

# HOUSE BILL 866

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CF SB 833

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By: **Delegates Rosenberg and Dumais**

Introduced and read first time: February 8, 2016

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Civil Right to Counsel – Pilot Program – Domestic Violence**

3 FOR the purpose of requiring the Governor to include in the budget bill for each fiscal year  
4 a certain appropriation to fund a pilot program in certain counties to provide legal  
5 representation to certain parties in certain protective order proceedings; requiring a  
6 certain amount to be allocated to certain programs; establishing that money  
7 appropriated under this Act for the pilot programs shall be used to supplement and  
8 not supplant certain existing funding; establishing a workgroup to monitor  
9 implementation of a civil right to counsel; providing for the membership, chair,  
10 staffing, and duties of the workgroup; providing that members of the workgroup may  
11 not receive compensation but are entitled to reimbursement for expenses; requiring  
12 the workgroup to report its findings and recommendations annually; and generally  
13 relating to providing legal representation for certain parties in certain civil matters.

14 BY adding to  
15 Article – Family Law  
16 Section 4–512.2  
17 Annotated Code of Maryland  
18 (2012 Replacement Volume and 2015 Supplement)

19 BY adding to  
20 Article – Courts and Judicial Proceedings  
21 Section 13–103  
22 Annotated Code of Maryland  
23 (2013 Replacement Volume and 2015 Supplement)

24 Preamble

25 WHEREAS, Maryland does not provide a right to counsel for most civil matters  
26 implicating basic human needs, such as housing, child custody, and stopping domestic

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 violence and, therefore, low-income individuals can access justice only through the existing  
2 legal aid programs that provide services to indigent and disadvantaged individuals; and

3 WHEREAS, Due to insufficient funding from all sources, in Maryland there is only  
4 one legal aid lawyer per every 1,055 individuals eligible for legal services, compared to one  
5 lawyer for every 160 individuals within the general population; and

6 WHEREAS, As a result of the combined lack of a right to counsel and insufficient  
7 civil legal aid funding, many Marylanders are unable to meaningfully access the courts and  
8 obtain justice in a timely and effective manner; yet, for a great many of the civil matters in  
9 which low-income litigants are unrepresented or receive only minimal services, a  
10 reasonable individual with resources would elect to hire a lawyer owing to the interests at  
11 stake; and

12 WHEREAS, The combined effect of widespread financial inability to afford legal  
13 representation coupled with the severe disadvantages of appearing in court without an  
14 attorney fosters a destructive perception that money drives the judicial system, and respect  
15 for the law and the judicial system is not encouraged if the public perceives, rightly or  
16 wrongly, that justice is mainly for the wealthy; and

17 WHEREAS, Studies show that (1) unrepresented litigants engage in discovery 0% of  
18 the time, while those litigants with counsel use discovery 62% of the time; and (2)  
19 unrepresented litigants raise defenses only 2% of the time, while the figure is 80% for those  
20 litigants with counsel; and

21 WHEREAS, If litigants lack counsel, courts must cope with the need to provide  
22 guidance and assistance to ensure that the matter is properly administered and the  
23 litigants receive a fair trial or hearing; and

24 WHEREAS, A growing body of empirical research confirms the widespread  
25 perception that, regardless of the merits of their case, a litigant without an attorney is  
26 likely to lose, particularly when the opposing litigant has an attorney, and a litigant who  
27 has an attorney is far more likely to win; and

28 WHEREAS, By reducing the need for many State services and allowing individuals  
29 to help themselves, providing counsel offers concrete financial and economic benefits. There  
30 are significant social and governmental fiscal costs of depriving unrepresented indigent  
31 litigants of vital legal rights affecting basic human needs and these costs may be avoided  
32 or reduced by providing the assistance of counsel. For example: (1) reducing domestic  
33 violence through the provision of legal services can save large amounts of public money that  
34 would otherwise be spent on law enforcement, health care, and homeless services; and (2)  
35 providing legal services brings federal dollars into the State when lawyers assist  
36 Marylanders in obtaining federal public benefits, and these benefits, once secured, typically  
37 last for many years; and

1 WHEREAS, The large and growing number of litigants without attorneys imposes  
2 significant costs on the judicial system and the public by impairing the ability of the courts  
3 to efficiently process heavy caseloads; and

4 WHEREAS, While court self-help services are important, those services are  
5 insufficient alone to meet all needs and experience has shown that those services are much  
6 less effective when, among other factors, unrepresented litigants lack income, education,  
7 and skills needed to navigate a complex and unfamiliar court process, particularly when  
8 unrepresented litigants are required to appear in court or face opposing counsel; and

9 WHEREAS, For those litigants who are unable to afford counsel to exercise the  
10 essential right of participants in a democracy, to protect their rights to liberty and property,  
11 and to secure basic human needs, the State has a responsibility to provide counsel without  
12 cost for indigent litigants in critical civil cases; and

13 WHEREAS, In its October 1, 2014, report, the Task Force to Study Implementing a  
14 Civil Right to Counsel in Maryland recommended the phased-in establishment of a right  
15 to counsel in civil domestic violence cases, the creation of a right to counsel pilot program  
16 in child custody matters, and the appointment of a workgroup to monitor implementation;  
17 and

18 WHEREAS, The report observed that “[i]ndigent victims [in domestic violence cases]  
19 who are represented are more likely to prevail in securing protection, retaining housing  
20 and protecting their children and themselves from further harm. Indigent respondents also  
21 have much at stake when facing a civil protective order. For some there are job related and  
22 financial consequences, as well as the potential loss of a home or the ability to care for their  
23 children.”; now, therefore,

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

26 **Article – Family Law**

27 **4-512.2.**

28 **(A) FOR FISCAL YEAR 2018 AND EACH FISCAL YEAR THEREAFTER, THE**  
29 **GOVERNOR SHALL INCLUDE IN THE BUDGET BILL AN APPROPRIATION OF AT LEAST**  
30 **\$250,000 TO FUND A PILOT PROGRAM IN HARFORD COUNTY AND PRINCE GEORGE’S**  
31 **COUNTY TO PROVIDE LEGAL REPRESENTATION IN PROTECTIVE ORDER**  
32 **PROCEEDINGS UNDER THIS SUBTITLE TO PETITIONERS AND RESPONDENTS WHO**  
33 **MEET INCOME ELIGIBILITY REQUIREMENTS ESTABLISHED BY THE MARYLAND**  
34 **LEGAL SERVICES CORPORATION UNDER § 11-603 OF THE HUMAN SERVICES**  
35 **ARTICLE.**

1           **(B) OF THE MONEY APPROPRIATED UNDER SUBSECTION (A) OF THIS**  
2 **SECTION, AT LEAST 20% SHALL BE ALLOCATED TO PROGRAMS THAT PROVIDE LEGAL**  
3 **REPRESENTATION TO INCOME-ELIGIBLE RESPONDENTS.**

4           **(C) MONEY APPROPRIATED UNDER THIS SECTION SHALL BE USED TO**  
5 **SUPPLEMENT AND NOT SUPPLANT EXISTING FUNDING FOR LEGAL**  
6 **REPRESENTATION IN PROTECTIVE ORDER PROCEEDINGS AND OTHER CIVIL LEGAL**  
7 **SERVICES PROGRAMS.**

8                                   **Article – Courts and Judicial Proceedings**

9           **13-103.**

10           **(A) THERE IS A WORKGROUP TO MONITOR IMPLEMENTATION OF A CIVIL**  
11 **RIGHT TO COUNSEL.**

12           **(B) THE WORKGROUP CONSISTS OF THE FOLLOWING MEMBERS:**

13                           **(1) ONE MEMBER OF THE SENATE OF MARYLAND, APPOINTED BY THE**  
14 **PRESIDENT OF THE SENATE;**

15                           **(2) ONE MEMBER OF THE HOUSE OF DELEGATES, APPOINTED BY THE**  
16 **SPEAKER OF THE HOUSE; AND**

17                           **(3) THREE MEMBERS APPOINTED BY THE GOVERNOR, ONE OF WHOM**  
18 **MUST BE AN ATTORNEY WHO IS A MEMBER OF THE MARYLAND STATE BAR**  
19 **ASSOCIATION AND WHO IS APPOINTED AFTER CONSULTATION WITH THE**  
20 **PRESIDENT OF THE MARYLAND STATE BAR ASSOCIATION AND ONE OF WHOM MUST**  
21 **BE AN ATTORNEY OR A CIVIL LEGAL SERVICES PROVIDER OR BOTH.**

22           **(C) THE GOVERNOR SHALL DESIGNATE THE CHAIR OF THE WORKGROUP.**

23           **(D) THE MARYLAND LEGAL SERVICES CORPORATION SHALL PROVIDE**  
24 **STAFF FOR THE WORKGROUP.**

25           **(E) A MEMBER OF THE WORKGROUP:**

26                           **(1) MAY NOT RECEIVE COMPENSATION AS A MEMBER OF THE**  
27 **WORKGROUP; BUT**

28                           **(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE**  
29 **STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.**

1           **(F) THE WORKGROUP SHALL:**

2                   **(1) MONITOR IMPLEMENTATION OF:**

3                           **(I) PROGRAMS THAT PROVIDE LEGAL REPRESENTATION TO**  
4 **INCOME-ELIGIBLE PETITIONERS AND RESPONDENTS IN PROTECTIVE ORDER**  
5 **PROCEEDINGS UNDER § 4-512.2 OF THE FAMILY LAW ARTICLE; AND**

6                           **(II) THE JUDICARE PILOT PROGRAM UNDER § 9-109 OF THE**  
7 **FAMILY LAW ARTICLE; AND**

8                   **(2) EVALUATE THE EFFECTIVENESS OF THE PROGRAMS.**

9           **(G) ON OR BEFORE NOVEMBER 1, 2019, AND ANNUALLY EACH NOVEMBER**  
10 **1 THEREAFTER, THE WORKGROUP SHALL REPORT ITS FINDINGS AND**  
11 **RECOMMENDATIONS TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF**  
12 **THE STATE GOVERNMENT ARTICLE, THE PRESIDENT OF THE SENATE, THE**  
13 **SPEAKER OF THE HOUSE, THE SENATE BUDGET AND TAXATION COMMITTEE, THE**  
14 **SENATE JUDICIAL PROCEEDINGS COMMITTEE, THE HOUSE APPROPRIATIONS**  
15 **COMMITTEE, AND THE HOUSE JUDICIARY COMMITTEE.**

16           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June  
17 1, 2016.