

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL 261
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Office of the Public Defender – Representation” and substitute “Criminal Defendants – Court Appearances”; strike beginning with “repealing” in line 3 down through “appearance” 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; 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; 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 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 circuit court judge within a certain time period except under certain circumstances; repealing the requirement that the Office of the Public Defender provide representation to a certain indigent individual in all stages of a certain proceeding; altering the specific events in which the Office of the Public Defender is required to represent indigent individuals in criminal proceedings; 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; providing that representation is not required to be provided by the Office of the Public Defender to certain indigent individuals at a certain initial appearance before a District Court commissioner; 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

(Over)

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 certain dates; providing for the application of certain provisions of this Act; providing for the termination of a certain provision of this Act”; strike line 10 in its entirety and substitute “court appearances by criminal defendants.”; after line 10, insert:

“BY adding to

Article - Courts and Judicial Proceedings
Section 2-607(f) and 10-922
Annotated Code of Maryland
(2006 Replacement Volume and 2011 Supplement)

BY adding to

Article - Criminal Procedure
Section 5-215
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)”;

and after line 15, insert:

“Preamble

WHEREAS, This Act implements a right to counsel at bail hearings before a District Court or circuit court judge in response to the decision of the Court of Appeals of Maryland in DeWolfe v. Richmond, No. 34, September 2011 Term, issued January 4, 2012; and

WHEREAS, The Court in DeWolfe v. Richmond held that the plain meaning of § 16-204(b) of the Criminal Procedure Article prior to enactment of this Act entitled indigent defendants to public defender representation at an initial appearance before a District Court commissioner; and

WHEREAS, The question of whether or not a constitutional right to counsel before a District Court commissioner exists was not reached by the Court of Appeals; and

WHEREAS, It is anticipated that this question will be addressed by the Court of Appeals or other appropriate appellate court as part of continuing litigation in DeWolfe v. Richmond or another claim or action; and

WHEREAS, The Task Force established by Section 3 of this Act shall address the adequacy and cost of laws and policies regarding the representation of indigent defendants by the Public Defender and the District Court commissioner and pretrial release systems; now, therefore,

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.”.

AMENDMENT NO. 2

On page 1, strike beginning with “1.” in line 16 down through “MARYLAND” in line 17 and substitute “2. AND BE IT FURTHER ENACTED”; after line 17, insert:

“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

(Over)

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.”;

and after line 18, insert:

“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

OR CIRCUIT COURT JUDGE WITHIN 48 HOURS OF THE DETERMINATION BY THE DISTRICT COURT COMMISSIONER, EXCEPT FOR WEEKENDS AND HOLIDAYS.”.

AMENDMENT NO. 3

On page 2, in line 23, strike the brackets; in the same line, strike “AT BAIL REVIEW” and substitute “BAIL HEARING BEFORE A DISTRICT COURT OR CIRCUIT COURT JUDGE”; strike beginning with “THIS” in line 25 down through “4-213.” in line 27 and substitute “REPRESENTATION IS NOT REQUIRED TO BE PROVIDED TO AN INDIGENT INDIVIDUAL AT AN INITIAL APPEARANCE BEFORE A DISTRICT COURT COMMISSIONER.”;

and after line 27, insert:

“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 of Maryland, or the Governor’s designee;

(4) the Public Defender of Maryland, or the Public Defender’s designee;

(Over)

(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 Quinton Richmond, et al. v. Paul DeWolfe, Jr., et al. 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;
- (xii) a representative of the National Association of Criminal Defense Lawyers;
- (xiii) a representative of the American Civil Liberties Union; and
- (xiv) 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:

(i) representation of indigent criminal defendants by the Office of the Public Defender; and

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

(2) consider and make recommendations regarding options for and costs of improving:

(i) the system of representation of indigent criminal defendants; and

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

(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 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 2 of this Act, applies only to bail hearings occurring on or after June 1, 2012.”;

in line 28, strike “2.” and substitute “5.”; and in line 32, after “enacted.” 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.”.