

HOUSE BILL 1218

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7lr2591

By: **Delegates Moon, Angel, Hill, Morales, Pena-Melnyk, Platt, Robinson, and
Tarlau**

Introduced and read first time: February 10, 2017

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Pretrial Release – Financial Conditions**

3 FOR the purpose of prohibiting a certain court from including as a condition of pretrial
4 release a certain financial condition; requiring each county in the State to establish
5 a certain pretrial supervision program that provides certain services; making
6 conforming changes; providing for the applicability of this Act; providing for a
7 delayed effective date for a certain provision of this Act; and generally relating to
8 pretrial release.

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Procedure
11 Section 5–201, 5–202, 5–203, 5–204, 5–205(a), 5–207, 5–211, and 5–214
12 Annotated Code of Maryland
13 (2008 Replacement Volume and 2016 Supplement)

14 BY adding to
15 Article – Criminal Procedure
16 Section 5–205(e)
17 Annotated Code of Maryland
18 (2008 Replacement Volume and 2016 Supplement)

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

21 **Article – Criminal Procedure**

22 5–201.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(a) (1) **THIS SUBSECTION APPLIES ONLY TO A COUNTY IN THE STATE THAT OPERATES A PRETRIAL SUPERVISION PROGRAM.**

(2) **A COURT MAY NOT INCLUDE A FINANCIAL CONDITION AS A CONDITION OF PRETRIAL RELEASE.**

(B) (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)] (C) (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.

5–202.

(a) **THE PROVISIONS OF THIS SECTION RELATING TO BAIL APPLY ONLY TO A COUNTY IN THE STATE THAT DOES NOT OPERATE A PRETRIAL SUPERVISION PROGRAM.**

(B) 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)] (C) (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.

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

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

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

7 (iii) of an offense listed in subsection ~~[(f)(1)] (G)(1)~~ of this section.

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

10 1. suitable bail;

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

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

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

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

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

27 (i) aiding, counseling, or procuring arson in the first degree under §
28 6–102 of the Criminal Law Article;

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

31 (iii) burglary in the first degree under § 6–202 of the Criminal Law
32 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)] (F) (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)] (G) (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.

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

- 3 1. suitable bail;
- 4 2. any other conditions that will reasonably ensure that the
5 defendant will not flee or pose a danger to another person or the community; or
- 6 3. both bail and other conditions described under item 2 of
7 this subparagraph.

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

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

16 **[(g)] (H)** (1) A District Court commissioner may not authorize the pretrial
17 release of a defendant who:

- 18 (i) is registered under Title 11, Subtitle 7 of this article; or
- 19 (ii) is a sex offender who is required to register by another
20 jurisdiction, a federal, military, or tribal court, or a foreign government.

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

- 23 1. suitable bail;
- 24 2. any other conditions that will reasonably ensure that the
25 defendant will not flee or pose a danger to another person or the community; or
- 26 3. both bail and other conditions described under item 2 of
27 this subparagraph.

28 (ii) When a defendant described in paragraph (1) of this subsection
29 is presented to the court under Maryland Rule 4–216(f), the judge shall order the continued
30 detention of the defendant if the judge determines that neither suitable bail nor any
31 condition or combination of conditions will reasonably ensure that the defendant will not
32 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.

5–203.

(a) **THIS SECTION DOES NOT APPLY TO A COUNTY IN THE STATE THAT OPERATES A PRETRIAL SUPERVISION PROGRAM.**

(B) (1) Subject to paragraphs (2) and (3) of this subsection, a circuit court may adopt rules setting the terms and conditions of bail bonds filed in that court and rules on the qualifications of and fees charged by bail bondsmen.

(2) Notwithstanding any other law or rule to the contrary, if expressly authorized by the court, a defendant or a private surety acting for the defendant may post a bail bond by executing it in the full penalty amount and depositing with the clerk of court the greater of 10% of the penalty amount or \$25.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, if an order setting “cash bail” or “cash bond” specifies that it may be posted by the defendant only, the “cash bail” or “cash bond” may be posted by the defendant, by an individual, or by a private surety, acting for the defendant, that holds a certificate of authority in the State.

(ii) Unless otherwise ordered by the court, an order setting “cash bail” or “cash bond” for a failure to pay support under Title 10, Title 11, Title 12, or Title 13 of the Family Law Article may be posted by the defendant only.

(4) A bail bond commissioner may be appointed to carry out rules adopted under this section.

(5) A violation of a rule adopted under this section is contempt of court and shall be punished in accordance with Title 15, Chapter 200 of the Maryland Rules.

(6) A person may not engage in the business of becoming a surety for compensation on bail bonds in criminal cases unless the person is:

(i) approved in accordance with any rules adopted under this section; and

(ii) if required under the Insurance Article, licensed in accordance with the Insurance Article.

[(b)] (C) (1) In the circuit courts in the Seventh Judicial Circuit, a bail bondsman approved under subsection **[(a)] (B)** of this section shall pay a license fee of 1% of the gross value of all bail bonds written in all courts of the circuit, if the fee is approved by the court of the county in which it applies.

(2) The fee shall be paid to the court as required by the rules of court and shall be used to pay the expenses of carrying out this section.

(3) Any absolute bail bond forfeitures collected may be used to pay the expenses of carrying out this section.

5–204.

(a) In a criminal case in a circuit court in which the defendant is allowed to give bail, the clerk of the court may take the bail if:

(1) the court adjourns before the defendant has secured the bail; and

(2) the court before adjournment, or any judge of the court after adjournment, issues an order that sets the amount of the bail and directs the clerk to take the bail.

(b) **(1) THIS SUBSECTION APPLIES ONLY TO A COUNTY IN THE STATE THAT DOES NOT OPERATE A PRETRIAL SUPERVISION PROGRAM.**

(2) If a defendant is arrested on indictment in a bailable case in a circuit court and is confined during the recess of the court, any judge of the court, by written order, may set the amount of the bail and direct the clerk to take the bail with security.

(c) The clerk may not accept security for bail unless:

(1) the person offering the security states under oath that the person owns real or personal property worth the amount of the bail, exclusive of the person's right to exemption from execution; and

(2) the clerk is satisfied that the statement is true.

5–205.

(a) **[A] EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, A** District Court judge may:

(1) set bond or bail;

(2) release a defendant on personal recognizance or on a personal or other bail bond;

(3) commit a defendant to a correctional facility in default of a bail bond;

(4) order a bail bond forfeited if the defendant fails to meet the conditions of the bond; and

(5) exercise all of the powers of a justice of the peace under the Constitution of 1867.

(E) A DISTRICT COURT JUDGE IN A COUNTY IN THE STATE THAT OPERATES A PRETRIAL SUPERVISION PROGRAM MAY NOT INCLUDE A FINANCIAL CONDITION AS A CONDITION OF PRETRIAL RELEASE.

5–207.

(a) If a defendant is found guilty in a circuit court and sentenced to imprisonment, a bond on which the defendant was released before the sentencing is terminated.

(b) (1) [If] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF the defendant files a notice of appeal and the sentencing court requires a bond to be posted, the defendant shall post a new bond.

(2) A SENTENCING COURT IN A COUNTY IN THE STATE THAT OPERATES A PRETRIAL SUPERVISION PROGRAM MAY NOT INCLUDE A FINANCIAL CONDITION AS A CONDITION OF RELEASE PENDING APPEAL.

5–211.

(a) THE PROVISIONS OF THIS SECTION RELATING TO BAIL APPLY ONLY TO A COUNTY IN THE STATE THAT DOES NOT OPERATE A PRETRIAL SUPERVISION PROGRAM.

(B) If a person has been charged with a crime and admitted to bail or released on recognizance and the person forfeits the bail or recognizance and willfully fails to surrender, a bench warrant shall be issued for the person's arrest.

[(b)] (C) (1) On issuing a bench warrant under subsection **[(a)] (B)** of this section, a judge may also set a bond in the case.

(2) If a person against whom a bench warrant has been issued posts a bond that has been set by a judge under paragraph (1) of this subsection:

(i) a judicial officer shall mark the bench warrant satisfied; and

(ii) the court shall reschedule the hearing or trial.

[(c)] (D) A person who has been admitted to bail or released on recognizance in a criminal case in the State and who willfully fails to surrender within 30 days after the date of forfeiture is guilty of a misdemeanor and on conviction is subject to:

(1) a fine not exceeding \$5,000 or imprisonment not exceeding 5 years or both, if the bail or recognizance was given in connection with a charge of a felony or pending an appeal, certiorari, habeas corpus, or postconviction proceeding after conviction of any crime; or

(2) a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both, if the bail or recognizance was given in connection with a charge of a misdemeanor, or for appearance as a witness.

[(d)] (E) This section does not diminish the power of a court to punish for contempt.

[(e)] (F) A person who is prosecuted under subsection **[(c)(1)] (D)(1)** of this section is subject to § 5–106(b) of the Courts Article regarding the exemption from the statute of limitations for the institution of prosecution and the right of in banc review.

5–214.

(A) THIS SECTION APPLIES ONLY TO A COUNTY IN THE STATE THAT DOES NOT OPERATE A PRETRIAL SUPERVISION PROGRAM.

(B) Notwithstanding Maryland Rule 4–217(g), after a defendant has appeared in person before the commissioner or judge in a case, the defendant may post bond by means of electronic transmission or hand delivery of the relevant documentation without appearing before the commissioner or judge, if authorized by:

(1) in the circuit court, the County Administrative Judge; and

(2) in the District Court, the Chief Judge of the District Court.

SECTION 2. AND BE IT FURTHER ENACTED, That each county in the State shall establish a program that provides pretrial supervision services, including agent supervision, location tracking services, and reminder notifications for court appearances.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect December 31, 2018.

SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in Section 3 of this Act, this Act shall take effect October 1, 2017.