

HOUSE BILL 537

E2

4r2757
CF 4r1882

By: **Chair, Judiciary Committee (By Request – Maryland Judicial Conference)**

Introduced and read first time: January 29, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Pretrial Confinement and Release of Criminal**
3 **Defendants – Initial Appearance and Representation by the Office of the**
4 **Public Defender**

5 FOR the purpose of requiring a District Court commissioner to conduct certain duties
6 relating to an initial appearance of a defendant in accordance with certain court
7 rules; authorizing a commissioner to gather and verify certain information
8 under certain circumstances; requiring a certain person to be presented before a
9 District Court judge within a certain amount of time after arrest for a certain
10 initial appearance under certain circumstances; requiring a certain person to be
11 presented before a commissioner for a certain initial appearance under certain
12 circumstances; providing that a certain initial appearance may be conducted
13 through the use of video conferencing in accordance with a certain court rule;
14 requiring the Office of the Public Defender to provide representation at a
15 certain initial appearance; repealing a provision that provides that
16 representation is not required to be provided by the Office of the Public
17 Defender to certain indigent individuals at a certain initial appearance before a
18 District Court commissioner; providing for a delayed effective date; making this
19 Act contingent on the taking effect of another Act; and generally relating to
20 pretrial confinement and release of criminal defendants and initial appearances
21 and representation by the Office of the Public Defender.

22 BY repealing and reenacting, with amendments,
23 Article – Courts and Judicial Proceedings
24 Section 2–607
25 Annotated Code of Maryland
26 (2013 Replacement Volume and 2013 Supplement)

27 BY adding to
28 Article – Criminal Procedure

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 5–202.1
2 Annotated Code of Maryland
3 (2008 Replacement Volume and 2013 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Criminal Procedure
6 Section 16–204
7 Annotated Code of Maryland
8 (2008 Replacement Volume and 2013 Supplement)

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

11 **Article – Courts and Judicial Proceedings**

12 2–607.

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

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

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

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

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

27 (c) (1) A commissioner shall receive applications and determine probable
28 cause for the issuance of charging documents.

29 (2) **[A] FOR AN INITIAL APPEARANCE CONDUCTED BEFORE A**
30 **COMMISSIONER, A** commissioner shall **[advise arrested persons of their**
31 **constitutional rights, set bond or commit persons to jail in default of bond or release**
32 **them on personal recognizance if circumstances warrant, and conduct investigations**
33 **and inquiries into the circumstances of any matter presented to the commissioner in**
34 **order to determine if probable cause exists for the issuance of a charging document,**
35 **warrant, or criminal summons and, in general,] PERFORM DUTIES IN ACCORDANCE**
36 **WITH MARYLAND RULES 4–213 AND 4–216.**

1 **(3) FOR AN INITIAL APPEARANCE TO BE CONDUCTED BEFORE A**
2 **JUDGE, A COMMISSIONER MAY GATHER AND VERIFY RELEVANT INFORMATION**
3 **AND FORWARD THAT INFORMATION AND A RECOMMENDATION BASED ON THE**
4 **INFORMATION TO THE JUDGE FOR CONSIDERATION IN DETERMINING WHETHER**
5 **AND ON WHAT CONDITIONS THE DEFENDANT SHOULD BE RELEASED.**

6 **(4) A COMMISSIONER SHALL** perform all the functions of committing
7 magistrates as exercised by the justices of the peace prior to July 5, 1971.

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

12 **[(4)] (E)** A commissioner may exercise the powers of office in any
13 county to which the commissioner is assigned by the Chief Judge of the District Court
14 or a designee of the Chief Judge of the District Court.

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

20 **[(6)] (G) [(i)] (1)** An individual may file an application for a
21 statement of charges with a District Court commissioner.

22 **[(ii)] (2)** On review of an application for a statement of
23 charges, a District Court commissioner may issue a summons or an arrest warrant.

24 **[(iii)] (3)** A District Court commissioner may issue an arrest
25 warrant only on a finding that:

26 **[1.] (I)** There is probable cause to believe that the
27 defendant committed the offense charged in the charging document; and

28 **[2.] (II) [A.] 1.** The defendant previously has
29 failed to respond to a summons that has been personally served or a citation;

30 **[B.] 2.** The whereabouts of the defendant are unknown
31 and the issuance of a warrant is necessary to subject the defendant to the jurisdiction
32 of the court;

1 [C.] 3. The defendant is in custody for another offense;
2 or

3 [D.] 4. There is probable cause to believe that the
4 defendant poses a danger to another person or to the community.

5 [(d)] (H) (1) The authority under this subsection applies only to a
6 respondent who is an adult.

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

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

14 Article – Criminal Procedure

15 5-202.1.

16 (A) (1) IF THE COURT IS IN SESSION, A PERSON ARRESTED SHALL BE
17 PRESENTED BEFORE A DISTRICT COURT JUDGE WITHIN 24 HOURS AFTER
18 ARREST FOR AN INITIAL APPEARANCE IN ACCORDANCE WITH MARYLAND RULE
19 4-213.

20 (2) IF THE COURT IS NOT IN SESSION AND MORE THAN 24 HOURS
21 WILL PASS BEFORE THE NEXT SESSION OF THE COURT, A PERSON ARRESTED
22 SHALL BE PRESENTED BEFORE A DISTRICT COURT COMMISSIONER FOR AN
23 INITIAL APPEARANCE IN ACCORDANCE WITH MARYLAND RULE 4-213.

24 (B) AN INITIAL APPEARANCE MAY BE CONDUCTED THROUGH THE USE
25 OF VIDEO CONFERENCING IN ACCORDANCE WITH MARYLAND RULE 4-231.

26 16-204.

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

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

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

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

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

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

10 (v) a proceeding involving children in need of assistance under §
11 3–813 of the Courts Article; or

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

14 1. for a parent, a hearing in connection with
15 guardianship or adoption;

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

18 3. an appeal.

19 (2) [(i) Except as provided in subparagraph (ii) of this paragraph,
20 representation] **REPRESENTATION** shall be provided to an indigent individual in all
21 stages of a proceeding listed in paragraph (1) of this subsection, including, in criminal
22 proceedings, custody, interrogation, **INITIAL APPEARANCE**, bail hearing before a
23 District Court or circuit court judge, preliminary hearing, arraignment, trial, and
24 appeal.

25 [(ii) Representation is not required to be provided to an indigent
26 individual at an initial appearance before a District Court commissioner.]

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 January 1, 2015, contingent on the taking effect of Chapter ____ (S.B. ____)(4lr2195) of
29 the Acts of the General Assembly of 2014, and if Chapter ____ (S.B. ____)(4lr2195)
30 does not become effective, this Act shall be null and void without the necessity of
31 further action by the General Assembly.