

Chapter 244

(Senate Bill 515)

AN ACT concerning

Public Defender – Representation – Income Eligibility and Appointment by a Court

FOR the purpose of establishing that certain individuals may be eligible for services from the Office of the Public Defender without an assessment regarding the need of the individual; establishing that the determination of eligibility for services from the Office of the Public Defender based on need applies for an individual whose assets and net annual income equal or exceed a certain amount; establishing that certain courts are prohibited from appointing an attorney through the Office of the Public Defender under certain circumstances; and generally relating to representation by the Office of the Public Defender.

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 16–210 and 16–213
Annotated Code of Maryland
(2008 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Procedure

16–210.

(a) An individual may apply for services of the Office 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 proceedings listed under § 16–204(b) of this subtitle.

(B) FOR AN INDIVIDUAL WHOSE ASSETS AND NET ANNUAL INCOME ARE LESS THAN 100 PERCENT OF THE FEDERAL POVERTY GUIDELINES, ELIGIBILITY FOR SERVICES OF THE OFFICE MAY BE DETERMINED WITHOUT AN ASSESSMENT REGARDING THE NEED OF THE APPLICANT.

[(b)] (C) (1) [Eligibility] FOR AN INDIVIDUAL WHOSE ASSETS AND NET ANNUAL INCOME EQUAL OR EXCEED 100 PERCENT OF THE FEDERAL

POVERTY GUIDELINES, ELIGIBILITY for the services of the Office shall be determined by the need of the applicant.

(2) Need shall 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.

(3) Financial ability shall be determined by:

- (i) the nature, extent, and liquidity of assets;
- (ii) the disposable net income of the applicant;
- (iii) the nature of the offense;
- (iv) the length and complexity of the proceedings;
- (v) the effort and skill required to gather pertinent information;

and

(vi) any other foreseeable expense.

(4) If eligibility cannot be determined before the Office or a panel attorney begins representation, the Office may represent an applicant provisionally.

(5) If the Office subsequently determines that an applicant is ineligible:

(i) the Office shall inform the applicant; and

(ii) the applicant shall be required to engage the applicant's own attorney and reimburse the Office for the cost of the representation provided.

[(c)] (D) (1) The Office shall investigate the financial status of an applicant when the circumstances warrant.

(2) The Office may:

(i) require an applicant to execute and deliver written requests or authorizations that are necessary under law to provide the Office with access to confidential records of public or private sources that are needed to evaluate eligibility; and

(ii) on request, obtain information without charge from a public record office or other unit of the State, county, or municipal corporation.

(3) (i) The Office may submit requests to the Department of Labor, Licensing, and Regulation and the Comptroller for information regarding the employment status and income of applicants.

(ii) Each request shall be accompanied by an authorization for release of information that is:

1. in a form acceptable to the agency to which the request is submitted; and
2. signed by the applicant.

(iii) The Department of Labor, Licensing, and Regulation and the Comptroller shall comply with requests for information made by the Office under this paragraph.

(iv) Requests and responsive information may be exchanged by facsimile transmission.

16–213.

This subtitle does not prohibit the appointment of an attorney, **OTHER THAN THROUGH THE OFFICE**, to represent an indigent individual by the District Court, a circuit court, or the Court of Special Appeals if:

(1) there is a conflict in legal representation in a matter involving multiple defendants, and one of the defendants is represented by or through the Office; or

(2) the Office declines to provide representation to an indigent individual entitled to representation under this subtitle.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2011.

Approved by the Governor, May 10, 2011.