

BY: House Judiciary Committee

AMENDMENTS TO SENATE BILL 422
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “prohibiting” in line 4 down through “circumstances” in line 9 and substitute “declaring the intention of the General Assembly to monitor certain issues and determine whether modification of this Act is required at a certain time; requiring a police officer to charge a person by citation for certain misdemeanors and local ordinance violations; expanding the authority of a police officer to charge a person by citation to include certain misdemeanors and local ordinance violations; establishing that a police officer may charge a defendant by citation only under certain circumstances; providing that, under certain circumstances, an officer who has grounds to make a warrantless arrest may issue a citation in lieu of making the arrest or make the arrest and subsequently issue a citation in lieu of continued custody; prohibiting certain ex parte communications between a District Court commissioner and a State’s Attorney, an attorney for the defendant, or a law enforcement officer”; in line 12, after “proceeding” insert “or juvenile proceeding; 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 a District Court or a circuit court judge at a certain time”; strike beginning with “repealing” in line 12 down through “proceedings;” in line 16; and strike beginning with “establishing” in line 20 down through “determination;” in line 25.

On page 2, in line 8, strike the first “a”; in the same line, strike “date” and substitute “dates; requiring certain law enforcement officers to record certain information pertaining to the issuance of certain citations; requiring the Police Training Commission and the Maryland Statistical Analysis Center (MSAC), in consultation with the Administrative Office of the Courts, to develop a certain format”

(Over)

for the recording of certain data and to develop certain procedures relating to the compilation and submission of certain data on or before a certain date; requiring the Police Training Commission to develop certain guidelines for certain data collection and a certain model policy relating to citations; requiring the MSAC to analyze certain data based on a methodology developed in conjunction with the Police Training Commission; requiring the MSAC to make certain reports to the General Assembly, the Governor, and law enforcement agencies; requiring law enforcement agencies to adopt certain policies regarding the issuance of certain citations; defining certain terms; providing for the application of certain provisions of this Act"; strike beginning with "of" in line 8 down through "provision" in line 9 and substitute "of certain provisions"; in line 11, strike "representation by the Office of the Public Defender" and substitute "citations for and appearances by criminal defendants"; strike in their entirety lines 12 through 16, inclusive; in line 19, after "Section" insert "2-607(f) and"; after line 21, insert:

"BY adding to

Article – Criminal Procedure

Section 5-215

Annotated Code of Maryland

(2008 Replacement Volume and 2011 Supplement)";

and in line 29, strike "5-215" and substitute "4-101.1".

AMENDMENT NO. 2

On page 3, after line 16, insert:

"SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That it is the intent of the General Assembly to continue to monitor the issues relating to representation of indigent defendants and to determine whether modification of this Act is required during the 2015 session of the General Assembly or earlier if an appellate court issues a decision related to the relevant issues in DeWolfe

v. Richmond or the Task Force established under Section 3 of this Act issues its report and recommendations.”;

and strike beginning with “1.” in line 17 down through “MARYLAND” in line 18 and substitute “2. AND BE IT FURTHER ENACTED”.

AMENDMENT NO. 3

On pages 3 through 5, strike in their entirety the lines beginning with line 19 on page 3 through line 9 on page 5, inclusive.

On page 5, in line 28, strike “(2)” and substitute “(3)”.

On page 6, in lines 16 and 19, in each instance, strike “OR”; after line 19, insert:

“4. POSSESSION OF AN ELECTRONIC CONTROL DEVICE AFTER CONVICTION OF A DRUG FELONY OR CRIME OF VIOLENCE UNDER § 4-109(B) OF THE CRIMINAL LAW ARTICLE;

5. VIOLATION OF AN OUT-OF-STATE DOMESTIC VIOLENCE ORDER UNDER § 4-508.1 OF THE FAMILY LAW ARTICLE; OR

6. ABUSE OR NEGLECT OF AN ANIMAL UNDER § 10-604 OF THE CRIMINAL LAW ARTICLE; OR”;

in line 21, after “ARTICLE” insert “, IF THE QUANTITY IS LESS THAN 14 GRAMS”; after line 21, insert:

“(2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, IN ADDITION TO ANY OTHER LAW ALLOWING A CRIME TO BE CHARGED BY CITATION, A POLICE OFFICER MAY CHARGE BY CITATION FOR A MISDEMEANOR

OR LOCAL ORDINANCE VIOLATION FOR WHICH THE MAXIMUM PENALTY OF IMPRISONMENT IS 3 YEARS OR LESS, EXCEPT:

(I) FAILURE TO COMPLY WITH A PEACE ORDER UNDER § 3-1508 OF THE COURTS ARTICLE;

(II) FAILURE TO SURRENDER FOLLOWING FORFEITURE OF BAIL OR RECOGNIZANCE UNDER § 5-211(B)(2) OF THIS ARTICLE;

(III) 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;

(IV) SEX OFFENDER REGISTRY VIOLATIONS UNDER § 11-721(B)(1) OF THIS ARTICLE;

(V) CRIMINALLY NEGLIGENT MANSLAUGHTER BY VEHICLE OR VESSEL UNDER § 2-210 OF THE CRIMINAL LAW ARTICLE;

(VI) LIFE-THREATENING INJURY BY MOTOR VEHICLE OR VESSEL WHILE UNDER THE INFLUENCE AND RELATED CRIMES UNDER § 3-211 OF THE CRIMINAL LAW ARTICLE;

(VII) FOURTH DEGREE SEXUAL OFFENSE UNDER § 3-308 OF THE CRIMINAL LAW ARTICLE;

(VIII) SEXUAL CONDUCT BETWEEN CORRECTIONAL OR DEPARTMENT OF JUVENILE SERVICES EMPLOYEE AND INMATE OR CONFINED CHILD UNDER § 3-314 OF THE CRIMINAL LAW ARTICLE;

(IX) THREATENING TO INJURE, KIDNAP, OR KILL A STATE OFFICIAL UNDER § 3-708 OF THE CRIMINAL LAW ARTICLE;

(X) VISUAL SURVEILLANCE WITH PRURIENT INTENT UNDER § 3-902 OF THE CRIMINAL LAW ARTICLE;

(XI) SURREPTITIOUS CAMERA SURVEILLANCE IN PRIVATE RESIDENCE UNDER § 3-903 OF THE CRIMINAL LAW ARTICLE;

(XII) WEARING OR CARRYING A DANGEROUS WEAPON UNDER § 4-101 OF THE CRIMINAL LAW ARTICLE;

(XIII) POSSESSION OF AN ELECTRONIC CONTROL DEVICE AFTER CONVICTION OF A DRUG FELONY OR CRIME OF VIOLENCE UNDER § 4-109(B) OF THE CRIMINAL LAW ARTICLE;

(XIV) WEARING, CARRYING, OR TRANSPORTING A HANDGUN UNDER § 4-203 OF THE CRIMINAL LAW ARTICLE;

(XV) ASSAULT PISTOL VIOLATIONS UNDER § 4-303 OF THE CRIMINAL LAW ARTICLE;

(XVI) CONTROLLED DANGEROUS SUBSTANCE ADMINISTRATION IN CONJUNCTION WITH A VIOLENT CRIME OR SEX OFFENSE UNDER § 5-624 OF THE CRIMINAL LAW ARTICLE;

(XVII) SALE OF DRUG DIFFERENT FROM THAT ORDERED UNDER § 5-702 OF THE CRIMINAL LAW ARTICLE;

(XVIII) SECOND DEGREE MALICIOUS BURNING UNDER § 6-105 OF THE CRIMINAL LAW ARTICLE;

(XIX) FOURTH DEGREE BURGLARY UNDER § 6-205 OF THE CRIMINAL LAW ARTICLE;

(XX) MALICIOUS DESTRUCTION OF PROPERTY VALUED AT \$500 OR MORE UNDER § 6-301 OF THE CRIMINAL LAW ARTICLE;

(XXI) THROWING OBJECT AT AN OCCUPIED VEHICLE UNDER § 6-302 OF THE CRIMINAL LAW ARTICLE;

(XXII) COUNTERFEITING A PRESCRIPTION UNDER § 8-610 OF THE CRIMINAL LAW ARTICLE;

(XXIII) SECOND DEGREE ESCAPE UNDER § 9-405 OF THE CRIMINAL LAW ARTICLE;

(XXIV) SELLING OR EXHIBITING SEXUAL DISPLAYS TO A MINOR UNDER § 11-102, § 11-103, OR § 11-104 OF THE CRIMINAL LAW ARTICLE;

(XXV) DISPLAYING OR ALLOWING A SEXUAL DISPLAY FOR ADVERTISING PURPOSES UNDER § 11-105 OF THE CRIMINAL LAW ARTICLE;

(XXVI) OBSCENE MATTER VIOLATIONS UNDER § 11-202, § 11-203, § 11-204, § 11-205, OR § 11-206 OF THE CRIMINAL LAW ARTICLE;

(XXVII) HIRING A MINOR FOR A PROHIBITED PURPOSE RELATING TO OBSCENE MATTER UNDER § 11-209 OF THE CRIMINAL LAW ARTICLE;

(XXVIII) VIOLATION OF AN OUT-OF-STATE DOMESTIC VIOLENCE ORDER UNDER § 4-508.1 OF THE FAMILY LAW ARTICLE;

(XXIX) VIOLATION OF AN INTERIM, TEMPORARY, OR FINAL PROTECTIVE ORDER UNDER § 4-509 OF THE FAMILY LAW ARTICLE;

(XXX) DESERTION OF A MINOR CHILD UNDER § 10-203 OR § 10-219 OF THE FAMILY LAW ARTICLE; OR

(XXXI) POSSESSION OF A RIFLE OR SHOTGUN BY A PERSON WITH A MENTAL DISORDER UNDER § 5-205 OF THE PUBLIC SAFETY ARTICLE.”;

and in line 22, strike “(2)” and substitute “(3)”; in the same line, strike “issue a citation to a defendant” and substitute “CHARGE A DEFENDANT BY CITATION”.

On page 7, in line 3, strike “(3)” and substitute “(4)”; and strike beginning with “BEFORE” in line 3 down through “DEFENDANT” in line 11 and substitute “A POLICE OFFICER WHO HAS GROUNDS TO MAKE A WARRANTLESS ARREST FOR AN OFFENSE THAT MAY BE CHARGED BY CITATION UNDER THIS SUBSECTION MAY:

(I) ISSUE A CITATION IN LIEU OF MAKING THE ARREST; OR

(II) MAKE THE ARREST AND SUBSEQUENTLY ISSUE A CITATION IN LIEU OF CONTINUED CUSTODY”.

AMENDMENT NO. 4

On page 8, after line 8, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

2-607.

(F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, EX PARTE COMMUNICATIONS BETWEEN A DISTRICT COURT COMMISSIONER AND A STATE’S ATTORNEY, AN ATTORNEY FOR THE DEFENDANT, OR A LAW ENFORCEMENT OFFICER ARE PROHIBITED.

(2) AN EX PARTE COMMUNICATION FOR SCHEDULING, ADMINISTRATIVE, OR EMERGENCY PURPOSES IS ALLOWED, IF:

(I) THE COMMUNICATION DOES NOT ADDRESS SUBSTANTIVE MATTERS;

(II) NO PARTY WILL GAIN A PROCEDURAL, SUBSTANTIVE, OR TACTICAL ADVANTAGE AS A RESULT OF THE COMMUNICATION; AND

(III) THE COMMISSIONER PROMPTLY NOTIFIES THE OTHER PARTIES AND GIVES THEM AN OPPORTUNITY TO RESPOND.

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 OR JUVENILE PROCEEDING.

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 IMMEDIATELY IF THE COURT IS IN SESSION, OR IF THE COURT IS NOT IN SESSION, AT THE NEXT SESSION OF THE COURT.”.

AMENDMENT NO. 5

On page 9, strike in their entirety lines 10 through 28, inclusive; and in line 29, strike “3.” and substitute “4.”.

On page 10, in line 5, after “Governor” insert “of Maryland”.

On page 11, in line 21, after “to” insert “:

(i);

after line 23, insert:

“(ii) the District Court commissioner and pretrial release systems; and”;

(Over)

in line 25, after “improving” insert “:

(i)”;

and in the same line, after “defendants” insert “; and

(ii) the District Court commissioner and pretrial release systems”.

AMENDMENT NO. 6

On page 12, after line 2, insert:

“SECTION 5. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Criminal Procedure

4-101.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “LAW ENFORCEMENT AGENCY” MEANS AN AGENCY THAT IS LISTED IN § 3-101(E) OF THE PUBLIC SAFETY ARTICLE AND THAT, IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION, IS SUBJECT TO THE PROVISIONS OF THIS SECTION.

(3) “LAW ENFORCEMENT OFFICER” MEANS ANY PERSON WHO, IN AN OFFICIAL CAPACITY, IS AUTHORIZED BY LAW TO MAKE ARRESTS AND WHO IS AN EMPLOYEE OF A LAW ENFORCEMENT AGENCY THAT IS SUBJECT TO THIS SECTION.

(4) “MARYLAND STATISTICAL ANALYSIS CENTER” MEANS THE RESEARCH, DEVELOPMENT, AND EVALUATION COMPONENT OF THE GOVERNOR’S OFFICE OF CRIME CONTROL AND PREVENTION.

(5) “POLICE TRAINING COMMISSION” MEANS THE UNIT WITHIN THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES ESTABLISHED UNDER § 3-202 OF THE PUBLIC SAFETY ARTICLE.

(B) THE POLICE TRAINING COMMISSION AND THE MARYLAND STATISTICAL ANALYSIS CENTER, IN CONSULTATION WITH THE ADMINISTRATIVE OFFICE OF THE COURTS, SHALL DEVELOP A FORMAT FOR THE EFFICIENT RECORDING OF DATA REQUIRED TO BE SUBMITTED UNDER SUBSECTION (E) OF THIS SECTION.

(C) ON OR BEFORE DECEMBER 31, 2012, THE POLICE TRAINING COMMISSION, IN CONSULTATION WITH THE MARYLAND STATISTICAL ANALYSIS CENTER, SHALL DEVELOP:

(1) GUIDELINES THAT EACH LAW ENFORCEMENT AGENCY MAY USE AS A MANAGEMENT TOOL TO EVALUATE DATA COLLECTED UNDER SUBSECTION (E) OF THIS SECTION FOR USE IN COUNSELING AND IMPROVED TRAINING; AND

(2) A MODEL POLICY AGAINST THE ISSUANCE OF A CITATION ON THE BASIS OF RACE THAT A LAW ENFORCEMENT AGENCY CAN USE IN DEVELOPING ITS POLICY IN ACCORDANCE WITH SUBSECTION (H) OF THIS SECTION.

(D) THIS SECTION APPLIES TO EACH LAW ENFORCEMENT AGENCY THAT HAS ONE OR MORE LAW ENFORCEMENT OFFICERS.

(E) EACH TIME A LAW ENFORCEMENT OFFICER ISSUES A CITATION IN ACCORDANCE WITH § 4-101 OF THIS SUBTITLE, THAT OFFICER SHALL REPORT THE FOLLOWING INFORMATION ON THE MARYLAND UNIFORM CITATION FORM CONSISTENT WITH THE PROCEDURES DEVELOPED UNDER SUBSECTION (F) OF THIS SECTION USING THE FORMAT DEVELOPED UNDER SUBSECTION (B) OF THIS SECTION:

(1) THE DATE, LOCATION, AND TIME OF THE ISSUANCE OF THE CITATION;

(2) THE OFFENSE CHARGED;

(3) THE GENDER OF THE OFFENDER;

(4) THE DATE OF BIRTH OF THE OFFENDER;

(5) THE STATE AND, IF AVAILABLE, THE COUNTY OF RESIDENCE OF THE OFFENDER; AND

(6) THE RACE OR ETHNICITY OF THE OFFENDER AS:

(I) ASIAN;

(II) BLACK;

(III) HISPANIC;

(IV) WHITE; OR

(V) OTHER.

(F) ON OR BEFORE DECEMBER 31, 2012, THE POLICE TRAINING COMMISSION AND THE MARYLAND STATISTICAL ANALYSIS CENTER, IN CONSULTATION WITH THE ADMINISTRATIVE OFFICE OF THE COURTS, SHALL DEVELOP A PROCEDURE FOR:

(1) THE COMPILATION OF DATA REQUIRED TO BE COLLECTED UNDER THIS SECTION FOR THE CALENDAR YEAR AS A REPORT IN THE FORMAT REQUIRED UNDER SUBSECTION (B) OF THIS SECTION; AND

(2) THE SUBMISSION OF THE REPORT TO THE MARYLAND STATISTICAL ANALYSIS CENTER NO LATER THAN MARCH 1 OF THE FOLLOWING CALENDAR YEAR BEGINNING ON MARCH 1, 2014.

(G) (1) THE MARYLAND STATISTICAL ANALYSIS CENTER SHALL ANALYZE THE ANNUAL REPORTS SUBMITTED UNDER SUBSECTION (F) OF THIS SECTION BASED ON A METHODOLOGY DEVELOPED IN CONSULTATION WITH THE POLICE TRAINING COMMISSION.

(2) THE MARYLAND STATISTICAL ANALYSIS CENTER SHALL SUBMIT A REPORT OF THE FINDINGS TO THE GOVERNOR, THE GENERAL ASSEMBLY, AS PROVIDED IN § 2-1246 OF THE STATE GOVERNMENT ARTICLE, AND EACH LAW ENFORCEMENT AGENCY BEFORE SEPTEMBER 1 OF EACH YEAR BEGINNING ON SEPTEMBER 1, 2014.

(Over)

(H) (1) A LAW ENFORCEMENT AGENCY SHALL ADOPT A POLICY AGAINST THE ISSUANCE OF A CITATION ON THE BASIS OF RACE THAT IS TO BE USED AS A MANAGEMENT TOOL TO PROMOTE NONDISCRIMINATORY LAW ENFORCEMENT AND IN THE TRAINING AND COUNSELING OF ITS OFFICERS.

(2) (I) THE POLICY SHALL PROHIBIT THE PRACTICE OF USING AN INDIVIDUAL'S RACE OR ETHNICITY AS THE SOLE JUSTIFICATION TO ISSUE A CITATION.

(II) THE POLICY SHALL MAKE CLEAR THAT IT MAY NOT BE CONSTRUED TO ALTER THE AUTHORITY OF A LAW ENFORCEMENT OFFICER TO MAKE AN ARREST, CONDUCT A SEARCH OR SEIZURE, OR OTHERWISE FULFILL THE OFFICER'S LAW ENFORCEMENT OBLIGATIONS.

(3) THE POLICY SHALL PROVIDE FOR THE LAW ENFORCEMENT AGENCY TO PERIODICALLY REVIEW DATA COLLECTED UNDER SUBSECTION (E) OF THIS SECTION AND TO REVIEW THE ANNUAL REPORT OF THE MARYLAND STATISTICAL ANALYSIS CENTER FOR PURPOSES OF PARAGRAPH (1) OF THIS SUBSECTION.”;

in line 3, strike “4.” and substitute “6.”; in line 4, strike “October 1, 2012” and substitute “January 1, 2013”; after line 4, insert:

“SECTION 7. AND BE IT FURTHER ENACTED, That the obligation of the Office of the Public Defender to provide representation to indigent defendants at bail hearings before District Court or circuit court judges under § 16–204 of the Criminal Procedure Article, as enacted by Section 3 of this Act, applies only to bail hearings occurring on or after May 1, 2012.

SECTION 8. AND BE IT FURTHER ENACTED, That, beginning January 1, 2013, data shall be collected under Section 5 of this Act through December 31, 2017, and the Maryland Statistical Analysis Center shall issue a final report of its findings to the Governor, the General Assembly, in accordance with § 2-1246 of the State Government Article, and each law enforcement agency on or before August 31, 2018.”;

in line 5, strike “5.” and substitute “9.”; in line 9, strike “4” and substitute “6”; in line 10, strike “3” and substitute “4”; in line 11, strike “3” and substitute “4”; and in line 12, after “effect.” insert “Section 5 of this Act shall remain effective until September 1, 2018, and, at the end of August 31, 2018, with no further action required by the General Assembly, Section 5 of this Act shall be abrogated and of no further force and effect.”.