

SENATE BILL 983

E2, E4

7lr2871
CF 7lr3059

By: **Senator Muse**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Pretrial Release**

3 FOR the purpose of altering a certain requirement for the construction of a certain
4 provision of law relating to pretrial release of a certain defendant on personal
5 recognizance; altering a certain authorization for a court to release a certain
6 defendant on personal recognizance so as to require that a defendant charged only
7 with one or more misdemeanors be released on personal recognizance; altering the
8 circumstances under which a defendant may not be released on personal
9 recognizance; providing that the amount of a certain bail may not be higher than
10 necessary to achieve certain purposes under certain circumstances; providing that a
11 judicial officer may not set bail under certain circumstances; providing that a
12 defendant may satisfy a certain bail and be released pending trial after providing
13 certain security; providing that a defendant who is released before trial shall be
14 released either on personal recognizance or on bail, with additional conditions
15 imposed in accordance with a certain provision of law; prohibiting the release of a
16 certain defendant under certain circumstances; requiring a judicial officer to
17 consider certain information when determining whether to release a defendant
18 before trial and the amount of bail or appropriate conditions or both to impose on the
19 defendant at a certain time; repealing certain requirements that the court or a
20 District Court commissioner consider including certain protections as a condition of
21 pretrial release for a defendant under certain circumstances; repealing a certain
22 authorization for a court to require that a certain defendant be monitored by a
23 certain agency as a condition of pretrial release under certain circumstances;
24 authorizing a judicial officer to impose certain conditions in addition to ordering a
25 certain defendant released on either personal recognizance or bail; requiring a
26 certain person to provide the State's Attorney, Public Defender, and District Court
27 judges for the county with a certain report at a certain time; requiring the State's
28 Attorney, Public Defender, and District Court judges to review a certain report to
29 make a certain determination for a certain purpose; requiring that a certain counsel
30 be included in a certain review under certain circumstances; authorizing the filing
31 of a motion making a certain claim at a certain time under certain circumstances;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



requiring the court to review a certain motion and any supporting information at a certain time; requiring a court to make a certain presumption at a certain time; authorizing a court to alter a certain bail amount if a certain defendant proves certain matters by a certain standard of evidence; authorizing a court to modify certain terms of release for a certain defendant in a certain manner under certain circumstances; requiring a court to advise a certain defendant of certain rights at a certain time; prohibiting a certain release of a certain defendant from being premised on a waiver of a certain right or protection under certain circumstances; requiring that a certain judicial officer order that a certain defendant be detained pending trial under certain circumstances; requiring a defendant charged with first degree murder to be subject to a certain rebuttable presumption and detained pending trial; requiring that a defendant charged with escape from a correctional facility or other place of confinement be presumed ineligible for pretrial release and detained pending trial; requiring a judge to order the continued detention of a certain defendant if the judge makes a certain determination at a certain time; altering certain restrictions on pretrial release; authorizing a judge to release a certain defendant on certain conditions of release, bond, or both release and bond; defining a certain term; and generally relating to pretrial release.

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 5–101
Annotated Code of Maryland
(2008 Replacement Volume and 2016 Supplement)

BY adding to
Article – Criminal Procedure
Section 5–103, 5–201, 5–201.1, 5–201.2, 5–202, and 5–202.1
Annotated Code of Maryland
(2008 Replacement Volume and 2016 Supplement)

BY repealing
Article – Criminal Procedure
Section 5–201 and 5–202
Annotated Code of Maryland
(2008 Replacement Volume and 2016 Supplement)

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

Article – Criminal Procedure

5–101.

(a) This section shall be liberally construed to [carry out the purpose of relying on criminal sanctions instead of financial loss to ensure the appearance of a defendant in a criminal case before verdict or pending a new trial] **AUTHORIZE RELEASE OF A**

1 **DEFENDANT PENDING TRIAL, WITH OR WITHOUT NONFINANCIAL CONDITIONS, BAIL,**
2 **OR BOTH, UNLESS IT IS SHOWN BY CLEAR AND CONVINCING EVIDENCE THAT THE**
3 **DEFENDANT:**

4 **(1) WILL NOT APPEAR WHEN REQUIRED; OR**

5 **(2) WILL POSE A DANGER TO AN ALLEGED VICTIM, WITNESS, OTHER**
6 **PERSONS, OR THE COMMUNITY.**

7 (b) (1) Except as provided in subsection (c) of this section, [if, from all the
8 circumstances, the court believes that a minor or adult defendant in a criminal case will
9 appear as required for trial before verdict or pending trial, the defendant may be released
10 on personal recognizance] **A DEFENDANT CHARGED ONLY WITH ONE OR MORE**
11 **MISDEMEANORS SHALL BE RELEASED ON PERSONAL RECOGNIZANCE.**

12 (2) A [failure] **PERSON RELEASED ON PERSONAL RECOGNIZANCE WHO**
13 **FAILS** to appear as required by [personal recognizance] A **JUDICIAL OFFICER** is subject
14 to the penalties provided in § 5–211 of this title.

15 (c) A defendant may not be released on personal recognizance if:

16 **(1) the defendant [is charged with]:**

17 **[(1)] (I) IS CHARGED WITH** a crime listed in [§ 5–202(d)] **§**
18 **5–202.1(D)** of this title [after having been convicted of a crime listed in § 5–202(d) of this
19 title; or];

20 **(II) HAS BEEN CONVICTED OF A CRIME LISTED IN § 5–202.1(D)**
21 **OF THIS TITLE WITHIN THE PREVIOUS 5 YEARS;**

22 **[(2)] (III) IS CHARGED WITH** a crime punishable by life imprisonment
23 without parole;

24 **(IV) IS CHARGED WITH A DOMESTICALLY RELATED CRIME, AS**
25 **DEFINED IN § 6–233 OF THIS ARTICLE;**

26 **(V) IS CHARGED IN MORE THAN ONE PENDING CRIMINAL**
27 **PROCEEDING; OR**

28 **(VI) HAS FAILED TO APPEAR IN ANY CRIMINAL PROCEEDING**
29 **WITHIN THE PREVIOUS 3 YEARS; OR**

30 **(2) A JUDICIAL OFFICER DETERMINES AND STATES IN A WRITTEN**
31 **ORDER THAT NONFINANCIAL CONDITIONS OR BAIL OR BOTH ARE REASONABLE AND**

1 NECESSARY BECAUSE RELEASE ON PERSONAL RECOGNIZANCE WILL NOT
2 REASONABLY ENSURE THE APPEARANCE OF THE DEFENDANT AS REQUIRED, OR
3 WILL ENDANGER THE SAFETY OF A PERSON OR THE COMMUNITY.

4 (D) (1) NOTWITHSTANDING ANY OTHER LAW OR RULE TO THE CONTRARY,
5 IN CIRCUMSTANCES IN WHICH A JUDICIAL OFFICER MAY IMPOSE BAIL, A JUDICIAL
6 OFFICER MAY NOT SET BAIL HIGHER THAN NECESSARY TO ENSURE THE FUTURE
7 APPEARANCE OF THE DEFENDANT OR PROTECT THE SAFETY OF A VICTIM, A
8 WITNESS, ANOTHER PERSON, OR THE COMMUNITY.

9 (2) A JUDICIAL OFFICER MAY NOT SET BAIL:

10 (I) SOLELY FOR THE PURPOSE OF DETAINING THE DEFENDANT;

11 (II) TO PUNISH THE DEFENDANT; OR

12 (III) TO PLACATE PUBLIC OPINION.

13 (3) A DEFENDANT MAY SATISFY ANY BAIL IMPOSED BY A JUDICIAL
14 OFFICER AND SHALL BE RELEASED PENDING TRIAL ON PROVIDING:

15 (I) 10% OF THE AMOUNT OF ANY BAIL OF \$2,500 OR LESS;

16 (II) 100% OF THE AMOUNT OF ANY BAIL IN UNITED STATES
17 CURRENCY OR THE EQUIVALENT;

18 (III) A DEED OF TRUST ON REAL ESTATE WITH AN EQUITY VALUE
19 IN EXCESS OF THE AMOUNT OF BAIL; OR

20 (IV) A BAIL BOND ISSUED BY AN AUTHORIZED BAIL BONDSMAN
21 OR SURETY INSURER.

22 5-103.

23 (A) (1) A DEFENDANT WHO IS RELEASED BEFORE TRIAL SHALL BE
24 RELEASED ON PERSONAL RECOGNIZANCE OR ON BAIL.

25 (2) ADDITIONAL CONDITIONS MAY BE IMPOSED IN ACCORDANCE
26 WITH § 5-201 OF THIS TITLE.

27 (B) IN ACCORDANCE WITH § 5-202 OF THIS TITLE, IF A JUDICIAL OFFICER
28 FINDS, AFTER AN INDIVIDUALIZED HEARING, THAT NO AMOUNT OF BAIL OR ANY
29 CONDITIONS OF RELEASE OR COMBINATION OF BOTH WILL REASONABLY ENSURE

1 THE APPEARANCE OF THE DEFENDANT AS REQUIRED AND THE SAFETY OF A VICTIM,
2 A WITNESS, ANOTHER PERSON, OR THE COMMUNITY, THE DEFENDANT MAY NOT BE
3 RELEASED.

4 (C) A JUDICIAL OFFICER SHALL CONSIDER THE FOLLOWING INFORMATION,
5 TO THE EXTENT AVAILABLE, WHEN DETERMINING WHETHER TO RELEASE A
6 DEFENDANT BEFORE TRIAL AND THE AMOUNT OF BAIL OR APPROPRIATE
7 CONDITIONS OR BOTH TO IMPOSE ON THE DEFENDANT WHEN RELEASED:

8 (1) THE NATURE AND CIRCUMSTANCES OF THE OFFENSE CHARGED;

9 (2) THE NATURE OF THE EVIDENCE AGAINST THE DEFENDANT;

10 (3) THE POTENTIAL SENTENCE ON CONVICTION;

11 (4) THE DEFENDANT'S PRIOR CONVICTIONS AND HISTORY OF
12 ARRESTS;

13 (5) THE DEFENDANT'S PRIOR RECORD OF APPEARANCE OR
14 NONAPPEARANCE AT COURT PROCEEDINGS;

15 (6) THE DEFENDANT'S PRIOR RECORD OF FLIGHT TO AVOID
16 PROSECUTION;

17 (7) THE DEFENDANT'S FAMILY AND COMMUNITY TIES;

18 (8) THE DEFENDANT'S EMPLOYMENT STATUS AND EMPLOYMENT
19 HISTORY;

20 (9) THE DEFENDANT'S FINANCIAL RESOURCES, INCLUDING ANY
21 LAWFUL SOURCE OF INCOME, EXPENSES PAID BY THE DEFENDANT, AND AVAILABLE
22 FINANCIAL SUPPORT FROM THE DEFENDANT'S FAMILY OR OTHERS;

23 (10) THE DEFENDANT'S MENTAL HEALTH STATUS;

24 (11) THE DEFENDANT'S LENGTH OF RESIDENCE IN THE COMMUNITY
25 AND THE STATE;

26 (12) ANY RECOMMENDATION OF AN AGENCY THAT CONDUCTS A
27 PRETRIAL RELEASE INVESTIGATION;

28 (13) ANY RECOMMENDATION OF THE STATE'S ATTORNEY OR
29 ARRESTING LAW ENFORCEMENT OFFICER;

(14) ANY INFORMATION OR RECOMMENDATION PRESENTED BY THE
DEFENDANT OR THE DEFENDANT'S ATTORNEY;

(15) THE DANGER POSED BY THE DEFENDANT TO AN ALLEGED VICTIM,
ANOTHER PERSON, OR THE COMMUNITY;

(16) THE WRITTEN OR ORAL STATEMENT OF THE VICTIM;

(17) ANY HISTORY OF REQUESTS FOR AN ISSUANCE OF PEACE ORDERS
OR PROTECTIVE ORDERS AGAINST THE DEFENDANT;

(18) THE DANGER TO SELF POSED BY THE DEFENDANT; AND

(19) ANY OTHER FACTOR BEARING ON THE RISK OF A WILLFUL
FAILURE TO APPEAR AND THE SAFETY OF AN ALLEGED VICTIM, ANOTHER PERSON,
OR THE COMMUNITY.

[5-201.

(a) (1) The court or a District Court commissioner shall consider including, as
a condition of pretrial release for a defendant, reasonable protections for the safety of the
alleged victim.

(2) If a victim has requested reasonable protections for safety, the court or
a District Court commissioner shall consider including, as a condition of pretrial release,
provisions regarding no contact with the alleged victim or the alleged victim's premises or
place of employment.

(b) (1) In accordance with eligibility criteria, conditions, and procedures
required under the Maryland Rules, the court may require, as a condition of a defendant's
pretrial release, that the defendant be monitored by a private home detention monitoring
agency licensed under Title 20 of the Business Occupations and Professions Article.

(2) A defendant placed in private home detention under paragraph (1) of
this subsection shall pay directly to the private home detention monitoring agency the
agency's monitoring fee.]

5-201.

IN ADDITION TO ORDERING THE DEFENDANT RELEASED ON EITHER
PERSONAL RECOGNIZANCE OR BAIL, A JUDICIAL OFFICER MAY IMPOSE ANY OF THE
FOLLOWING CONDITIONS:

(1) COMMITTING THE DEFENDANT TO THE CUSTODY OF A
RECOGNIZED ORGANIZATION THAT AGREES TO SUPERVISE THE DEFENDANT AND
ASSIST IN ENSURING THE DEFENDANT'S APPEARANCE IN COURT;

(2) PLACING THE DEFENDANT UNDER THE SUPERVISION OF A
GOVERNMENT AGENCY AUTHORIZED TO PERFORM SUCH SUPERVISION AND
CAPABLE OF ENFORCING COMPLIANCE WITH THE TERMS OF RELEASE IMPOSED BY
THE JUDICIAL OFFICER;

(3) REQUIRING THE DEFENDANT TO BE SUBJECT TO HOME
DETENTION MONITORING, WITH COSTS AND FEES TO BE PAID BY THE DEFENDANT,
UNLESS WAIVED BY THE COURT;

(4) SUBJECTING THE DEFENDANT TO REASONABLE RESTRICTIONS
WITH RESPECT TO TRAVEL, ASSOCIATION, AND RESIDENCE;

(5) PROHIBITING THE DEFENDANT FROM HAVING CONTACT WITH AN
ALLEGED VICTIM, INCLUDING EXCLUSION FROM THE VICTIM'S PLACE OF
RESIDENCE, PLACE OF EDUCATION, PLACE OF BUSINESS, OR PLACE OF
EMPLOYMENT;

(6) SUBJECTING THE DEFENDANT, FOR GOOD CAUSE SHOWN, TO ONE
OR MORE OF THE CONDITIONS AUTHORIZED UNDER § 9-304 OF THE CRIMINAL LAW
ARTICLE REASONABLY NECESSARY TO STOP OR PREVENT THE INTIMIDATION OF A
VICTIM OR WITNESS OR A VIOLATION OF § 9-302, § 9-303, OR § 9-305 OF THE
CRIMINAL LAW ARTICLE; OR

(7) SUBJECTING THE DEFENDANT TO ANY OTHER CONDITION
REASONABLY NECESSARY AND CALCULATED TO:

(I) ENSURE THE APPEARANCE OF THE DEFENDANT AS
REQUIRED;

(II) PROTECT THE SAFETY OF THE ALLEGED VICTIM; AND

(III) ENSURE THAT THE DEFENDANT WILL NOT POSE A DANGER
TO ANOTHER PERSON OR THE COMMUNITY.

5-201.1.

(A) IN THIS SECTION, "FINANCIAL RESOURCES" INCLUDES ANY:

(1) LAWFUL SOURCE OF INCOME;

1 **(2) PROOF OF EXPENSES PAID BY THE DEFENDANT; AND**

2 **(3) AVAILABLE FINANCIAL SUPPORT FROM THE DEFENDANT'S**
3 **FAMILY OR OTHERS.**

4 **(B) ONCE A WEEK, THE MANAGING OFFICIAL OF EACH LOCAL DETENTION**
5 **FACILITY SHALL PROVIDE THE STATE'S ATTORNEY, PUBLIC DEFENDER, AND**
6 **DISTRICT COURT JUDGES FOR THE COUNTY WITH A REPORT LISTING THE**
7 **DEFENDANTS INCARCERATED IN THE COUNTY WHO ARE AWAITING TRIAL.**

8 **(C) (1) TO AVOID UNNECESSARY DETENTION, THE STATE'S ATTORNEY,**
9 **PUBLIC DEFENDER, AND DISTRICT COURT JUDGES SHALL REVIEW THE REPORT TO**
10 **ASCERTAIN THE BASIS FOR THE INCARCERATION OF THE DEFENDANTS LISTED.**

11 **(2) IF A DEFENDANT IS REPRESENTED BY COUNSEL OTHER THAN THE**
12 **OFFICE OF THE PUBLIC DEFENDER, DEFENDANT'S COUNSEL SHALL BE INCLUDED**
13 **IN THE REVIEW OF THE REPORT ON BEHALF OF THAT DEFENDANT.**

14 **(D) IF A DEFENDANT REMAINS IN CUSTODY FOR LONGER THAN 72 HOURS**
15 **AFTER THE CONCLUSION OF THE DEFENDANT'S BAIL REVIEW HEARING IN THE**
16 **DISTRICT COURT, THE DEFENDANT OR COUNSEL ON BEHALF OF THE DEFENDANT**
17 **MAY FILE A MOTION TO CLAIM THAT THE BASIS FOR THE CONTINUED**
18 **INCARCERATION IS THE DEFENDANT'S LACK OF ACCESS TO FINANCIAL RESOURCES.**

19 **(E) THE COURT SHALL REVIEW A MOTION FILED UNDER SUBSECTION (D) OF**
20 **THIS SECTION AND ANY SUPPORTING INFORMATION DURING THE WEEKLY**
21 **POPULATION REVIEW.**

22 **(F) IN CONSIDERING THE MOTION, THE COURT SHALL PRESUME THAT THE**
23 **AMOUNT OF BAIL REQUIRED BY THE DISTRICT COURT IS REASONABLE AND**
24 **NECESSARY, AND MAY ALTER THE BAIL AMOUNT ONLY IF THE DEFENDANT PROVES,**
25 **BY A PREPONDERANCE OF THE EVIDENCE, THAT:**

26 **(1) NEW OR AMENDED INFORMATION RELATING TO THE**
27 **DEFENDANT'S ABILITY TO PAY THE BAIL EXISTS; OR**

28 **(2) THE COURT FAILED TO CONSIDER RELEVANT INFORMATION**
29 **WHEN BAIL WAS SET.**

30 **(G) IF THE COURT DETERMINES THAT THE DEFENDANT IS INCARCERATED**
31 **SOLELY DUE TO THE INABILITY TO AFFORD THE AMOUNT OF BAIL IMPOSED, THE**
32 **COURT MAY MODIFY THE TERMS OF RELEASE FOR THE DEFENDANT BY:**

1 **(1) REDUCING THE BAIL; OR**

2 **(2) ALLOWING THE RELEASE OF THE DEFENDANT ON PERSONAL**
3 **RECOGNIZANCE WITH CONDITIONS.**

4 **5–201.2.**

5 **(A) WHEN A JUDICIAL OFFICER IMPOSES ONE OR MORE NONFINANCIAL**
6 **CONDITIONS OF RELEASE ON A DEFENDANT, THE JUDICIAL OFFICER SHALL ADVISE**
7 **THE DEFENDANT OF THE DEFENDANT’S RIGHTS UNDER THE UNITED STATES AND**
8 **MARYLAND CONSTITUTIONS.**

9 **(B) THE RELEASE OF A DEFENDANT ON ONE OR MORE NONFINANCIAL**
10 **CONDITIONS MAY NOT BE PREMISED ON A WAIVER OF ANY CONSTITUTIONAL RIGHT**
11 **OR PROTECTION UNLESS SUCH A WAIVER IS GIVEN KNOWINGLY, VOLUNTARILY, AND**
12 **INTELLIGENTLY AFTER A MEANINGFUL OPPORTUNITY TO CONSULT WITH COUNSEL.**

13 **(C) THE IMPOSITION OF A NONFINANCIAL CONDITION MAY NOT LIMIT OR**
14 **MODIFY ANY CONSTITUTIONAL RIGHT OR PROTECTION OF A DEFENDANT.**

15 **[5–202.**

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

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

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

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

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

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

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

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

(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 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:

(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 weapons 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

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

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

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

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

13 (i) is registered under Title 11, Subtitle 7 of this article; or

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

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

18 1. suitable bail;

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

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

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

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

31 **5–202.**

32 **(A) IF A JUDICIAL OFFICER DETERMINES THAT NO AMOUNT OF BAIL OR**
33 **CONDITIONS OF RELEASE WILL REASONABLY ENSURE THE APPEARANCE OF THE**

1 DEFENDANT AS REQUIRED AND THE SAFETY OF AN ALLEGED VICTIM, WITNESS,
2 OTHER PERSON, AND THE COMMUNITY, THEN THE JUDICIAL OFFICER SHALL ORDER
3 THAT THE DEFENDANT BE DETAINED PENDING TRIAL.

4 (B) THERE IS A REBUTTABLE PRESUMPTION THAT A DEFENDANT CHARGED
5 WITH FIRST DEGREE MURDER IS INELIGIBLE FOR PRETRIAL RELEASE AND SHALL BE
6 DETAINED PENDING TRIAL.

7 (C) A DEFENDANT CHARGED WITH ESCAPE FROM A CORRECTIONAL
8 FACILITY OR OTHER PLACE OF CONFINEMENT SHALL BE PRESUMED INELIGIBLE
9 FOR PRETRIAL RELEASE AND SHALL BE DETAINED PENDING TRIAL.

10 (D) WHEN A DEFENDANT HAS BEEN DETAINED BY A DISTRICT COURT
11 COMMISSIONER AND IS PRESENTED TO A JUDGE IN ACCORDANCE WITH MARYLAND
12 RULE 4-216(F), THE JUDGE SHALL ORDER THE CONTINUED DETENTION OF THE
13 DEFENDANT IF THE JUDGE DETERMINES BY CLEAR AND CONVINCING EVIDENCE
14 THAT NEITHER SUITABLE BAIL NOR ANY CONDITION OR COMBINATION OF
15 CONDITIONS OF RELEASE WILL REASONABLY ENSURE THAT THE DEFENDANT WILL
16 NOT FLEE OR POSE A DANGER TO ANOTHER PERSON OR THE COMMUNITY BEFORE
17 TRIAL.

18 5-202.1.

19 (A) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE
20 PRETRIAL RELEASE OF A DEFENDANT WHO IS CHARGED WITH ONE OF THE
21 FOLLOWING CRIMES:

22 (1) BEING A DRUG KINGPIN UNDER § 5-613 OF THE CRIMINAL LAW
23 ARTICLE;

24 (2) A VIOLATION OF A PROVISION OF A TEMPORARY PROTECTIVE
25 ORDER DESCRIBED IN § 4-505(A)(2)(I) OF THE FAMILY LAW ARTICLE OR A
26 PROVISION OF A PROTECTIVE ORDER DESCRIBED IN § 4-506(D)(1) OF THE FAMILY
27 LAW ARTICLE THAT ORDERS THE DEFENDANT TO REFRAIN FROM ABUSING OR
28 THREATENING TO ABUSE A PERSON ELIGIBLE FOR RELIEF;

29 (3) A VIOLATION OF A PROVISION OF AN ORDER FOR PROTECTION, AS
30 DEFINED IN § 4-508.1 OF THE FAMILY LAW ARTICLE, ISSUED BY A COURT OF
31 ANOTHER STATE OR OF A NATIVE AMERICAN TRIBE THAT ORDERS THE DEFENDANT
32 TO REFRAIN FROM ABUSING OR THREATENING TO ABUSE A PERSON ELIGIBLE FOR
33 RELIEF, IF THE ORDER IS ENFORCEABLE UNDER § 4-508.1 OF THE FAMILY LAW
34 ARTICLE;

1 (4) WEARING, CARRYING, OR TRANSPORTING A HANDGUN UNDER §
2 4–203 OF THE CRIMINAL LAW ARTICLE;

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

5 (6) A VIOLATION OF A PROHIBITION RELATING TO ASSAULT WEAPONS
6 UNDER § 4–303 OF THE CRIMINAL LAW ARTICLE;

7 (7) USE OF A MACHINE GUN IN A CRIME OF VIOLENCE UNDER § 4–404
8 OF THE CRIMINAL LAW ARTICLE;

9 (8) USE OF A MACHINE GUN FOR AN AGGRESSIVE PURPOSE UNDER §
10 4–405 OF THE CRIMINAL LAW ARTICLE;

11 (9) USE OF A WEAPON AS A SEPARATE CRIME UNDER § 5–621 OF THE
12 CRIMINAL LAW ARTICLE;

13 (10) POSSESSION OF A REGULATED FIREARM BY A PROHIBITED
14 PERSON UNDER § 5–133 OF THE PUBLIC SAFETY ARTICLE;

15 (11) TRANSPORTING A REGULATED FIREARM FOR UNLAWFUL SALE OR
16 TRAFFICKING UNDER § 5–140 OF THE PUBLIC SAFETY ARTICLE; OR

17 (12) POSSESSION OF A RIFLE OR SHOTGUN BY A PERSON WITH A
18 MENTAL DISORDER UNDER § 5–205 OF THE PUBLIC SAFETY ARTICLE.

19 (B) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE
20 PRETRIAL RELEASE OF A PERSON WHO IS:

21 (1) REGISTERED AS A SEX OFFENDER UNDER TITLE 11, SUBTITLE 7
22 OF THIS ARTICLE; OR

23 (2) A SEX OFFENDER WHO IS REQUIRED TO REGISTER BY ANOTHER
24 JURISDICTION, A FEDERAL, MILITARY, OR TRIBAL COURT, OR A FOREIGN
25 GOVERNMENT.

26 (C) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE
27 PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH A CRIME OF VIOLENCE IF THE
28 DEFENDANT HAS BEEN PREVIOUSLY CONVICTED:

29 (1) IN THIS STATE OF A CRIME OF VIOLENCE;

1 (2) OF A CRIME, IN ANY OTHER JURISDICTION, THAT WOULD BE A
2 CRIME OF VIOLENCE IF COMMITTED IN THIS STATE; OR

3 (3) OF AN OFFENSE LISTED IN SUBSECTION (A) OF THIS SECTION.

4 (D) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE
5 PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH COMMITTING ONE OF THE
6 FOLLOWING CRIMES WHILE THE DEFENDANT WAS RELEASED ON BAIL OR PERSONAL
7 RECOGNIZANCE:

8 (1) AIDING, COUNSELING, OR PROCURING ARSON IN THE FIRST
9 DEGREE UNDER § 6-102 OF THE CRIMINAL LAW ARTICLE;

10 (2) ARSON IN THE SECOND DEGREE OR ATTEMPTING, AIDING,
11 COUNSELING, OR PROCURING ARSON IN THE SECOND DEGREE UNDER § 6-103 OF
12 THE CRIMINAL LAW ARTICLE;

13 (3) BURGLARY IN THE FIRST DEGREE UNDER § 6-202 OF THE
14 CRIMINAL LAW ARTICLE;

15 (4) BURGLARY IN THE SECOND DEGREE UNDER § 6-203 OF THE
16 CRIMINAL LAW ARTICLE;

17 (5) BURGLARY IN THE THIRD DEGREE UNDER § 6-204 OF THE
18 CRIMINAL LAW ARTICLE;

19 (6) CAUSING ABUSE TO A CHILD UNDER § 3-601 OR § 3-602 OF THE
20 CRIMINAL LAW ARTICLE;

21 (7) A CRIME THAT RELATES TO A DESTRUCTIVE DEVICE UNDER §
22 4-503 OF THE CRIMINAL LAW ARTICLE;

23 (8) A CRIME THAT RELATES TO A CONTROLLED DANGEROUS
24 SUBSTANCE UNDER §§ 5-602 THROUGH 5-609, § 5-612, OR § 5-613 OF THE
25 CRIMINAL LAW ARTICLE;

26 (9) MANSLAUGHTER BY VEHICLE OR VESSEL UNDER § 2-209 OF THE
27 CRIMINAL LAW ARTICLE;

28 (10) A CRIME OF VIOLENCE;

29 (11) A CRIME REQUIRING REGISTRATION AS A SEX OFFENDER UNDER
30 TITLE 11, SUBTITLE 7 OF THIS ARTICLE; OR

1 **(12) ANY OTHER FELONY.**

2 **(E) A JUDGE MAY RELEASE A DEFENDANT DESCRIBED IN SUBSECTIONS (A)**
3 **THROUGH (D) OF THIS SECTION ON:**

4 **(1) CONDITIONS OF RELEASE SET FORTH IN § 5–201 OF THIS**
5 **SUBTITLE;**

6 **(2) BOND; OR**

7 **(3) BOTH BOND AND CONDITIONS OF RELEASE SET FORTH IN § 5–201**
8 **OF THIS SUBTITLE.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
10 1, 2017.