

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 983

(Senator Muse)

Judicial Proceedings

Judiciary

Criminal Procedure - Pretrial Release

This bill (1) requires that a judicial officer make an individualized determination regarding the release or detention of a defendant before trial; (2) requires that a judicial officer impose the least restrictive pretrial release conditions on a defendant that are reasonably necessary to ensure the defendant's appearance as required and the safety of each alleged victim, other person, or the community; (3) prohibits a judicial officer from giving preference to a particular condition of pretrial release; (4) requires that a judicial officer take into consideration all available information in determining conditions of pretrial release, as specified; and (5) prohibits a judicial officer from setting financial conditions of release for specified reasons. The bill also establishes the Pretrial Services Workgroup, to be staffed by the Governor's Office of Crime Control and Prevention (GOCCP).

The bill takes effect July 2, 2017. The provisions pertaining to the workgroup terminate June 30, 2018.

Fiscal Summary

State Effect: Depending on judicial discretion, future general fund expenditures increase for the Department of Public Safety and Correctional Services (DPSCS) if the bill limits the level of anticipated reductions in the pretrial detention population in Baltimore City that may have been realized under the Maryland Rules set to take effect July 1, 2017, partially offset by future increases in general fund expenditures for the Pretrial Release Services Program (PRSP) due to potential increased referrals to the program that may have occurred under the Maryland Rules. Any expense reimbursements for workgroup members and staffing costs for GOCCP are assumed to be minimal and absorbable within existing budgeted resources. Revenues are not affected.

Local Effect: Depending on judicial discretion, local expenditures increase if the bill limits the level of anticipated reductions in local pretrial detention populations that may have been realized under the Maryland Rules set to take effect July 1, 2017. Local revenues are not affected.

Small Business Effect: Meaningful impact on small business bail bondsmen due to expanded opportunities to use bail as a condition of pretrial release under the bill compared to the Maryland Rules set to take effect July 1, 2017.

Analysis

Bill Summary: If a judicial officer determines that a defendant may be released before trial subject to conditions, the judicial officer must impose the least restrictive pretrial conditions that are reasonable to ensure the appearance of the defendant as required and the safety of each alleged victim, other person, or the community. In making this determination, the judicial officer may not give preference to a particular pretrial condition and must take into consideration all available information, including (1) the defendant's ability to pay a financial condition of release; (2) the cost of imposing nonfinancial conditions of release; and (3) the restrictions on the individual liberty of the defendant caused by imposing conditions.

A judicial officer may not set a financial condition of release (1) solely for the purpose of detaining the defendant; (2) to punish the defendant; (3) to placate public opinion; (4) higher than necessary to ensure the appearance of the defendant as required or the safety of an alleged victim, other person, or the community; or (5) by reference to a predetermined schedule of amounts fixed according to the nature of the charge. The bill prohibits a judicial officer from imposing a financial condition of release in a form or amount that results in the pretrial detention of the defendant solely due to the fact that the defendant is financially incapable of meeting the condition. A judicial officer may consider all resources available to the defendant from any lawful source when determining the form or amount of a financial condition of release.

The bill also establishes the Pretrial Services Workgroup. GOCCP must staff the workgroup, and the Governor must designate the chair of the workgroup. A member of the task force may not receive compensation, but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

The workgroup must (1) examine the financial impacts of different types of pretrial release conditions; (2) conduct hearings across the State to seek citizen input; and (3) study what pretrial release services were assigned to defendants in the State. By December 31, 2017,

the workgroup must report its findings and recommendations to the Governor and the General Assembly.

Current Law: The statutory provisions pertaining to release on personal recognizance must 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.

In general, if the court believes, based on all the circumstances, that a minor or adult defendant in a criminal case will appear as required for trial before verdict or pending trial, the defendant may be released on personal recognizance. A failure to appear as required by personal recognizance is subject to specified penalties.

A criminal defendant is entitled to be released pending trial unless a judge ultimately determines that no conditions can be placed on the defendant's release to reasonably ensure the defendant's appearance at trial and the safety of the alleged victim, another person, and the community. Most defendants are eligible for and are released on personal recognizance. However, if a judicial officer determines that release on personal recognizance alone is not appropriate, or the defendant is by law ineligible for release on recognizance, the defendant may be released prior to trial only by posting bail in an amount set by the judicial officer.

A defendant is by law ineligible for release on personal recognizance if charged with (1) a crime punishable by life imprisonment without parole or (2) a crime of violence, certain drug offenses, or certain other serious crimes, after having been previously convicted of one of these crimes.

In most cases, pretrial release determinations are made at a defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants. Pretrial release of such defendants may be authorized only by a judge, and only on suitable bail, on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions. Please see **Appendix 1 – Defendants Ineligible for Pretrial Release by a District Court Commissioner** for a comprehensive list of defendants ineligible for pretrial release by a District Court commissioner.

A defendant who is denied pretrial release by a District Court commissioner or who for any reason remains in custody after a District Court commissioner has determined conditions of release under Maryland Rule 4-216 must be presented to a District Court judge immediately if the court is in session, or if the court is not in session, at the next session of the court.

Whether released on recognizance or bail, one or more conditions may be imposed, including:

- committing the defendant to the custody of a designated person or organization (including a private home detention company) that agrees to supervise the defendant and assist in ensuring the defendant's future appearance in court;
- placing the defendant under the supervision of a probation officer or other appropriate public official, such as a governmental pretrial services unit, which in some jurisdictions can provide home detention, electronic monitoring, and drug testing or treatment pending trial;
- restricting the defendant's travel, associations, or residence;
- prohibiting contact with the alleged victim;
- subjecting the defendant to any other conditions reasonably necessary to (1) ensure the appearance of the defendant as required; (2) protect the safety of the alleged victim; and (3) ensure that the defendant will not pose a danger to another person or the community; and
- for good cause shown, imposing one or more statutorily authorized conditions reasonably necessary to stop or prevent intimidation of a victim or witness or a violation of certain laws relating to obstruction of justice.

In determining whether a defendant should be released and the conditions of pretrial release, the judicial officer (judge or commissioner) is required to take into account the following information, to the extent available: (1) the nature and circumstances of the offense; (2) the nature of the evidence against the defendant and the potential sentence upon conviction; (3) the defendant's prior record and history with regard to appearing in court as required or flight from prosecution; (4) the defendant's employment status and history, family ties, financial resources, reputation, character and mental condition, and length of residence in the community and the State; (5) the potential danger of the defendant to himself or herself, the alleged victim, the community, or others; (6) recommendations of the State's Attorney and any agency that conducts a pretrial release investigation; (7) information provided by the defendant or the defendant's counsel; and (8) any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

Bail is intended to ensure the presence of the defendant in court, not as punishment. If there is a concern that the defendant will fail to appear in court, but otherwise does not appear to pose a significant threat to the public, the defendant may be required to post a bail bond rather than be released on recognizance. A bail bond is the written obligation of the defendant, with or without a surety or collateral security, conditioned on the personal

appearance of the defendant in court as required and providing for payment of a specified penalty (the amount of the bail) upon default.

Once the bail has been set, the defendant may secure release by posting cash or other collateral with the court, such as a corporate surety bond, a certified check, intangible property, or encumbrances on real property, in an amount required by the judicial officer.

If expressly authorized by a circuit 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 10% of the penalty amount or \$25, whichever is greater. In a criminal or traffic case in the District Court in which a bail bond has been set and if expressly authorized by the court or District Court commissioner, the defendant or a private surety acting for the defendant may post the bail bond by executing it in the full penalty amount and depositing with the clerk of the court or a commissioner the greater of 10% of the penalty amount or \$25. A judicial officer may increase the percentage of cash surety required in a particular case but may not authorize a cash deposit of less than \$25. This option is not available to a defendant in the District Court who has been arrested for failure to appear in court or for contempt of court.

The Justice Reinvestment Act (Chapter 515 of 2016) established the Justice Reinvestment Oversight Board, which is staffed by GOCCP. The board is required to conduct several specified duties, including collecting and analyzing pretrial data submitted pursuant to the Act. Chapter 515 requires each county and the Division of Pretrial Detention and Services within DPSCS to report the following information for the prior calendar year to the board by March 31 of each year: (1) the number of individuals detained pretrial on the same day each year; (2) the mean and median days individuals were detained in pretrial detention; (3) the charges under which individuals were detained in pretrial detention; (4) the reasons why individuals were unable to secure pretrial release; (5) the number of individuals who were released during the pretrial period; and (6) the disposition of each case.

Background: When an individual is charged with a crime, Maryland law currently allows District Court commissioners and judges to permit release on personal recognizance, set a bail amount, or order pretrial detention. To meet a bail amount, an arrestee must either make a payment directly to the court, post property, or seek the assistance of a bail bondsman.

Bail Systems Scrutinized Nationally: Bail systems have come under increased scrutiny nationwide due to the disproportionate financial burden placed on lower income individuals and the risk that they will be held before trial solely because of their financial status. Advocates for bail reform contend that alternative pretrial release strategies perform as well as or better than bail for court appearance rates and public safety without imposing a disparate impact on low-income defendants.

In February 2015, the U.S. Department of Justice (DOJ) filed a statement of interest in a case pending in federal district court in Alabama, *Varden v. City of Clanton*, in which an arrestee was held for a week because she could not afford to pay the preset bail for her charges. The DOJ statement argued that such fixed-sum bail schemes violate the Equal Protection Clause of the Fourteenth Amendment because “they essentially mandate pretrial detention for anyone who is too poor to pay the predetermined fee.” The case was settled shortly after DOJ filed its statement. Under the settlement agreement, the city agreed to release most individuals arrested for violations of city ordinances on unsecured bonds and to conduct a bail hearing within 48 hours after arrest for anyone who was not released.

In August 2016, DOJ filed an *amicus curiae* brief in *Walker v. City of Calhoun, Georgia* stating that a bail system that required an arrestee to pay a fixed amount violated the Fourteenth Amendment because it failed to engage in a meaningful consideration of the arrestee’s ability to pay the bail and alternatives to money bail. The plaintiff in the case alleged that he was kept in jail for six days because of his inability to pay a \$160 bail, which was determined according to the City of Calhoun’s preset bail schedule.

In January 2016, a federal district court granted Mr. Walker’s request for a preliminary injunction and ordered the City of Calhoun to implement constitutional post-arrest procedures. The court also prohibited the city from keeping arrestees in custody solely because of their inability to pay their monetary bonds and ordered the city to release present and future misdemeanor arrestees in its custody on personal recognizance or unsecured bond until it can implement lawful procedures. The court also granted Mr. Walker’s motion for class certification. The U.S. Court of Appeals for the Eleventh Circuit heard oral arguments in the case on February 23, 2017.

Though the *Varden* and *Walker* cases involve bail schedules and preset bail amounts, DOJ officials have stated that the department’s position applies to any system that incarcerates an individual solely because of the individual’s inability to pay a cash bond, fee, or fine.

Imposition of Bail in Maryland: Maryland does not utilize preset bail schedules or fixed-sum bail systems. Rather, judges and commissioners in Maryland are required to consider a number of factors when determining whether an arrestee is to be held in pretrial detention, released with a money bail, or released on recognizance. According to information provided by the Maryland Judiciary during the 2016 session, approximately 50% of arrestees are released immediately on personal recognizance or by unsecured personal bonds, 10% post bonds the same evening, and 10% post bonds prior to a judicial bail review hearing.

In an advisory letter dated October 11, 2016, the Office of the Attorney General stated its belief that, if presented with an appropriate case, the Court of Appeals would determine that the State’s laws and the Maryland Rules require judicial officers to inquire into an

arrestee's ability to meet a financial condition of release. The advisory letter concluded that if a judge or commissioner determines that pretrial detention without bail is not necessary, then they "may not impose a financial condition set solely to detain the defendant," and release conditions must be the "least onerous" possible to meet the State's interests in public safety and ensure the appearance of the defendant. The office also determined that if bail is set at a financially unreachable level for a defendant for whom pretrial detention is not justified, the Court of Appeals would likely determine that the bail is excessive under the Eighth Amendment of the U.S. Constitution and Article 25 of the Maryland Declaration of Rights. State law does not require that bail be set within an arrestee's ability to pay.

Ensuring Least Onerous Conditions: The Chief Judge of the District Court of Maryland, John P. Morrissey, issued a guidance letter to all District and circuit court judges and District Court commissioners on October 25, 2016, advising them on several aspects of the bail-setting process under current law. In particular, Chief Judge Morrissey cautioned that judicial officers are to apply the "least onerous" conditions that will ensure public safety and the appearance of the defendant and that cash bail is not an appropriate means of ensuring public safety. He also advised that judicial officers should avoid "defendants being detained who do not need to be detained."

Also on October 25, 2016, Maryland Attorney General Brian E. Frosh requested that the Maryland Judiciary's Standing Committee on Rules of Practice and Procedure consider changes to the Maryland Rules to ensure that arrestees do not remain incarcerated solely because they cannot afford bail. The 24-member panel considers proposed amendments to the Maryland Rules of Procedure and submits recommendations for amendments to the Court of Appeals. On February 7, 2017, the Maryland Court of Appeals approved changes to the Maryland Rules regarding pretrial release of criminal defendants.

While the amended Rules still authorize the imposition of financial conditions of release, the Rules (1) establish that unless a judicial officer finds that no permissible nonfinancial condition of release will reasonably ensure the defendant's appearance in court or public safety, the judicial officer must release the defendant on personal recognizance or unsecured bond, with or without conditions; (2) require a judicial officer to impose the least onerous conditions of release to ensure the defendant's appearance as required and ensure public safety; and (3) require a judicial officer to consider the specific facts and circumstances applicable to the defendant, including the defendant's ability to meet financial conditions of release. **Appendix 2 – Summary of Recent Changes to the Maryland Rules Regarding Pretrial Release of Criminal Defendants** contains a summary of recent changes to the Maryland Rules.

Appendix 3 – Initial Appearances and Outcomes by Jurisdiction contains statistics on initial appearances and release determinations in the District Court during fiscal 2016.

State Expenditures: Depending on judicial discretion, future general fund expenditures for DPSCS increase if the bill limits the level of anticipated reductions in the pretrial detention population in Baltimore City that may have been realized under the Maryland Rules set to take effect July 1, 2017. The magnitude of this effect cannot be reliably determined at this time.

The bill's fiscal effect depends on pretrial determinations made according to the provisions of the bill compared to those expected under implementation of the Rules set to take effect July 1, 2017. The provisions of the bill that differ from the recently amended Rules and are most likely to affect pretrial release decisions are:

- the requirement under the bill that judicial officers not give preference to any particular condition of release, versus provisions under the amended Rules stating that preference should be given to nonfinancial conditions of release and that the Rules are designed to promote release on recognizance or unsecured bond when necessary;
- the bill's requirement that a judicial officer consider the defendant's ability to pay a financial condition of release, the cost of imposing nonfinancial conditions of release, and restrictions on the individual liberty of the defendant caused by imposing conditions (while the Rules authorize a judicial officer to consider all resources available to a defendant from lawful sources, the Rules do not address the other two considerations);
- the bill's authorization for a judicial officer to set a financial condition of release for safety reasons, versus the provisions under the amended Rules and statements in the letter of advice issued on October 25, 2016, stating that financial conditions of release are not appropriate to address public safety concerns; and
- the bill's provisions that a judicial officer may not (1) set a financial condition of release higher than necessary to ensure the appearance of the defendant as required or the safety of an alleged victim, other person, or the community and (2) impose a financial condition of release in a form or amount that results in the pretrial detention of the defendant solely because the defendant is financially incapable of meeting the condition (the amended Rules only contain the latter provision).

Given that the Maryland Rules do not take effect until July 1, 2017, the magnitude of the Rules' effect on pretrial detention populations cannot be reliably estimated at this time. According to the Judiciary, District Court commissioners have not received training on the new Rules. However, the October 2016 letter of advice from the Chief Judge of the District Court may provide some guidance on potential effects of the new Rules.

As previously mentioned, the Chief Judge of the District Court issued an advisory letter on October 25, 2016, to judicial officers advising that (1) a defendant should be released on personal recognizance, with or without conditions, unless no permissible conditions can assure the defendant's appearance as required or public safety; (2) if a defendant cannot be released on personal recognizance, the judicial officer should impose the least onerous conditions on the defendant to reasonably assure the defendant's appearance in court and public safety; (3) the posting of money or property or use of a compensated surety should be used *only when necessary* to assure the appearance of the defendant, not for the assurance of public safety; (4) financial conditions are not an appropriate way of assuring public safety and should not be imposed to assure the detention of the defendant; (5) a defendant should not be released if there is any reasonable likelihood of danger to others; and (6) financial conditions should not be imposed if a judicial officer knows or has reason to believe the defendant is financially incapable of meeting those conditions, or in order to placate public opinion or punish the defendant.

The advisory letter is based on the Maryland Rules currently in effect and predates approval by the Court of Appeals of the amended Rules set to take effect July 1, 2017. However, the letter is consistent with many of the provisions of the new Rules. It appears that judicial officers are following the advisory provisions of the letter. **Exhibit 1** contains statistics on pretrial release decisions from July 2016 through February 2017.

Based on a comparison of the average percentages for July through September 2016 and November 2016 through February 2017, the percentage of individuals released on recognizance or unsecured personal bond increased by 5.6%, the percentage of individuals held on bail decreased by 11.9%, and the percentage of individuals held without bail increased by 5.2%. The changes in these populations are likely due to individuals previously subjected to low(er) bails being released on personal recognizance or unsecured personal bond and individuals previously subjected to high bails being held without bond. According to the Judiciary, the bill may result in a reversion to pre-advice letter distributions of pretrial release decisions.

The effect of the bill on pretrial release populations in Baltimore City depends on the number of defendants in these two categories who are able to afford their respective bails and the extent to which judicial officers impose high bails on defendants who present public safety concerns. However, it should be noted that individuals currently being held without bond who were previously subject to high bails may have been held on bail in such high amounts that the *de facto* effect was being held without bond. Also, individuals released on personal recognizance or unsecured personal bond who were previously held on low(er) bails may have secured their release by posting bonds.

Finally, it is unclear how the following two provisions of the bill work together: (1) the prohibition on a judicial officer setting a financial condition of release higher than

necessary to ensure the defendant's appearance as required or address safety concerns; and (2) the bill's prohibition on a judicial officer imposing a financial condition on a defendant in a form or amount that results in the detention of the defendant solely because the defendant is financially incapable of meeting the condition. Should judicial officers determine that a defendant for whom a high bail is justified is financially incapable of posting that bail, judicial officers may opt to hold the defendant without bond instead of imposing bail.

Exhibit 1
Pretrial Release Decisions at Initial Appearances
Before District Court Commissioners
July 2016 through February 2017

<u>Month</u>	<u>Total Initial Appearances</u>	<u>Personal Recognizance and Unsecured Personal Bond</u>	<u>Held on Bail</u>	<u>Held Without Bail</u>
July 2016	12,169	47.6%	41.7%	8.6%
August 2016	12,288	46.3%	42.1%	9.1%
September 2016	11,778	47.5%	41.6%	8.8%
October 2016	11,434	48.6%	38.9%	10.5%
November 2016	10,578	54.2%	29.5%	14.1%
December 2016	10,185	51.7%	30.8%	15.0%
January 2017	11,630	51.8%	30.2%	13.9%
February 2017	11,256	53.4%	29.2%	13.2%

Source: Maryland Judiciary

The Division of Pretrial Detention and Services within DPSCS advises that it does not foresee an operational or fiscal impact as a result of the bill. DPSCS staffing and funding levels have not been altered in anticipation of the amended Rules. Should the bill result in a reversion to previous pretrial detention populations, then DPSCS experiences minimal changes to budgeted variable costs for pretrial detentions.

DPSCS advises that unless it can close entire facilities or significant portions of detention facilities, the department is unlikely to experience significant changes in expenditures due to changes in the pretrial detention population. For State detention facilities, the average total cost per inmate, including overhead, is estimated at \$6,478 per month. Excluding overhead, the average cost of housing a new State detainee (including variable health care costs) is about \$880 per month. Excluding all health care, the average variable costs total about \$290 per month. The total cost per inmate in a State detention facility increased

significantly between fiscal 2015 and 2016. According to DPSCS, this increase is due to a significant decrease in the average daily population in State detention facilities.

Finally, should the Rules have resulted in increased use of pretrial services in Baltimore City, DPSCS avoids costs that would otherwise be incurred for the expansion of its pretrial services program. The fiscal 2018 budget includes \$6.3 million for PRSP, and PRSP has 88 positions.

Local Expenditures: Depending on judicial discretion, if the bill limits the anticipated reductions in the local pretrial detention population that may have been experienced under the Maryland Rules set to take effect July 1, 2017, then future local incarceration expenditures increase, partially offset by potential cost avoidance relating to an increased demand for pretrial detention services. While the Rules do not require local jurisdictions to establish pretrial services programs or expand existing pretrial services programs, should local jurisdictions otherwise decide to pursue those courses of action in response to the implementation of the amended Rules, the bill's provisions eliminate any such future expenditures. The magnitude of this impact cannot be reliably determined at this time.

As with DPSCS, based on the information available at this time, local jurisdictions have not altered their funding or staffing levels in response to the future implementation of the amended Rules or in response to the advisory letter. Therefore, any reversion to pre-advisory letter policies results in minimal changes to budgeted variable costs to maintain pretrial detention populations.

Exhibit 2 contains information on local jurisdictions with pretrial services units, based on information from legislative reports and recent developments. Based on the most recent available information, 11 counties have pretrial services units. The programs vary in their policies and duties.

Exhibit 2
Pretrial Services Units in Local Jurisdictions

<u>Jurisdictions with Pretrial Services Units</u>	<u>Jurisdictions Without Pretrial Services Units</u>
Anne Arundel County	Allegany County
Baltimore City	Caroline County
Baltimore County	Cecil County
Calvert County	Charles County
Carroll County	Garrett County
Frederick County	Howard County
Harford County	Kent County
Montgomery County	Queen Anne's County
Prince George's County	Somerset County
St. Mary's County	Talbot County
Wicomico County	Washington County
	Worcester County

Source: Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender – Survey by Pretrial Justice Institute; Maryland Association of Counties; Department of Legislative Services

This analysis does not address any potential changes to the failure to appear rates in local jurisdictions resulting from implementation of the amended Rules. While the October 25, 2016 advisory letter states many of the principles in the amended Rules, the most recent available data for monthly failures to appear in the District Court is through February 2017. According to the Judiciary, this data is not a reflection of any effect of the advisory letter, as any case that was initiated in November 2016 will not come to court for approximately 90 to 120 days or longer. The Judiciary also notes that whether a case was generated by an initial appearance or judicial bail review conducted after October 25, 2016, cannot be determined from current available statistics without tracking individual cases and researching for the presence of a failure to appear in any of those cases.

Additional Information

Prior Introductions: None.

Cross File: HB 1215 (Delegate Anderson, *et al.*) - Judiciary.

Information Source(s): Baltimore, Dorchester, Garrett, and Montgomery counties; Maryland Association of Counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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Appendix 1 – Defendants Ineligible for Pretrial Release by a District Court Commissioner

Please refer to § 5-202 of the Criminal Procedure Article for complete information on defendants who are not eligible for pretrial release by a District Court commissioner.

In General

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants who are registered sex offenders in the State or defendants required to register as a sex offender by another jurisdiction/court/government and defendants charged:

- with a crime punishable by life imprisonment;
- with escaping from a correctional facility or any other place of confinement in the State;
- as a drug kingpin;
- with a crime of violence (as defined under § 14-101 of the Criminal Law Article), if the defendant has been previously convicted of a crime of violence under the laws of this State, has been convicted under the laws of another state of a crime classified as a crime of violence in Maryland or has been convicted of specified weapons-related offenses; and
- with violating the provisions of a domestic violence protective order (temporary or otherwise) ordering the defendant to refrain from abusing or threatening to abuse a person eligible for relief (applies to orders issued by a court in Maryland, by another state, or by a Native American tribe).

Repeat Offender – Defendant Charged with a Specified Crime Who Has a Prior Conviction for a Specified Crime

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:***

- wearing, carrying, or transporting a handgun under § 4-203 of the Criminal Law Article;
- use of a handgun or an antique firearm in commission of a crime under § 4-204 of the Criminal Law Article;

- violating prohibitions relating to assault weapons under § 4-303 of the Criminal Law Article;
- use of a machine gun in a crime of violence under § 4-404 of the Criminal Law Article;
- use of a machine gun for an aggressive purpose under § 4-405 of the Criminal Law Article;
- use of a weapon as a separate crime under § 5-621 of the Criminal Law Article;
- possession of a regulated firearm under § 5-133 of the Public Safety Article;
- transporting a regulated firearm for unlawful sale or trafficking under § 5-140 of the Public Safety Article; or
- possession of a rifle or shotgun by a person with a mental disorder under § 5-205 of the Public Safety Article.

Repeat Offender – Defendant Charged with Committing a Specified Crime While Released on Bail or Personal Recognizance on a Prior Charge of Committing a Specified Crime

A District Court commissioner also 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:***

- aiding, counseling, or procuring arson in the first degree;
- arson in the second degree or attempting, aiding, counseling, or procuring arson in the second degree;
- burglary in the first, second, or third degree;
- child abuse or sexual abuse of a minor;
- manufacture or possession of a destructive device;
- various offenses related to controlled dangerous substances (CDS), except for possessing or administering CDS;
- manslaughter by vehicle or vessel; and
- a crime of violence.

Appendix 2 – Summary of Recent Changes to the Maryland Rules Regarding Pretrial Release of Criminal Defendants (Effective July 1, 2017)

On February 7, 2017, the Maryland Court of Appeals approved significant changes to the Maryland Rules on pretrial release of defendants. The rules take effect July 1, 2017.

General Principles: The new rules are designed to promote the release of defendants on their own recognizance or unsecured bond, when necessary. A judicial officer should impose additional conditions on release only if needed to ensure the defendant's appearance in court; to protect the community, victims, witnesses, or other persons; and to maintain the integrity of the judicial process, as demonstrated by the circumstance of the individual case. Preference should be given to additional conditions without financial terms.

Interpretation of Rules: The rules must be construed to permit the release of a defendant pending trial except if the judicial officer finds that if the defendant is released, there is a reasonable likelihood that the defendant will not appear as required or will be a danger to the victim, witnesses, another person, or the community.

Individualized Consideration: A judicial officer must consider the specific facts and circumstances applicable to the defendant when determining whether or on what conditions to release a defendant, including the ability of the defendant to meet a special condition of release with financial terms or comply with a special condition.

Least Onerous Conditions: If a judicial officer determines that a defendant should be released other than on personal recognizance or unsecured bond with special conditions, the judicial officer must impose the least onerous condition(s) of release to reasonably ensure the defendant's appearance in court and the safety of specified individuals and the community.

Priority Given to Release on Personal Recognizance or Unsecured Bond: Except as prohibited under § 5-101 or § 5-202 of the Criminal Procedure Article (no personal recognizance for specified defendants and individuals ineligible for pretrial release by a District Court commissioner), unless the judicial officer finds that no permissible nonfinancial condition of release will reasonably ensure the appearance of the defendant or safety of victims, witnesses, other persons, or the community, the judicial officer must release the defendant on personal recognizance or unsecured bond, with or without special conditions. If the judicial officer makes such a finding, the judicial officer must state the basis for it on the record.

Required Conditions of Release: The following conditions of release are required for all defendants: (1) the defendant will not engage in any criminal conduct while on pretrial release; and (2) the defendant will appear in court when required to do so.

Special Conditions of Release: Special conditions of release that may be imposed on a defendant include:

- statutory conditions to stop or prevent witness intimidation, including a general no-contact order;
- reasonable travel or residential restrictions;
- maintaining or seeking employment;
- maintaining or commencing an education program;
- a reasonable curfew;
- refraining from possessing a firearm, destructive device, or dangerous weapon;
- refraining from use of alcohol, narcotics, or controlled dangerous substances;
- medical, psychological, or psychiatric treatment or drug/alcohol counseling;
- electronic monitoring;
- periodic reporting to designated supervisory persons;
- committing the defendant to the custody or supervision of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;
- execution of unsecured bonds by the defendant and an uncompensated surety who meets specified requirements;
- execution of a bond secured by the deposit of collateral security of a value in excess of 10% of the penalty amount of the bond or by the obligation of a surety, including a surety insurer acceptable to the judicial officer (preference to uncompensated surety with personal relationship to the defendant and posting of collateral security by that surety); and
- any other lawful condition that will help ensure the appearance of the defendant or safety of specified individuals or the community.

Consideration of Defendant's Resources: A judicial officer may not impose a special condition of release with financial terms in a form or amount that results in the pretrial detention of the defendant solely because of the defendant's inability to meet the financial condition. The judicial officer may consider resources available to the defendant from all lawful sources when determining the defendant's ability to meet a financial condition of release.

Imposition of Special Conditions: Special conditions of release with financial terms are appropriate only to ensure the appearance of the defendant and may not be imposed solely to prevent future criminal conduct during the pretrial period or to protect the safety of any person or the community or to punish the defendant or placate public opinion. Judicial officers may not use a predetermined charge-based schedule to set financial terms of release.

The judicial officer may also impose one or more special conditions of release if the officer finds that such conditions are necessary to ensure the defendant's appearance and protect the safety of victims, other persons, or the community.

Recommendations by Pretrial Services Units: When determining whether or not to release a defendant and the conditions of release, a judicial officer must consider the recommendations of a pretrial services unit that has administered a validated risk assessment to the defendant and is willing to provide an acceptable level of supervision over the defendant during the pretrial period if asked to do so.

Additional Factors for Consideration: Additional factors the judicial officer must consider are:

- the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;
- the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;
- the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;
- any request made under § 5-201 of the Criminal Procedure Article for reasonable protections for the safety of the victim;
- any recommendation of an agency that conducts pretrial release investigations;
- any information presented by the State's Attorney and any recommendation of the State's Attorney;
- any information presented by the defendant or defendant's attorney;
- the danger of the defendant to the alleged victim, another person, or the community;
- the danger of the defendant to himself or herself; and
- any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

Refunds of Posted Collateral Security: If the judicial officer requires collateral security, the officer must advise the defendant that any posted cash or property will be refunded at the conclusion of the criminal proceedings if the defendant has not defaulted in the performance of the conditions of the bond.

**Appendix 3 – Initial Appearances and Outcomes by Jurisdiction
Fiscal 2016**

<u>County</u>	<u>Number of Initial Appearances</u>	<u>No Probable Cause Release</u>	<u>Personal Recognizance</u>	<u>Unsecured Personal Bond</u>	<u>% Personal Recognizance and Unsecured Personal Bond</u>	<u>Held On Bail</u>	<u>% Held On Bail</u>	<u>Held Without Bail</u>	<u>% Held Without Bail</u>
Allegany	2,201	25	580	65	30.4%	1,175	53.4%	345	15.7%
Anne Arundel	13,699	579	6,280	1,064	57.8%	4,658	34.0%	887	6.5%
Baltimore City	29,223	97	11,855	785	43.6%	13,482	46.1%	2,996	10.3%
Baltimore	17,392	110	5,720	905	38.7%	8,829	50.8%	1,067	6.1%
Calvert	2,202	22	645	776	65.5%	665	30.2%	87	4.0%
Caroline	838	1	268	194	55.3%	301	35.9%	72	8.6%
Carroll	2,055	20	748	357	54.7%	665	32.4%	263	12.8%
Cecil	3,636	8	988	648	45.2%	1,348	37.1%	633	17.4%
Charles	4,529	130	2,525	223	63.5%	1,292	28.5%	311	6.9%
Dorchester	1,275	5	238	148	30.7%	764	59.9%	109	8.5%
Frederick	4,101	89	1,590	291	48.0%	1,690	41.2%	343	8.4%
Garrett	575	1	232	38	47.1%	241	41.9%	63	11.0%
Harford	3,326	62	1,644	42	52.6%	1,158	34.8%	388	11.7%
Howard	4,001	19	647	1,249	47.9%	1,669	41.7%	355	8.9%
Kent	454	0	102	84	41.0%	203	44.7%	53	11.7%
Montgomery	13,617	141	3,518	2,917	48.3%	6,249	45.9%	772	5.7%
Prince George's	27,265	829	11,866	777	49.4%	10,165	37.3%	1,835	6.7%
Queen Anne's	1,121	8	190	166	32.5%	558	49.8%	171	15.3%
St. Mary's	2,144	33	1,168	294	69.7%	535	25.0%	110	5.1%
Somerset	687	12	107	175	42.8%	273	39.7%	90	13.1%
Talbot	978	10	406	186	61.6%	340	34.8%	35	3.6%
Washington	3,903	97	1,624	159	48.2%	1,473	37.7%	477	12.2%
Wicomico	4,539	212	1,079	424	37.8%	2,105	46.4%	521	11.5%
Worcester	3,433	318	1,699	257	66.2%	940	27.4%	196	5.7%
Total	147,194	2,828	55,719	12,224	48.1%	60,778	41.3%	12,179	8.3%

No Probable Cause Release: Commissioner found no probable cause for all charges and must release without conditions.

Unsecured Personal Bond: Commissioner released on unsecured personal bond. Defendant does not need to post money to be released, but owes money if he/she fails to appear.

Held on Bail: Commissioner held defendant on bond. Defendant is released if bond is paid.

Held Without Bail: Commissioner held defendant without bond due to statutory requirements under § 5-202 of the Criminal Procedure Article (restrictions on release by commissioner), fugitives, or discretionary holds without bond (significant danger, etc.).

Note: Total initial appearances include manual circuit court entries and civil body attachments in which pretrial release determinations are not recorded. Individual category totals will not add up to grand total of initial appearances.

Source: Maryland Judiciary; Department of Legislative Services