

derived from Art. 5, §§ 15, 15A, and 15B.

In subsection (a), the phrase "oath in forma pauperis" is replaced with "petition under oath alleging the fact of his poverty and his inability to defray the expense of prosecuting an appeal" for the purpose of uniformity. It is believed that this formal change does not affect the legislative intent to provide for an appeal in these cases notwithstanding a defendant's inability to defray the cost of an appeal. It should be noted that in death sentence cases a sentencing judge has no power to exercise his discretion in ascertaining a defendant's indigency.

In subsection (c) the provisions dealing with costs of filing a petition for writ of certiorari are modified to provide for the Court in which the petition is filed to make determination of indigency. The present procedure requires action by two courts for an indigent, i.e., determination of indigency in Court of Special Appeals and decision on petition in Court of Appeals. The commission feels that the payment of costs should be considered by the same tribunal which entertains a petition for writ of certiorari. This is logical since there is no particular reason that the Court of Special Appeals is able to make this determination more readily than the Court of Appeals. In addition, the last provision in subsection (c) is modified to fill an apparent gap which exists in the present statute. It is unclear from the present statute who would pay the costs of filing the petition for a writ of certiorari if the petition for waiver of costs is granted and the petition for a writ of certiorari is denied. The draft clarifies this ambiguity by providing for payment of costs by the State irrespective of the Court's decision on the petition for a writ of certiorari if the petitioner is found indigent.

For procedure to issue a writ of certiorari, see Md. Rules 811, 1011, and K41 to 48.

SEC. 7-104. COSTS ON APPEAL WHERE STATE OR ITS AGENCY