility determinations from the Public Defender's Office to the Judiciary, a move we supported, the Assembly mandated that court commissioners conduct eligibility determinations for indigent persons facing a term of incarceration.

This comports with the Constitution's 6th Amendment and Supreme Court law that establishes the right to counsel for indigent persons who are facing criminal proceedings that subject them to *any possible time* behind bars, whether just one day, or a lifetime. Incarceration is the sole basis for the scope of our representation, not any other aspect of the law, whether fines, fees or other collateral consequences.

In the early 70's, when the public defender statute was codified, for some reason our representation mandate was delineated in reference to whether someone was facing a "serious crime," presumably to limit our representing persons with petty offenses, for which it might have been thought they didn't need an attorney. The "serious offense" definition included reference to not only a term of incarceration "for more than three months," but also included fines of "more than \$500."

While we have always represented persons to the full extent of our constitutional obligations, this part of our statute needs updating for two reasons.

First, the "more than three month" threshold is arbitrary and unconstitutional. While we have never recognized the threshold in practice to deny representation, we should eliminate it from our code.

Second, the monetary prong of the definition seems to saddle us with the responsibility to represent people the Constitution doesn't require us to represent. Because more and more offenses that once carried incarceration penalties are being revised to only include monetary fines, we do not want to continue to give the false impression that our

Agency must represent persons in fine-only cases. Indeed, our resources are best focused on more serious offenses.

* * *

For all of the above-stated reasons, we urge a favorable vote on SB 1048.