

BY: Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL 261
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, strike “Court” and substitute “Citations and”; and strike beginning with “prohibiting” in line 12 down through “officer” in line 14 and substitute “authorizing an individual to file an application for a statement of charges with a District Court commissioner; authorizing a District Court commissioner to issue a summons or an arrest warrant under certain circumstances; requiring a police officer to charge a person by citation for 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”.

On pages 1 and 2, strike beginning with “repealing” in line 22 on page 1 down through “proceedings;” in line 1 on page 2.

On page 2, in line 14, after “dates;” insert “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 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;”; in line 16, after “measure;” insert “providing for the”

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effective date of a certain provision of this Act;”; in line 17, strike “court” and substitute “citations for and”; after line 18, 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)”;

in line 21, strike “2-607(f) and”; strike in their entirety lines 24 through 28, inclusive; in line 31, after “Section” insert “4-101 and”; and after line 33, insert:

“BY adding to
Article - Criminal Procedure
Section 4-101.1 and 5-215
Annotated Code of Maryland
(2008 Replacement Volume and 2011 Supplement)”.

AMENDMENT NO. 2

On pages 2 and 3, strike in their entirety the lines beginning with line 35 on page 2 through line 12 on page 3, inclusive, and substitute:

“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 3, in line 18, strike “3” and substitute “4”.

On pages 3 and 4, strike in their entirety the lines beginning with line 25 on page 3 through line 2 on page 4, inclusive, and substitute:

“(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 commissioner shall receive applications and determine probable cause for the issuance of charging documents.

(2) 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) (I) AN INDIVIDUAL MAY FILE AN APPLICATION FOR A STATEMENT OF CHARGES WITH A DISTRICT COURT COMMISSIONER.

(II) ON REVIEW OF AN APPLICATION FOR A STATEMENT OF CHARGES, A DISTRICT COURT COMMISSIONER MAY ISSUE A SUMMONS OR AN ARREST WARRANT.

(III) A DISTRICT COURT COMMISSIONER MAY ISSUE AN ARREST WARRANT ONLY ON A FINDING THAT:

1. THERE IS PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT COMMITTED THE OFFENSE CHARGED IN THE CHARGING DOCUMENT; AND

2. A. THE DEFENDANT PREVIOUSLY HAS FAILED TO RESPOND TO A SUMMONS THAT HAS BEEN PERSONALLY SERVED OR A CITATION;

B. THE WHEREABOUTS OF THE DEFENDANT ARE UNKNOWN AND THE ISSUANCE OF A WARRANT IS NECESSARY TO SUBJECT THE DEFENDANT TO THE JURISDICTION OF THE COURT;

C. THE DEFENDANT IS IN CUSTODY FOR ANOTHER OFFENSE; OR

D. THERE IS PROBABLE CAUSE TO BELIEVE THAT THE DEFENDANT POSES A DANGER TO ANOTHER PERSON OR TO THE COMMUNITY.

(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.

Article – Criminal Procedure

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;

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;

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

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

(2) A police officer may [issue a citation to] CHARGE a defendant BY CITATION 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) A POLICE OFFICER WHO HAS GROUNDS TO MAKE A WARRANTLESS ARREST FOR AN OFFENSE THAT MAY BE CHARGED BY CITATION UNDER THIS SUBSECTION MAY:

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(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.

(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:

(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. 4

On page 5, in line 10, strike “Representation” and substitute “**EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, REPRESENTATION**”; in line 11, strike the brackets; and in line 20, strike “3.” and substitute “4.”.

AMENDMENT NO. 5

On page 6, strike beginning with “Quinton” in line 13 down through “litigation” in line 14 and substitute “DeWolfe v. Richmond litigation”.

AMENDMENT NO. 6

On page 7, after line 31, 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.

(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.

SECTION 6. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect January 1, 2013.”.

On page 8, in line 1, strike “4.” and substitute “7.”; in line 4, strike “2” and substitute “3”; after line 5, insert:

“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 6, strike “5.” and substitute “9.”; in line 9, strike “, and” and substitute “and, except as provided in Section 6 of this Act.”; in lines 10 and 12, in each instance, strike “3” and substitute “4”; and in line 13, after the period 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.”.