

SENATE BILL 920

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By: **Senator Miller**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Criminal Procedure – Pretrial Release

FOR the purpose of repealing the authority of a District Court commissioner to set bond or commit persons to jail in default of bond; prohibiting a District Court commissioner from issuing an arrest warrant based solely on an application for a statement of charges filed by a certain person; providing that on the filing of an application for a statement of charges by a certain person, a District Court commissioner who finds probable cause may issue a summons for the defendant to appear at a preliminary appearance before a judge; authorizing the Chief Judge of the District Court to add to the misdemeanors that are subject to citation in lieu of arrest under a certain provision of law; authorizing a District Court commissioner who finds probable cause to release a defendant charged with a felony from pretrial detention under certain circumstances; prohibiting a District Court commissioner who finds probable cause from authorizing the pretrial release of a defendant charged with a felony if a law enforcement officer certifies by affidavit and articulates under oath certain specific facts; requiring a law enforcement officer to appear at a certain pretrial release hearing if the law enforcement officer submits a certain affidavit; requiring a District Court commissioner to release a defendant charged with a misdemeanor on personal recognizance under certain circumstances; prohibiting a District Court commissioner who finds probable cause from authorizing the pretrial release of a defendant charged with a misdemeanor if a law enforcement officer certifies by affidavit and articulates under oath certain specific facts; requiring a District Court commissioner to release a certain defendant to the custody of a certain pretrial services agency under certain circumstances; requiring a law enforcement officer to appear at a certain pretrial release hearing if the law enforcement officer submits a certain affidavit and the defendant is not released to the custody of a certain pretrial services agency; providing that, notwithstanding any other law or rule, a defendant who is detained in custody after being brought before a District Court commissioner shall be taken before a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



certain judicial officer without unnecessary delay and in no event later than a certain time; and generally relating to pretrial release.

BY repealing and reenacting, with amendments,
 Article – Courts and Judicial Proceedings
 Section 2–607
 Annotated Code of Maryland
 (2013 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
 Article – Criminal Procedure
 Section 4–101
 Annotated Code of Maryland
 (2008 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,
 Article – Criminal Procedure
 Section 5–202
 Annotated Code of Maryland
 (2008 Replacement Volume and 2013 Supplement)

BY adding to
 Article – Criminal Procedure
 Section 5–202.1, 5–202.2, and 5–202.3
 Annotated Code of Maryland
 (2008 Replacement Volume and 2013 Supplement)

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

Article – Courts and Judicial Proceedings

2–607.

(a) (1) The administrative judge of each district, with the approval of the Chief Judge of the District Court, may appoint the number of commissioners necessary to perform the functions of the office within each county.

(2) In multicounty districts, the administrative judge shall obtain the recommendation of the resident judge in each county as to the number of commissioners required in the county and as to the persons to be appointed.

(b) (1) Commissioners shall be adult residents of the counties in which they serve, but they need not be lawyers.

(2) Each commissioner shall hold office at the pleasure of the Chief Judge of the District Court, and has the powers and duties prescribed by law.

(3) Except without additional compensation, unless otherwise fixed by law, an employee of the District Court, who is an adult, may be granted, in the same manner, commissioner powers and duties in the county where the employee is employed.

(c) (1) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS SUBSECTION,** A commissioner shall receive applications and determine probable cause for the issuance of charging documents.

(2) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (6) OF THIS SUBSECTION,** A commissioner shall advise arrested persons of their constitutional rights, [set bond or commit persons to jail in default of bond or] release them on personal recognizance if circumstances warrant, and conduct investigations and inquiries into the circumstances of any matter presented to the commissioner in order to determine if probable cause exists for the issuance of a charging document, warrant, or criminal summons and, in general, perform all the functions of committing magistrates as exercised by the justices of the peace prior to July 5, 1971.

(3) There shall be in each county, at all times, one or more commissioners available for the convenience of the public and police in obtaining charging documents, warrants, or criminal summonses and to advise arrested persons of their rights as required by law.

(4) A commissioner may exercise the powers of office in any county to which the commissioner is assigned by the Chief Judge of the District Court or a designee of the Chief Judge of the District Court.

(5) The Chief Judge of the District Court may authorize one or more commissioners to perform the duties of a commissioner regarding persons arrested in a county other than the county in which the commissioner resides and for which the commissioner was appointed when the arrested persons are brought before the commissioner by a peace officer of the jurisdiction in which that arrest was made.

(6) (i) An individual may file an application for a statement of charges with a District Court commissioner.

(ii) **[On] SUBJECT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH,** ON review of an application for a statement of charges, a District Court commissioner may issue a summons or an arrest warrant.

(iii) A District Court commissioner may issue an arrest warrant only on a finding that:

1. There is probable cause to believe that the defendant committed the offense charged in the charging document; and

2. A. The defendant previously has failed to respond to a summons that has been personally served or a citation;

B. The whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court;

C. The defendant is in custody for another offense; or

D. There is probable cause to believe that the defendant poses a danger to another person or to the community.

(IV) A DISTRICT COURT COMMISSIONER MAY NOT ISSUE AN ARREST WARRANT BASED SOLELY ON AN APPLICATION FOR A STATEMENT OF CHARGES FILED BY A PERSON OTHER THAN A PEACE OFFICER OR A STATE'S ATTORNEY.

(V) ON THE FILING OF AN APPLICATION FOR A STATEMENT OF CHARGES BY A PERSON OTHER THAN A PEACE OFFICER OR A STATE'S ATTORNEY, A DISTRICT COURT COMMISSIONER WHO FINDS PROBABLE CAUSE MAY ISSUE A SUMMONS FOR THE DEFENDANT TO APPEAR AT A PRELIMINARY APPEARANCE BEFORE A JUDGE.

(d) (1) The authority under this subsection applies only to a respondent who is an adult.

(2) A commissioner may issue an interim order for protection of a person eligible for relief in accordance with § 4–504.1 of the Family Law Article or a petitioner in accordance with § 3–1503.1 of this article.

(e) Notwithstanding the residence requirements set out in subsection (b) of this section, the Chief Judge of the District Court or a designee of the Chief Judge of the District Court may assign a commissioner of the District Court to serve temporarily in any county.

Article – Criminal Procedure

4–101.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) “Citation” means a written charging document that a police officer or fire marshal issues to a defendant, alleging the defendant has committed a crime.

(ii) “Citation” does not include an indictment, information, or statement of charges.

(3) “Fire marshal” means:

- (i) the State Fire Marshal;
- (ii) a deputy State fire marshal; or
- (iii) as designated under § 6–304 of the Public Safety Article:
 1. an assistant State fire marshal; or
 2. a special assistant State fire marshal.

(4) “Police officer” has the meaning stated in § 2–101 of this article.

(b) Within areas of the National Park System, a United States Park Police officer may exercise the authority of a police officer to issue a citation under this section.

(c) (1) (i) Subject to paragraph (2) of this subsection, in addition to any other law allowing a crime to be charged by citation, a police officer shall charge by citation for:

1. any misdemeanor or local ordinance violation that does not carry a penalty of imprisonment;
2. any misdemeanor or local ordinance violation for which the maximum penalty of imprisonment is 90 days or less, except:
 - A. failure to comply with a peace order under § 3–1508 of the Courts Article;
 - B. failure to comply with a protective order under § 4–509 of the Family Law Article;
 - C. violation of a condition of pretrial or posttrial release while charged with a sexual crime against a minor under § 5–213.1 of this article;
 - D. possession of an electronic control device after conviction of a drug felony or crime of violence under § 4–109(b) of the Criminal Law Article;
 - E. violation of an out-of-state domestic violence order under § 4–508.1 of the Family Law Article; or

F. abuse or neglect of an animal under § 10–604 of the Criminal Law Article; or

3. possession of marijuana under § 5–601 of the Criminal Law Article.

(ii) Subject to paragraph (2) of this subsection, in addition to any other law allowing a crime to be charged by citation, a police officer may charge by citation for:

1. sale of an alcoholic beverage to an underage drinker or intoxicated person under Article 2B, § 12–108 of the Code;

2. malicious destruction of property under § 6–301 of the Criminal Law Article, if the amount of damage to the property is less than \$500; or

3. misdemeanor theft under § 7–104(g)(2) of the Criminal Law Article.

(2) A police officer may charge a defendant by citation only if:

(i) the officer is satisfied with the defendant's evidence of identity;

(ii) the officer reasonably believes that the defendant will comply with the citation;

(iii) the officer reasonably believes that the failure to charge on a statement of charges will not pose a threat to public safety;

(iv) the defendant is not subject to arrest for another criminal charge arising out of the same incident; and

(v) the defendant complies with all lawful orders by the officer.

(3) A police officer who has grounds to make a warrantless arrest for an offense that may be charged by citation under this subsection may:

(i) issue a citation in lieu of making the arrest; or

(ii) make the arrest and subsequently issue a citation in lieu of continued custody.

(d) (1) Subject to paragraph (2) of this subsection, in addition to any other law allowing a crime to be charged by citation, a fire marshal may issue a citation for:

(i) discharging fireworks without a permit under § 10–104 or § 10–110 of the Public Safety Article;

(ii) possessing with intent to discharge or allowing the discharge of fireworks under § 10–104 or § 10–110 of the Public Safety Article; or

(iii) maintaining a fire hazard under § 6–317 of the Public Safety Article.

(2) A fire marshal may issue a citation if the fire marshal is satisfied with the defendant's evidence of identity and reasonably believes that the defendant will comply with the citation.

(e) (1) This section does not apply to a citation that is:

(i) authorized for a violation of a parking ordinance or a regulation adopted by a State unit or political subdivision of the State under Title 26, Subtitle 3 of the Transportation Article;

(ii) authorized by the Department of Natural Resources under § 1–205 of the Natural Resources Article; or

(iii) authorized by Baltimore City under § 16–16A (special enforcement officers) of the Code of Public Local Laws of Baltimore City for violation of a code, ordinance, or public local law of Baltimore City concerning building, housing, health, fire, safety, zoning, or sanitation.

(2) Except as otherwise expressly provided by law, the Chief Judge of the District Court shall prescribe a uniform, statewide form of a citation.

(3) Except for the uniform motor vehicle citation form, the law enforcement agencies of the State, the United States Park Police, and the Office of the State Fire Marshal shall reimburse the District Court for printing the citation forms that law enforcement officers and the State Fire Marshal require.

(F) THE CHIEF JUDGE OF THE DISTRICT COURT MAY ADD TO THE MISDEMEANORS THAT ARE SUBJECT TO CITATION IN LIEU OF ARREST UNDER THIS SECTION.

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 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 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.

(g) (1) A District Court commissioner may not authorize the pretrial release of a defendant who is registered under Title 11, Subtitle 7 of this 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.

5–202.1.

(A) EXCEPT AS PROVIDED IN § 5–202 OF THIS SUBTITLE AND SUBSECTION (B) OF THIS SECTION, A DISTRICT COURT COMMISSIONER WHO FINDS PROBABLE CAUSE MAY RELEASE A DEFENDANT CHARGED WITH A FELONY FROM PRETRIAL DETENTION:

(1) IF THE DEFENDANT POSTS A PRESET BOND IN ACCORDANCE WITH A SCHEDULE ADOPTED BY THE CHIEF JUDGE OF THE DISTRICT COURT; OR

(2) IF, BY RELEASING THE DEFENDANT TO THE CUSTODY OF THE AUTHORIZED PRETRIAL SERVICES AGENCY, IF ANY, THE PRETRIAL SERVICES AGENCY DETERMINES THE DEFENDANT TO BE ELIGIBLE AND ACCEPTS THE DEFENDANT INTO ITS PROGRAM.

(B) (1) A DISTRICT COURT COMMISSIONER WHO FINDS PROBABLE CAUSE MAY NOT AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH A FELONY IF A LAW ENFORCEMENT OFFICER CERTIFIES BY AFFIDAVIT AND ARTICULATES UNDER OATH SPECIFIC FACTS TO SUPPORT THE CONTENTION THAT THE DEFENDANT:

(I) IS A FLIGHT RISK; OR

(II) POSES A CREDIBLE PUBLIC SAFETY RISK.

(2) IF A LAW ENFORCEMENT OFFICER SUBMITS AN AFFIDAVIT UNDER THIS SUBSECTION, THE LAW ENFORCEMENT OFFICER SHALL APPEAR AT

A PRETRIAL RELEASE HEARING FOR THE DEFENDANT HELD BEFORE A JUDGE ON THE NEXT DAY THAT THE COURT IS IN SESSION.

5-202.2.

(A) EXCEPT AS PROVIDED IN § 5-202 OF THIS SUBTITLE AND SUBSECTION (B) OF THIS SECTION, A DISTRICT COURT COMMISSIONER SHALL RELEASE A DEFENDANT CHARGED WITH A MISDEMEANOR ON PERSONAL RECOGNIZANCE.

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A DISTRICT COURT COMMISSIONER WHO FINDS PROBABLE CAUSE MAY NOT AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH A MISDEMEANOR IF A LAW ENFORCEMENT OFFICER CERTIFIES BY AFFIDAVIT AND ARTICULATES UNDER OATH SPECIFIC FACTS TO SUPPORT THE CONTENTION THAT THE DEFENDANT:

(I) IS A FLIGHT RISK; OR

(II) POSES A CREDIBLE PUBLIC SAFETY RISK.

(2) IF A LAW ENFORCEMENT OFFICER SUBMITS AN AFFIDAVIT UNDER THIS SUBSECTION, THE DISTRICT COURT COMMISSIONER SHALL RELEASE THE DEFENDANT TO THE CUSTODY OF THE AUTHORIZED PRETRIAL SERVICES AGENCY, IF ANY, IF THE PRETRIAL SERVICES AGENCY DETERMINES THE DEFENDANT TO BE ELIGIBLE AND ACCEPTS THE DEFENDANT INTO ITS PROGRAM.

(3) IF A LAW ENFORCEMENT OFFICER SUBMITS AN AFFIDAVIT UNDER THIS SUBSECTION AND THE DEFENDANT IS NOT RELEASED TO THE CUSTODY OF THE PRETRIAL SERVICES AGENCY, THEN THE LAW ENFORCEMENT OFFICER SHALL APPEAR AT A PRETRIAL RELEASE HEARING FOR THE DEFENDANT HELD BEFORE A JUDGE ON THE NEXT DAY THAT THE COURT IS IN SESSION.

5-202.3.

NOTWITHSTANDING ANY OTHER LAW OR RULE, A DEFENDANT WHO IS DETAINED IN CUSTODY AFTER BEING BROUGHT BEFORE A DISTRICT COURT COMMISSIONER SHALL BE TAKEN BEFORE A JUDICIAL OFFICER OF THE DISTRICT COURT OR CIRCUIT COURT WITHOUT UNNECESSARY DELAY AND IN NO EVENT LATER THAN THE NEXT SESSION OF COURT AFTER THE DATE OF ARREST.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.