



April 1, 2014

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Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East Wing
11 Bladen Street
Annapolis, MD 21401

Dear Senators Frosh, Gladden, and Members of the Judicial Proceedings Committee,

I write on behalf of NACDL to express our opposition to House Bill 985. The bill unjustly deprives indigent defendants of their right to counsel immediately following a bail review hearing at a critical stage of proceedings. The ABA Standards for Defense Representation call for a prompt investigation by defense counsel into the circumstances surrounding the defendant's arrest. Imposing the additional procedural hurdle called for by HB 985 makes this impossible.

The additional scrutiny that HB 985 imposes on the financial eligibility of defendants for representation by the Office of the Public Defender is also unnecessary. Only defendants whose net annual income is less than 100% of the Federal Poverty Guidelines are presumptively eligible for representation. That means that an individual who is charged with a crime is only presumptively eligible for representation by OPD if he or she makes less than \$11,670 a year. As for those defendants who make more than the Federal Poverty Guidelines, they are already subjected to rigorous screening by OPD.

To put Maryland's financial eligibility criteria in perspective, very few states use 100% of the Federal Poverty Guidelines as the threshold for presumptive eligibility. A recent report by NACDL entitled "Redefining Indigence: Financial Eligibility for Assigned Counsel" documents how states decide who is too poor to hire a lawyer (available at <http://www.nacdl.org/gideonat50>). Defendants in Alabama, Colorado, Iowa, Ohio, Virginia and West Virginia who earn less than 125% of the Federal Poverty Guidelines are presumptively eligible for representation by the public defender. In Florida and Louisiana, defendants earning less than 200% of the Federal Poverty Guideline are presumptively eligible.

The guidelines themselves are not an accurate measure of who is too poor to hire a lawyer. They were originally designed to measure the amount of income required to purchase enough food to meet basic nutritional needs. While the Federal Poverty Guidelines are used by many needs-based assistance programs, the critical factor is the *multiple* used to determine eligibility. To be eligible for the Department of Agriculture's Women, Infants and Children Program (WIC), which provides food, nutrition education and health screenings to pregnant women and children, household income must be below 185% of the Federal Poverty Guidelines. To be eligible for the Supplemental Nutritional Assistance Program (SNAP), formerly the Food Stamp Program, household income must be below 130% of the Federal Poverty Guidelines. This means that defendants who are receiving certain forms of needs-based assistance from the federal government are not considered presumptively eligible for representation by the Office of the Public Defender.

Maryland's current income eligibility guidelines are clearly under-inclusive. When states impose unreasonably restrictive income eligibility guidelines, defendants who cannot afford a lawyer are denied their constitutional right to counsel. HB 985 is a solution to a nonexistent problem and has the potential to create additional barriers to an indigent defendant's right to counsel. For that reason, we request that you join in our opposition to this unnecessary and harmful legislation.

Sincerely,

A handwritten signature in cursive script that reads "Jerry J. Cox". The signature is written in black ink and is positioned above the typed name and title.

Jerry J. Cox
President, NACDL