

SENATE BILL 422

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EMERGENCY BILL

2lr2847

By: ~~Senator Frosh~~ **Senators Frosh and Colburn**

Introduced and read first time: February 1, 2012

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: February 28, 2012

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure – ~~Office of the Public Defender – Representation~~**
3 **Criminal Defendants – Citations and Appearances**

4 FOR the purpose of prohibiting a District Court commissioner from issuing an arrest
5 warrant based solely on an application for statement of charges filed by a
6 person other than a peace officer or State's Attorney except under certain
7 circumstances; requiring a police officer to issue a citation for certain offenses
8 under certain circumstances; establishing that a police officer may issue a
9 citation to a defendant only under certain circumstances; prohibiting a certain
10 statement made by a defendant during the course of an initial appearance
11 before a District Court commissioner from being used as evidence against the
12 defendant in a criminal proceeding; repealing the requirement that the Office of
13 the Public Defender provide representation to a certain indigent individual in
14 all stages of a certain proceeding; altering the specific events in which the Office
15 of the Public Defender is required to represent indigent individuals in criminal
16 proceedings; requiring the Office of the Public Defender to provide
17 representation to an indigent individual at a bail hearing before a District Court
18 or circuit court judge; providing that representation is not required to be
19 provided by the Office of the Public Defender to certain indigent individuals at a
20 certain initial appearance before a District Court commissioner; establishing
21 that a defendant who is denied pretrial release by a District Court
22 commissioner or who remains in custody after a District Court commissioner
23 has determined conditions of release under certain circumstances must be
24 presented to the District Court within a certain time period after the
25 determination; establishing a Task Force to Study the Laws and Policies

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Relating to Representation of Indigent Criminal Defendants by the Office of the
2 Public Defender; providing for the membership and duties of the Task Force;
3 providing for the designation of a chair of the Task Force; requiring the
4 Department of Legislative Services to provide staff for the Task Force;
5 prohibiting members of the Task Force from receiving compensation;
6 authorizing a member to receive certain reimbursement; requiring the Task
7 Force to report its findings and recommendations to the Governor and the
8 General Assembly on or before a certain date; providing for the termination of a
9 certain provision of this Act; making this Act an emergency measure; providing
10 for the effective date of a certain provision of this Act; and generally relating to
11 representation by the Office of the Public Defender.

12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 2–607
15 Annotated Code of Maryland
16 (2006 Replacement Volume and 2011 Supplement)

17 BY adding to
18 Article – Courts and Judicial Proceedings
19 Section 10–922
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2011 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article – Criminal Procedure
24 Section 4–101 and 16–204
25 Annotated Code of Maryland
26 (2008 Replacement Volume and 2011 Supplement)

27 BY adding to
28 Article – Criminal Procedure
29 Section 5–215
30 Annotated Code of Maryland
31 (2008 Replacement Volume and 2011 Supplement)

32 Preamble

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

35 WHEREAS, In 2011, over 170,000 people appeared before a District Court
36 commissioner in the State where their liberty was subject to restriction and over
37 70,000 of them were granted release on personal recognizance without the benefit of
38 the presence of counsel; and

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

4 WHEREAS, Many defendants cannot afford bail set at even a low amount of
5 \$100 and some wait in jail for weeks before a court appearance for misdemeanor
6 crimes; and

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

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

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

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

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

19 **Article – Courts and Judicial Proceedings**

20 2-607.

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

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

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

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

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

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

4 (2) [A] EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS
5 SUBSECTION, A commissioner shall advise arrested persons of their constitutional
6 rights, set bond or commit persons to jail in default of bond or release them on
7 personal recognizance if circumstances warrant, and conduct investigations and
8 inquiries into the circumstances of any matter presented to the commissioner in order
9 to determine if probable cause exists for the issuance of a charging document, warrant,
10 or criminal summons and, in general, perform all the functions of committing
11 magistrates as exercised by the justices of the peace prior to July 5, 1971.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 **(I) ARREST THE DEFENDANT;**

6 **(II) PERFORM A SEARCH INCIDENT TO ARREST;**

7 **(III) FINGERPRINT AND PHOTOGRAPH THE DEFENDANT;**

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

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

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

14 (i) discharging fireworks without a permit under § 10–104 or §
15 10–110 of the Public Safety Article;

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

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

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

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

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

27 (ii) authorized by the Department of Natural Resources under §
28 1–205 of the Natural Resources Article; or

29 (iii) authorized by Baltimore City under § 16–16A (special
30 enforcement officers) of the Code of Public Local Laws of Baltimore City for violation of

1 a code, ordinance, or public local law of Baltimore City concerning building, housing,
2 health, fire, safety, zoning, or sanitation.

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

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

9 16–204.

10 (a) Representation of an indigent individual may be provided in accordance
11 with this title by the Public Defender or, subject to the supervision of the Public
12 Defender, by the deputy public defender, district public defenders, assistant public
13 defenders, or panel attorneys.

14 (b) (1) Indigent defendants or parties shall be provided representation
15 under this title in:

16 (i) a criminal or juvenile proceeding in which a defendant or
17 party is alleged to have committed a serious offense;

18 (ii) a criminal or juvenile proceeding in which an attorney is
19 constitutionally required to be present prior to presentment being made before a
20 commissioner or judge;

21 (iii) a postconviction proceeding for which the defendant has a
22 right to an attorney under Title 7 of this article;

23 (iv) any other proceeding in which confinement under a judicial
24 commitment of an individual in a public or private institution may result;

25 (v) a proceeding involving children in need of assistance under §
26 3–813 of the Courts Article; or

27 (vi) a family law proceeding under Title 5, Subtitle 3, Part II or
28 Part III of the Family Law Article, including:

29 1. for a parent, a hearing in connection with
30 guardianship or adoption;

31 2. a hearing under § 5–326 of the Family Law Article for
32 which the parent has not waived the right to notice; and

33 3. an appeal.

1 (2) (I) ~~Representation~~ EXCEPT AS PROVIDED IN
 2 SUBPARAGRAPH (II) OF THIS PARAGRAPH, REPRESENTATION shall be provided to
 3 an indigent individual in ~~all stages of~~ a proceeding listed in paragraph (1) of this
 4 subsection, including, in criminal proceedings, custody, interrogation, ~~AT BAIL~~
 5 ~~REVIEW~~ BAIL HEARING BEFORE A DISTRICT COURT OR CIRCUIT COURT JUDGE,
 6 preliminary hearing, arraignment, trial, and appeal.

7 (II) REPRESENTATION IS NOT REQUIRED TO BE PROVIDED
 8 TO AN INDIGENT INDIVIDUAL AT AN INITIAL APPEARANCE BEFORE A DISTRICT
 9 COURT COMMISSIONER.

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

12 Article – Criminal Procedure

13 5-215.

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

20 (A) A DEFENDANT WHO IS DENIED PRETRIAL RELEASE BY A DISTRICT
 21 COURT COMMISSIONER OR WHO FOR ANY REASON REMAINS IN CUSTODY AFTER
 22 A DISTRICT COURT COMMISSIONER HAS DETERMINED CONDITIONS OF RELEASE
 23 UNDER MARYLAND RULE 4-216 SHALL BE PRESENTED IMMEDIATELY TO A
 24 DISTRICT COURT JUDGE IF THE COURT IS THEN IN SESSION, OR IF NOT, AT THE
 25 NEXT SESSION OF THE COURT.

26 (B) A DEFENDANT MAY NOT REMAIN IN CUSTODY MORE THAN 48 HOURS
 27 AFTER A DETERMINATION OF THE DISTRICT COURT COMMISSIONER WITHOUT
 28 BEING PRESENTED TO A DISTRICT COURT JUDGE.

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

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

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

- 1 (viii) a representative of the Maryland Association of Counties;
2 (ix) a representative of the Pretrial Justice Institute;
3 (x) a representative of the Public Justice Center;
4 (xi) a representative of NAACP – Legal Defense;
5 ~~(xii)~~ (xii) a representative of the National Association of
6 Criminal Defense Lawyers;
7 ~~(xiii)~~ (xiii) a representative of the American Civil Liberties
8 Union; and
9 ~~(xiv)~~ (xiv) an academic expert in the provision of counsel to the
10 indigent.

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

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

15 (e) A member of the Task Force:

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

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

20 (f) The Task Force shall:

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

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

26 (g) (1) On or before November 1, 2012, the Task Force shall submit an
27 interim report of its findings and recommendations to the Governor and, in accordance
28 with § 2–1246 of the State Government Article, the Senate Judicial Proceedings
29 Committee and the House Judiciary Committee.

30 (2) On or before November 1, 2013, the Task Force shall submit a final
31 report of its findings and recommendations to the Governor and, in accordance with §

1 2-1246 of the State Government Article, the Senate Judicial Proceedings Committee
 2 and the House Judiciary Committee.

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

5 SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act is an
 6 emergency measure, is necessary for the immediate preservation of the public health
 7 or safety, has been passed by a yea and nay vote supported by three-fifths of all the
 8 members elected to each of the two Houses of the General Assembly, ~~and~~ and, except
 9 as provided in Section 4 of this Act, shall take effect from the date it is enacted.
 10 Section 3 of this Act shall remain effective until June 1, 2014, and, at the end of May
 11 31, 2014, with no further action required by the General Assembly, Section 3 of this
 12 Act shall be abrogated and of no further force and effect.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.