

HOUSE BILL 207

E4, E2, E5

2lr0973

By: **Delegate Attar**

Introduced and read first time: January 13, 2022

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Pretrial Release – Crime Involving a Handgun**

3 FOR the purpose of prohibiting a judicial officer from authorizing the pretrial release of a
4 defendant charged with a crime involving a handgun after having been convicted of
5 a crime involving a handgun within a certain number of years; requiring that a
6 certain defendant be held without bail pending trial in a certain correctional facility;
7 and generally relating to pretrial release.

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Procedure
10 Section 5–101 and 5–202
11 Annotated Code of Maryland
12 (2018 Replacement Volume and 2021 Supplement)

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

15 **Article – Criminal Procedure**

16 5–101.

17 (a) This section shall be liberally construed to carry out the purpose of relying on
18 criminal sanctions instead of financial loss to ensure the appearance of a defendant in a
19 criminal case before verdict or pending a new trial.

20 (b) (1) Except as provided in subsection (c) of this section, if, from all the
21 circumstances, the court believes that a minor or adult defendant in a criminal case will
22 appear as required for trial before verdict or pending trial, the defendant may be released
23 on personal recognizance.

24 (2) A failure to appear as required by personal recognizance is subject to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 the penalties provided in § 5–211 of this title.

2 (c) A defendant may not be released on personal recognizance if the defendant is
3 charged with:

4 (1) a crime listed in § 5–202(d) of this title after having been convicted of a
5 crime listed in § 5–202(d) of this title; [or]

6 **(2) A CRIME INVOLVING A HANDGUN AFTER HAVING BEEN**
7 **CONVICTED OF A CRIME INVOLVING A HANDGUN WITHIN THE PREVIOUS 5 YEARS; OR**

8 **[(2)] (3)** a crime punishable by life imprisonment without parole.

9 5–202.

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

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

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

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

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

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

23 (ii) in any other jurisdiction of a crime that would be a crime of
24 violence if committed in this State; or

25 (iii) of an offense listed in subsection (f)(1) of this section.

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

28 1. suitable bail;

29 2. any other conditions that will reasonably ensure that the
30 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 item (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 a crime of violence or one of the following crimes:

1 (i) wearing, carrying, or transporting a handgun under § 4–203 of
2 the Criminal Law Article;

3 (ii) use of a handgun or an antique firearm in commission of a crime
4 under § 4–204 of the Criminal Law Article;

5 (iii) violating prohibitions relating to assault weapons under § 4–303
6 of the Criminal Law Article;

7 (iv) use of a machine gun in a crime of violence under § 4–404 of the
8 Criminal Law Article;

9 (v) use of a machine gun for an aggressive purpose under § 4–405 of
10 the Criminal Law Article;

11 (vi) use of a weapon as a separate crime under § 5–621 of the
12 Criminal Law Article;

13 (vii) possession of a regulated firearm under § 5–133 of the Public
14 Safety Article;

15 (viii) transporting a regulated firearm for unlawful sale or trafficking
16 under § 5–140 of the Public Safety Article; or

17 (ix) possession of a rifle or shotgun by a person with a mental
18 disorder under § 5–205 of the Public Safety Article.

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

21 1. suitable bail;

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

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

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

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

(g) (1) A District Court commissioner may not authorize the pretrial release of a defendant who:

(i) is registered, or the commissioner knows is required to register, under Title 11, Subtitle 7 of this article; or

(ii) is a sex offender who is required to register by another jurisdiction, a federal, military, or tribal court, or a foreign government.

(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.

(H) (1) A JUDICIAL OFFICER MAY NOT AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH A CRIME INVOLVING A HANDGUN AFTER HAVING BEEN CONVICTED OF A CRIME INVOLVING A HANDGUN WITHIN THE PREVIOUS 5 YEARS.

(2) A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION SHALL BE HELD WITHOUT BAIL PENDING TRIAL IN A CORRECTIONAL FACILITY, AS DEFINED IN § 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.