
**Task Force to Study the Laws and Policies Relating to
Representation of Indigent Criminal Defendants by the
Office of the Public Defender
Interim Report**

**Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland**

November 2012

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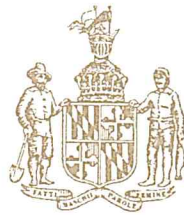
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THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401-1991

November 1, 2012

The Honorable Martin O'Malley
Governor of Maryland

The Honorable Brian E. Frosh
Chair, Senate Judicial Proceedings Committee

The Honorable Joseph F. Vallario, Jr.
Chair, House Judiciary Committee

Gentlemen:

Pursuant to Chapters 504 and 505 of the 2012 legislative session, the Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender is charged with studying the adequacy and cost of State laws and policies relating to representation of indigent criminal defendants by the Office of the Public Defender and the District Court commissioner and pretrial release systems. In addition, the task force is required to consider and make recommendations regarding options for and costs of improving the system of representation of indigent criminal defendants and the District Court commissioner and pretrial release systems.

On behalf of the task force, I am pleased to submit the interim report as directed by Chapters 504 and 505. This interim report is an overview of task force activity to date. The task force was not fully appointed until late summer; therefore, the full membership of the task force was only able to meet once prior to preparation of this report. The membership is committed to the work with which it has been charged, and the activities of the task force are underway.

If I can be of further assistance, please do not hesitate to contact me at 410-339-5005.

Sincerely,

Gary D. Maynard
Task Force Chair

GDM/SMP/ckt

**Task Force to Study the Laws and Policies Relating to Representation of
Indigent Criminal Defendants by the Office of the Public Defender
2012 Membership Roster**

Gary D. Maynard, **Chair**

Appointed by Governor

Cherise Burdeen
Debra Lynn Gardner, Esq.
John Patrick Gross, Esq.
Michele J. Hughes
Tanya M. Jackson
William H. Jones, Esq.
Dorothy J. Lennig, Esq.
Mary Lou McDonough
Michael A. Millemann, Esq.
Michael A. Pristoop
David R. Rocah, Esq.
Mitchell Y. Mirviss, Esq.
Scott D. Shellenberger, Esq.
Johanna Steinberg, Esq.

Appointed by Senate President

Joseph M. Getty
Victor R. Ramirez

Appointed by House Speaker

Curtis S. Anderson
Joseph F. Vallario, Jr.

Ex Officio

Tammy M. Brown, Executive Director, Governor's Office of Crime Control and Prevention¹
Franklyn Musgrave, Assistant Attorney General²
Ben C. Clyburn, Chief Judge, District Court of Maryland
Gary D. Maynard, Secretary of Public Safety & Correctional Services
Major Woodrow Jones, Maryland State Police³
Paul B. DeWolfe, Jr., Public Defender
David W. Weissert, Coordinator of Commissioner Activity, District Court of Maryland

Staff

Shirleen M. Pilgrim
Claire E. Rossmark

¹ Designee for Martin J. O'Malley, Governor

² Designee for Douglas F. Gansler, Attorney General

³ Designee for Col. Marcus L. Brown, Secretary of State Police

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Background

In *DeWolfe v. Richmond*, No. 34 (September Term 2011), the Maryland Court of Appeals held on January 4, 2012, that under the then-effective version of the Maryland Public Defender Act, no bail determination may be made by a District Court commissioner concerning an indigent defendant without the presence of counsel, unless representation by counsel is waived.

The January 4, 2012 opinion was based on the wording of the Maryland Public Defender Act, including language that the Office of the Public Defender (OPD) must represent an indigent defendant “in all stages” of a criminal proceeding. The court did not address the plaintiffs’ federal and State constitutional claims of a right to representation. However, the Circuit Court for Baltimore City had previously held, based on *Rothgery v. Gillespie County*, 554 U.S. 191 (2008), that indigent arrestees have a federal and State constitutional right to be appointed counsel at an initial appearance.

The *DeWolfe* decision sparked a heated debate during the 2012 session of the General Assembly. There was much concern about how the State would fund the obligation of OPD to begin representing people at an initial appearance phase. It was estimated that the cost to OPD alone (aside from costs that would be incurred by the Judiciary, the Department of Public Safety and Correctional Services, State’s Attorneys offices, law enforcement agencies, and local correctional facilities) would exceed \$27 million annually. On the other hand, serious questions were raised about whether people do possess a constitutional right to legal representation at an initial appearance, regardless of cost. This debate prompted broader questions about and scrutiny of Maryland’s criminal justice system, including the District Court commissioner and pretrial release systems. A number of bills were introduced to attempt to counteract or mitigate the effect of the *DeWolfe* decision. The House Judiciary and Senate Judicial Proceedings committees spent a considerable amount of time exploring these issues and dialoguing with stakeholders including the Office of the Public Defender, the Judiciary, law enforcement agencies, State’s Attorneys, and civil liberties advocates.

Ultimately, the General Assembly passed Chapters 504 and 505 of 2012, which were signed into law by the Governor on May 22, 2012. These bills (1) amend the Public Defender Act to specify that OPD is required to provide legal representation to an indigent defendant at a bail hearing before a District Court or circuit court judge, but is not required to represent an indigent criminal defendant at an initial appearance before a District Court commissioner; (2) prohibit a statement made during an initial appearance before a District Court commissioner from being used as evidence against the defendant in a criminal or juvenile proceeding; (3) codify the rule that a defendant who is denied pretrial release by a District Court commissioner or who remains in custody after a District Court commissioner has determined conditions of release must be presented to a District Court judge immediately if the court is in session or, if the court is not in session, at the next session of the court; (4) require a police officer to charge by citation for specified offenses if certain conditions are met; (5) authorize a

District Court commissioner to issue an arrest warrant based on an application for a statement of charges filed by an individual only if specified criteria are met; (6) establish the Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender (task force); and (7) require specified entities to develop a format and procedures to record specified citation data and require the Maryland Statistical Analysis Center within the Governor's Office of Crime Control and Prevention (GOCCP) to analyze citation data for five years beginning January 1, 2013.

The Task Force

Chapters 504 and 505 established the membership of the task force as follows:

(1) two members of the Senate of Maryland, appointed by the President of the Senate on or before May 1, 2012;

(2) two members of the House of Delegates, appointed by the Speaker of the House on or before May 1, 2012;

(3) the Governor of Maryland, or the Governor's designee;

(4) the Public Defender of Maryland, or the public defender's designee;

(5) the Chief Judge of the District Court of Maryland, or the chief judge's designee;

(6) the Coordinator of Commissioner Activity of the District Court of Maryland, or the coordinator's designee;

(7) the Superintendent of State Police, or the Superintendent's designee;

(8) the Attorney General of Maryland, or the Attorney General's designee;

(9) the Secretary of Public Safety and Correctional Services, or the Secretary's designee;
and

(10) the following individuals, appointed by the Governor on or before May 1, 2012:

(i) a representative of the Maryland State's Attorneys' Association;

(ii) an attorney representing the plaintiffs in the *DeWolfe v. Richmond litigation*;

(iii) a representative of the Maryland Chiefs of Police Association, Inc.;

- (iv) a representative of the Maryland Sheriffs' Association;
- (v) a representative of the Maryland Correctional Administrators Association;
- (vi) an advocate for the rights of victims of domestic violence;
- (vii) a victims' rights advocate;
- (viii) a representative of the Maryland Association of Counties;
- (ix) a representative of the Pretrial Justice Institute;
- (x) a representative of the Public Justice Center;
- (xi) a representative of NAACP – Legal Defense;
- (xii) a representative of the National Association of Criminal Defense Lawyers;
- (xiii) a representative of the American Civil Liberties Union; and
- (xiv) an academic expert in the provision of counsel to the indigent.

The legislation required the Governor to appoint a chair of the task force from its membership on or before May 1, 2012, and required the Department of Legislative Services to provide staff for the task force. The legislation also provided that a member of the task force may not receive compensation for serving as a member of the task force, but is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

The legislation charged the task force to:

- (1) study the adequacy and cost of State laws and policies relating to:
 - (i) representation of indigent criminal defendants by the Office of the Public Defender; and
 - (ii) the District Court commissioner and pretrial release systems; and
- (2) consider and make recommendations regarding options for and costs of improving:
 - (i) the system of representation of indigent criminal defendants; and
 - (ii) the District Court commissioner and pretrial release systems.

Finally, the legislation required the task force to submit an interim report of its findings and recommendations to the Governor and, in accordance with § 2-1246 of the State Government Article, the Senate Judicial Proceedings Committee, and the House Judiciary Committee, on or before November 1, 2012, and to submit a final report on or before November 1, 2013.

Initial Meeting of the Task Force

The task force met for the first time on October 16, 2012. After call to order by Chairman Gary D. Maynard, Secretary of Public Safety and Correctional Services, and introduction of members, staff reviewed the *DeWolfe v. Richmond* litigation and decision and outlined the provisions of the Chapters 504 and 505.

Next, David Weissert, Coordinator of Commissioner Activity, District Court of Maryland gave a presentation on the history of the District Court commissioner system, the authority of the commissioner, the requirements of and training for the job, work profile for commissioners, and the commissioners' impact on defendants/citizens.

The next presenter, Mary Lou McDonough, Director of Prince George's County Department of Corrections, gave an overview of the pre-trial release systems in local correctional institutions throughout the State.

Wendell France, Director, Central Region, Department of Public Safety and Correctional Services, then discussed Baltimore City's pre-trial release process, which is operated by the State.

Paul DeWolfe, Jr., Public Defender of Maryland spoke next about the history and duties of OPD. He then informed the task force about the status of OPD's compliance with Chapters 504 and 505, reporting that OPD was able to hire new staff in order to meet the legislation's requirement that OPD represent indigent defendants at bail review. However, overall, caseloads for OPD have been increasing while the workforce has been decreasing.

Deputy Chief Legal Counsel for the Baltimore Police Department, James Green, then updated the task force on the implementation of issuing citations as required by Chapters 504 and 505. Law enforcement has been working to meet the requirements of the legislation without jeopardizing public safety. Guideline policies are nearly complete and Mr. Green indicated that law enforcement has been working with the GOCCP and the District Court to make sure that full implementation is complete by January 1, 2013.

Tammy Brown, Executive Director of GOCCP added to Mr. Green's presentation that the reporting requirements of Chapters 504 and 505 are being implemented in conjunction with the citations component, and that the use of electronic citations is being addressed.

After the presentations were concluded, four subcommittees were established: Criminal Citations, District Court Commissioner Study, Pre-trial Release, and Public Defender Access. Task force members volunteered for membership on the subcommittees according to their interests.

Conclusion

The activities of the task force are underway. The next task force meeting is scheduled for Tuesday, December 4, 2012, at 1:00 p.m. in the Judiciary Committee hearing room. It is anticipated that the subcommittees will initiate their work as soon as possible and report back to the full committee at the second meeting on the status of their efforts.