

SB0422/248273/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 422
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “Senator Frosh” and substitute “Senators Frosh and Colburn”; in line 2, strike beginning with “Office” through “Representation” and substitute “Criminal Defendants – Citations and Appearances”; in line 3, before “repealing” insert “prohibiting a District Court commissioner from issuing an arrest warrant based solely on an application for statement of charges filed by a person other than a peace officer or State’s Attorney except under certain circumstances; requiring a police officer to issue a citation for certain offenses under certain circumstances; establishing that a police officer may issue a citation to a defendant only under certain circumstances; prohibiting a certain statement made by a defendant during the course of an initial appearance before a District Court commissioner from being used as evidence against the defendant in a criminal proceeding;”; in line 6, after “proceedings;” insert “requiring the Office of the Public Defender to provide representation to an indigent individual at a bail hearing before a District Court or circuit court judge;”; in line 9, after “commissioner;” insert “establishing 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 under certain circumstances must be presented to the District Court within a certain time period after the determination; establishing a Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender; providing for the membership and duties of the Task Force; providing for the designation of a chair of the Task Force; requiring the Department of Legislative Services to provide staff for the Task Force; prohibiting members of the Task Force from receiving compensation; authorizing a member to receive certain reimbursement; requiring the Task Force to report its findings and recommendations to the Governor and the General Assembly on or before a certain date; providing for the termination of a certain provision of this Act;”; in the same

(Over)

line, after “measure;” insert “providing for the effective date of a certain provision of this Act;”; after line 10, insert:

“BY repealing and reenacting, with amendments,
Article - Courts and Judicial Proceedings
Section 2-607
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

BY adding to
Article - Courts and Judicial Proceedings
Section 10-922
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)”;

in line 13, before “16-204” insert “4-101 and”; and after line 15, insert:

“BY adding to
Article - Criminal Procedure
Section 5-215
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)”.

AMENDMENT NO. 2

On page 1, before line 16, insert:

“Preamble

WHEREAS, The recent court decision in DeWolfe v. Richmond established the right of indigent defendants to counsel at bail proceedings in the State; and

WHEREAS, In 2011, over 170,000 people appeared before a District Court commissioner in the State where their liberty was subject to restriction and over 70,000 of them were granted release on personal recognizance without the benefit of the presence of counsel; and

WHEREAS, A defendant who is not represented at a bail proceeding must speak to secure his freedom and thereby risk self-incrimination and prejudice to rights; and

WHEREAS, Many defendants cannot afford bail set at even a low amount of \$100 and some wait in jail for weeks before a court appearance for misdemeanor crimes; and

WHEREAS, Unnecessary pretrial detention has a severely disproportionate racial impact and major social costs; and

WHEREAS, Implementation of the changes called for by the DeWolfe decision will be extremely costly at a time when the State is already struggling with revenue shortfalls; and

WHEREAS, Alternatives to the incarceration of indigent individuals can reduce expenses to the State and local government without sacrificing public safety; and

WHEREAS, Altering the charging process for some misdemeanor crimes will improve the current administration of justice while also preserving the rights of indigent defendants, now, therefore.”.

AMENDMENT NO. 3

On page 1, after line 17, insert:

“Article – Courts and Judicial Proceedings

(Over)

2-607.

(a) (1) The administrative judge of each district, with the approval of the Chief Judge of the District Court, may appoint the number of commissioners necessary to perform the functions of the office within each county.

(2) In multicounty districts, the administrative judge shall obtain the recommendation of the resident judge in each county as to the number of commissioners required in the county and as to the persons to be appointed.

(b) (1) Commissioners shall be adult residents of the counties in which they serve, but they need not be lawyers.

(2) Each commissioner shall hold office at the pleasure of the Chief Judge of the District Court, and has the powers and duties prescribed by law.

(3) Except without additional compensation, unless otherwise fixed by law, an employee of the District Court, who is an adult, may be granted, in the same manner, commissioner powers and duties in the county where the employee is employed.

(c) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS SUBSECTION, A commissioner shall receive applications and determine probable cause for the issuance of charging documents.

(2) [A] EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS SUBSECTION, A commissioner shall advise arrested persons of their constitutional rights, set bond or commit persons to jail in default of bond or release them on personal recognizance if circumstances warrant, and conduct investigations and inquiries into the circumstances of any matter presented to the commissioner in order to determine if probable cause exists for the issuance of a charging document, warrant,

or criminal summons and, in general, perform all the functions of committing magistrates as exercised by the justices of the peace prior to July 5, 1971.

(3) There shall be in each county, at all times, one or more commissioners available for the convenience of the public and police in obtaining charging documents, warrants, or criminal summonses and to advise arrested persons of their rights as required by law.

(4) A commissioner may exercise the powers of office in any county to which the commissioner is assigned by the Chief Judge of the District Court or a designee of the Chief Judge of the District Court.

(5) The Chief Judge of the District Court may authorize one or more commissioners to perform the duties of a commissioner regarding persons arrested in a county other than the county in which the commissioner resides and for which the commissioner was appointed when the arrested persons are brought before the commissioner by a peace officer of the jurisdiction in which that arrest was made.

(6) A COMMISSIONER MAY NOT ISSUE AN ARREST WARRANT BASED SOLELY ON AN APPLICATION FOR STATEMENT OF CHARGES FILED BY A PERSON OTHER THAN A PEACE OFFICER OR STATE'S ATTORNEY UNLESS:

(I) THE HEALTH, SAFETY, OR WELFARE OF A PERSON IS AT RISK; OR

(II) THE PERSON FILING THE APPLICATION FOR STATEMENT OF CHARGES HAS A POLICE REPORT OF THE INCIDENT.

(d) (1) The authority under this subsection applies only to a respondent who is an adult.

(2) A commissioner may issue an interim order for protection of a person eligible for relief in accordance with § 4-504.1 of the Family Law Article or a petitioner in accordance with § 3-1503.1 of this article.

(e) Notwithstanding the residence requirements set out in subsection (b) of this section, the Chief Judge of the District Court or a designee of the Chief Judge of the District Court may assign a commissioner of the District Court to serve temporarily in any county.”.

AMENDMENT NO. 4

On page 1, before line 18, insert:

“10-922.

A STATEMENT MADE DURING THE COURSE OF AN INITIAL APPEARANCE OF A DEFENDANT BEFORE A DISTRICT COURT COMMISSIONER IN ACCORDANCE WITH MARYLAND RULE 4-213 MAY NOT BE USED AS EVIDENCE AGAINST THE DEFENDANT IN A CRIMINAL PROCEEDING.”.

AMENDMENT NO. 5

On page 1, after line 18, insert:

“4-101.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) “Citation” means a written charging document that a police officer or fire marshal issues to a defendant, alleging the defendant has committed a crime.

(ii) “Citation” does not include an indictment, information, or statement of charges.

(3) “Fire marshal” means:

(i) the State Fire Marshal;

(ii) a deputy State fire marshal; or

(iii) as designated under § 6–304 of the Public Safety Article:

1. an assistant State fire marshal; or

2. a special assistant State fire marshal.

(4) “Police officer” has the meaning stated in § 2–101 of this article.

(b) Within areas of the National Park System, a United States Park Police officer may exercise the authority of a police officer to issue a citation under this section.

(c) (1) Subject to paragraph (2) of this subsection, in addition to any other law allowing a crime to be charged by citation, a police officer [may issue a] **SHALL CHARGE BY** citation for:

(i) [sale of an alcoholic beverage to an underage drinker or intoxicated person under Article 2B, § 12–108 of the Code;

(ii) malicious destruction of property under § 6–301 of the Criminal Law Article, if the amount of damage to the property is less than \$500;

(iii) disturbing the peace or disorderly conduct under § 10–201 of the Criminal Law Article; or

(iv) misdemeanor theft under § 7–104(g)(2) or (3) of the Criminal Law Article] **ANY MISDEMEANOR OR LOCAL ORDINANCE VIOLATION THAT DOES NOT CARRY A PENALTY OF IMPRISONMENT;**

(II) ANY MISDEMEANOR OR LOCAL ORDINANCE VIOLATION FOR WHICH THE MAXIMUM PENALTY OF IMPRISONMENT IS 90 DAYS OR LESS, EXCEPT:

1. FAILURE TO COMPLY WITH A PEACE ORDER UNDER § 3-1508 OF THE COURTS ARTICLE;

2. FAILURE TO COMPLY WITH A PROTECTIVE ORDER UNDER § 4-509 OF THE FAMILY LAW ARTICLE; OR

3. VIOLATION OF A CONDITION OF PRETRIAL OR POSTTRIAL RELEASE WHILE CHARGED WITH A SEXUAL CRIME AGAINST A MINOR UNDER § 5-213.1 OF THIS ARTICLE; OR

(III) POSSESSION OF MARIJUANA UNDER § 5-601 OF THE CRIMINAL LAW ARTICLE.

(2) A police officer may issue a citation to a defendant ONLY if:

(I) the officer is satisfied with the defendant's evidence of identity [and];

(II) THE OFFICER reasonably believes that the defendant will comply with the citation;

(III) THE OFFICER REASONABLY BELIEVES THAT THE FAILURE TO CHARGE ON A STATEMENT OF CHARGES WILL NOT POSE A THREAT TO PUBLIC SAFETY;

(IV) THE DEFENDANT IS NOT SUBJECT TO ARREST FOR ANOTHER CRIMINAL CHARGE ARISING OUT OF THE SAME INCIDENT; AND

(V) THE DEFENDANT COMPLIES WITH ALL LAWFUL ORDERS BY THE OFFICER.

(3) BEFORE CHARGING A DEFENDANT BY CITATION UNDER THIS SUBSECTION, AN OFFICER MAY:

(I) ARREST THE DEFENDANT;

(II) PERFORM A SEARCH INCIDENT TO ARREST;

(III) FINGERPRINT AND PHOTOGRAPH THE DEFENDANT;

(IV) CHECK FOR ACTIVE WARRANTS AGAINST THE DEFENDANT; AND

(V) PERFORM ROUTINE PROCEDURES TO DETERMINE THE IDENTITY OF THE DEFENDANT.

(d) (1) Subject to paragraph (2) of this subsection, in addition to any other law allowing a crime to be charged by citation, a fire marshal may issue a citation for:

(Over)

(i) discharging fireworks without a permit under § 10–104 or § 10–110 of the Public Safety Article;

(ii) possessing with intent to discharge or allowing the discharge of fireworks under § 10–104 or § 10–110 of the Public Safety Article; or

(iii) maintaining a fire hazard under § 6–317 of the Public Safety Article.

(2) A fire marshal may issue a citation if the fire marshal is satisfied with the defendant’s evidence of identity and reasonably believes that the defendant will comply with the citation.

(e) (1) This section does not apply to a citation that is:

(i) authorized for a violation of a parking ordinance or a regulation adopted by a State unit or political subdivision of the State under Title 26, Subtitle 3 of the Transportation Article;

(ii) authorized by the Department of Natural Resources under § 1–205 of the Natural Resources Article; or

(iii) authorized by Baltimore City under § 16–16A (special enforcement officers) of the Code of Public Local Laws of Baltimore City for violation of a code, ordinance, or public local law of Baltimore City concerning building, housing, health, fire, safety, zoning, or sanitation.

(2) Except as otherwise expressly provided by law, the Chief Judge of the District Court shall prescribe a uniform, statewide form of a citation.

(3) Except for the uniform motor vehicle citation form, the law enforcement agencies of the State, the United States Park Police, and the Office of the State Fire Marshal shall reimburse the District Court for printing the citation forms that law enforcement officers and the State Fire Marshal require.”.

AMENDMENT NO. 6

On page 2, in line 19, strike “Representation” and substitute “**EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, REPRESENTATION**”; in line 20, in each instance, strike the bracket; and in line 21, strike “AT BAIL REVIEW” and substitute “**BAIL HEARING BEFORE A DISTRICT COURT OR CIRCUIT COURT JUDGE**”.

AMENDMENT NO. 7

On page 2, after line 25, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Criminal Procedure

5-215.

A DEFENDANT WHO IS DENIED PRETRIAL RELEASE BY A DISTRICT COURT COMMISSIONER OR WHO FOR ANY REASON REMAINS IN CUSTODY AFTER A DISTRICT COURT COMMISSIONER HAS DETERMINED CONDITIONS OF RELEASE UNDER MARYLAND RULE 4-216 SHALL BE PRESENTED TO A DISTRICT COURT JUDGE WITHIN 48 HOURS OF THE DETERMINATION BY THE DISTRICT COURT COMMISSIONER.”.

AMENDMENT NO. 8

On page 2, before line 26, insert:

(Over)

“SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) There is a Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender.

(b) The Task Force consists of the following members:

(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, 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;

(Over)

(xiii) a representative of the National Association of Criminal Defense Lawyers;

(xiv) a representative of the American Civil Liberties Union; and

(xv) an academic expert in the provision of counsel to the indigent.

(c) On or before May 1, 2012, the Governor shall appoint a chair of the Task Force from its membership.

(d) The Department of Legislative Services shall provide staff for the Task Force.

(e) A member of the Task Force:

(1) may not receive compensation for serving as a member of the Task Force; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Task Force shall:

(1) study the adequacy and cost of State laws and policies relating to representation of indigent criminal defendants by the Office of the Public Defender; and

(2) consider and make recommendations regarding options for and cost of improving the system of representation of indigent criminal defendants.

(g) (1) On or before November 1, 2012, the Task Force shall 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.

(2) On or before November 1, 2013, the Task Force shall submit a final 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.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect October 1, 2012.”.

AMENDMENT NO. 9

On page 2, in line 26, strike “2” and substitute “5”; in line 29, strike “, and” and substitute “and, except as provided in Section 4 of this Act.”; and in line 30, after the period insert “Section 3 of this Act shall remain effective until June 1, 2014, and, at the end of May 31, 2014, with no further action required by the General Assembly, Section 3 of this Act shall be abrogated and of no further force and effect.”.