

CHAPTER 42

(House Bill 88)

AN ACT concerning

Criminal Procedure – Restrictions on Pretrial Release – Offenses Involving Firearms – Repeat Offenders

FOR the purpose of prohibiting a District Court commissioner from authorizing the pretrial release of a defendant charged with a certain offense involving a firearm if the defendant previously was convicted of a certain offense involving a firearm; providing that a judge may authorize the pretrial release of a certain defendant on suitable bail or certain other conditions or both; requiring a judge to order the continued detention of a certain defendant under certain circumstances at a certain time; creating a rebuttable presumption that a certain defendant will flee and pose a danger to another person or the community; and generally relating to restrictions on pretrial release.

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 5–202
Annotated Code of Maryland
(2008 Replacement Volume)

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

Article – Criminal Procedure

5–202.

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

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

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

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

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

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

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

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

1. suitable bail;

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

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

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

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

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

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

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

- (iii) burglary in the first degree under § 6–202 of the Criminal Law Article;
- (iv) burglary in the second degree under § 6–203 of the Criminal Law Article;
- (v) burglary in the third degree under § 6–204 of the Criminal Law Article;
- (vi) causing abuse to a child under § 3–601 or § 3–602 of the Criminal Law Article;
- (vii) a crime that relates to a destructive device under § 4–503 of the Criminal Law Article;
- (viii) a crime that relates to a controlled dangerous substance under §§ 5–602 through 5–609 or § 5–612 or § 5–613 of the Criminal Law Article;
- (ix) manslaughter by vehicle or vessel under § 2–209 of the Criminal Law Article; and
- (x) a crime of violence.

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

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

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

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

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

- (ii) the provisions of an order for protection, as defined in § 4–508.1 of the Family Law Article, issued by a court of another state or of a Native

American tribe that order the defendant to refrain from abusing or threatening to abuse a person eligible for relief, if the order is enforceable under § 4-508.1 of the Family Law Article.

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

(i) suitable bail;

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

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

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

(F) (1) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH ONE OF THE FOLLOWING CRIMES IF THE DEFENDANT HAS PREVIOUSLY BEEN CONVICTED OF ONE OF THE FOLLOWING CRIMES:

(I) WEARING, CARRYING, OR TRANSPORTING A HANDGUN UNDER § 4-203 OF THE CRIMINAL LAW ARTICLE;

(II) USE OF A HANDGUN OR AN ANTIQUE FIREARM IN COMMISSION OF A CRIME UNDER § 4-204 OF THE CRIMINAL LAW ARTICLE;

(III) VIOLATING PROHIBITIONS RELATING TO ASSAULT PISTOLS UNDER § 4-303 OF THE CRIMINAL LAW ARTICLE;

(IV) USE OF A MACHINE GUN IN A CRIME OF VIOLENCE UNDER § 4-404 OF THE CRIMINAL LAW ARTICLE;

(V) USE OF A MACHINE GUN FOR AN AGGRESSIVE PURPOSE UNDER § 4-405 OF THE CRIMINAL LAW ARTICLE;

(VI) USE OF A WEAPON AS A SEPARATE CRIME UNDER § 5-621 OF THE CRIMINAL LAW ARTICLE;

(VII) POSSESSION OF A REGULATED FIREARM UNDER § 5-133 OF THE PUBLIC SAFETY ARTICLE;

(VIII) TRANSPORTING A REGULATED FIREARM FOR UNLAWFUL SALE OR TRAFFICKING UNDER § 5-140 OF THE PUBLIC SAFETY ARTICLE; OR

(IX) POSSESSION OF A RIFLE OR SHOTGUN BY A PERSON WITH A MENTAL DISORDER UNDER § 5-205 OF THE PUBLIC SAFETY ARTICLE.

(2) (I) A JUDGE MAY AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION ON:

1. SUITABLE BAIL;

2. ANY OTHER CONDITIONS THAT WILL REASONABLY ENSURE THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY; OR

3. BOTH BAIL AND OTHER CONDITIONS DESCRIBED UNDER ITEM 2 OF THIS SUBPARAGRAPH.

(II) WHEN A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION IS PRESENTED TO THE COURT UNDER MARYLAND RULE 4-216(F), THE JUDGE SHALL ORDER THE CONTINUED DETENTION OF THE DEFENDANT IF THE JUDGE DETERMINES THAT NEITHER SUITABLE BAIL NOR ANY CONDITION OR COMBINATION OF CONDITIONS WILL REASONABLY ENSURE THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY BEFORE THE TRIAL.

(3) THERE IS A REBUTTABLE PRESUMPTION THAT A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION WILL FLEE AND POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

Approved by the Governor, April 14, 2009.