

# HOUSE BILL 583

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By: **Delegates McDonough, Eckardt, Haddaway, Impallaria, Shewell, and Sossi**

Introduced and read first time: February 8, 2007

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Second Gun Offense – Prohibition on Pretrial Release**

3 FOR the purpose of prohibiting a District Court commissioner from authorizing the  
4 pretrial release of a defendant charged with a certain crime involving the use or  
5 possession of a firearm if the defendant has been previously convicted of a  
6 certain crime involving the use or possession of a firearm; and generally  
7 relating to firearms crimes.

8 BY repealing and reenacting, with amendments,  
9 Article – Criminal Procedure  
10 Section 5–202  
11 Annotated Code of Maryland  
12 (2001 Volume and 2006 Supplement)

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

15 **Article – Criminal Procedure**

16 5–202.

17 (a) A District Court commissioner may not authorize pretrial release for a  
18 defendant charged with escaping from a correctional facility or any other place of  
19 confinement in the State.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           (b) (1) A District Court commissioner may not authorize the pretrial  
2 release of a defendant charged as a drug kingpin under § 5–613 of the Criminal Law  
3 Article.

4           (2) A judge may authorize the pretrial release of a defendant charged  
5 as a drug kingpin on suitable bail and on any other conditions that will reasonably  
6 ensure that the defendant will not flee or pose a danger to another person or the  
7 community.

8           (3) There is a rebuttable presumption that, if released, a defendant  
9 charged as a drug kingpin will flee and pose a danger to another person or the  
10 community.

11          (c) (1) A District Court commissioner may not authorize the pretrial  
12 release of a defendant charged with a crime of violence if the defendant has been  
13 previously convicted:

14                   (i) in this State of a crime of violence; or

15                   (ii) in any other jurisdiction of a crime that would be a crime of  
16 violence if committed in this State.

17          (2) (i) A judge may authorize the pretrial release of a defendant  
18 described in paragraph (1) of this subsection on:

19                           1. suitable bail;

20                           2. any other conditions that will reasonably ensure that  
21 the defendant will not flee or pose a danger to another person or the community; or

22                           3. both bail and other conditions described under item 2  
23 of this subparagraph.

24                   (ii) When a defendant described in paragraph (1) of this  
25 subsection is presented to the court under Maryland Rule 4–216(f), the judge shall  
26 order the continued detention of the defendant if the judge determines that neither  
27 suitable bail nor any condition or combination of conditions will reasonably ensure  
28 that the defendant will not flee or pose a danger to another person or the community  
29 before the trial.

30          (3) There is a rebuttable presumption that a defendant described in  
31 paragraph (1) of this subsection will flee and pose a danger to another person or the  
32 community.

1 (d) (1) A District Court commissioner may not authorize the pretrial  
2 release of a defendant charged with committing one of the following crimes while the  
3 defendant was released on bail or personal recognizance for a pending prior charge of  
4 committing one of the following crimes:

5 (i) aiding, counseling, or procuring arson in the first degree  
6 under § 6–102 of the Criminal Law Article;

7 (ii) arson in the second degree or attempting, aiding, counseling,  
8 or procuring arson in the second degree under § 6–103 of the Criminal Law Article;

9 (iii) burglary in the first degree under § 6–202 of the Criminal  
10 Law Article;

11 (iv) burglary in the second degree under § 6–203 of the Criminal  
12 Law Article;

13 (v) burglary in the third degree under § 6–204 of the Criminal  
14 Law Article;

15 (vi) causing abuse to a child under § 3–601 or § 3–602 of the  
16 Criminal Law Article;

17 (vii) a crime that relates to a destructive device under § 4–503 of  
18 the Criminal Law Article;

19 (viii) a crime that relates to a controlled dangerous substance  
20 under §§ 5–602 through 5–609 or § 5–612 or § 5–613 of the Criminal Law Article;

21 (ix) manslaughter by vehicle or vessel under § 2–209 of the  
22 Criminal Law Article; and

23 (x) a crime of violence.

24 (2) A defendant under this subsection remains ineligible to give bail or  
25 be released on recognizance on the subsequent charge until all prior charges have  
26 finally been determined by the courts.

27 (3) A judge may authorize the pretrial release of a defendant described  
28 in paragraph (1) of this subsection on suitable bail and on any other conditions that  
29 will reasonably ensure that the defendant will not flee or pose a danger to another  
30 person or the community.

1           (4) There is a rebuttable presumption that a defendant described in  
2 paragraph (1) of this subsection will flee and pose a danger to another person or the  
3 community if released before final determination of the prior charge.

4           (e) (1) A District Court commissioner may not authorize the pretrial  
5 release of a defendant charged with violating:

6                   (i) the provisions of a temporary protective order described in §  
7 4–505(a)(2)(i) of the Family Law Article or the provisions of a protective order  
8 described in § 4–506(d)(1) of the Family Law Article that order the defendant to  
9 refrain from abusing or threatening to abuse a person eligible for relief; or

10                   (ii) the provisions of an order for protection, as defined in §  
11 4–508.1 of the Family Law Article, issued by a court of another state or of a Native  
12 American tribe that order the defendant to refrain from abusing or threatening to  
13 abuse a person eligible for relief, if the order is enforceable under § 4–508.1 of the  
14 Family Law Article.

15           (2) A judge may allow the pretrial release of a defendant described in  
16 paragraph (1) of this subsection on:

17                   (i) suitable bail;

18                   (ii) any other conditions that will reasonably ensure that the  
19 defendant will not flee or pose a danger to another person or the community; or

20                   (iii) both bail and other conditions described under  
21 subparagraph (ii) of this paragraph.

22           (3) When a defendant described in paragraph (1) of this subsection is  
23 presented to the court under Maryland Rule 4–216(f), the judge shall order the  
24 continued detention of the defendant if the judge determines that neither suitable bail  
25 nor any condition or combination of conditions will reasonably ensure that the  
26 defendant will not flee or pose a danger to another person or the community before the  
27 trial.

28           **(F) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE**  
29 **PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH COMMITTING A CRIME**  
30 **INVOLVING THE UNLAWFUL USE OR POSSESSION OF A FIREARM UNDER TITLE 4**  
31 **OR TITLE 5 OF THE CRIMINAL LAW ARTICLE OR TITLE 5 OF THE PUBLIC**  
32 **SAFETY ARTICLE IF THE DEFENDANT HAS BEEN PREVIOUSLY CONVICTED OF A**

1 **CRIME INVOLVING THE UNLAWFUL USE OR POSSESSION OF A FIREARM UNDER**  
2 **TITLE 4 OR TITLE 5 OF THE CRIMINAL LAW ARTICLE OR TITLE 5 OF THE**  
3 **PUBLIC SAFETY ARTICLE.**

4           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2007.