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FISCAL AND POLICY NOTE
First Reader

House Bill 1397
Judiciary

(Delegate Hornberger, *et al.*)

Criminal Procedure – Pretrial Release – Defendant on Parole

This bill prohibits a judicial officer from authorizing pretrial release for a defendant who is charged with a crime of violence while out on parole until after the conclusion of a proceeding for a revocation of parole by the Maryland Parole Commission (MPC) under § 7-401 of the Correctional Services Article.

Fiscal Summary

State Effect: Minimal increase in general fund incarceration expenditures if the bill increases pretrial detention times in Baltimore City. Revenues are not affected.

Local Effect: Minimal increase in local incarceration expenditures if the bill increases pretrial detention times in jurisdictions other than Baltimore City. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law:

Pretrial Release

Under Maryland Rule 4-102, a “judicial officer” means a judge or District Court commissioner.

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 the **Appendix – 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 the Maryland Rules 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.

Under the Maryland Rules, the standards governing pretrial release must be construed to permit the release of a defendant pending trial unless the judicial officer finds that release presents a reasonable likelihood that the defendant (1) will not appear when required or (2) will be a danger to an alleged victim, another person, or the community. If such a finding is made, the defendant must not be released.

Crimes of Violence

Section 14-101 of the Criminal Law Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) an attempt to commit crimes (1) through (15); (17) continuing course of certain sexual conduct with a child; (18) assault in the first degree; or (19) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

Revocation of Parole

Section 7-401 of the Correctional Services Article addresses procedures for when a parolee is alleged to have violated a condition of parole. A hearing on an alleged violation of parole is conducted before one parole commissioner, and the parolee is entitled to legal representation at the hearing. If the commissioner finds from the evidence that the parolee

has violated a condition of parole, the commissioner may take any appropriate action, including revoking parole or continuing parole (with or without conditions). If parole is revoked due to a technical violation, the commissioner may require the individual to serve a period of imprisonment ranging from 15 days for a first technical violation to 45 days for a third technical violation. If parole is revoked due to a fourth or subsequent technical violation or a nontechnical violation, the commissioner may require the inmate to serve any unserved portion of the original sentence, subject to specified provisions.

Background: The bill only applies to a pretrial defendant on parole. According to MPC, there are 4,730 offenders on parole and 3,334 offenders on mandatory supervision. Offenders on mandatory supervision are offenders who were not released on parole but were released by the application of diminution credits. An offender on mandatory supervision is supervised as if on parole until the expiration of the offender's sentence. Also, the Justice Reinvestment Act (Chapter 515 of 2016) authorized (as of October 1, 2017) the administrative release of an offender who was convicted of specified offenses, is compliant with his/her case plan, and has served 25% of his/her sentence. An offender on administrative release is also supervised as if on parole. MPC advises that there are five offenders on administrative release.

When any of the aforementioned offenders are arrested for a new offense, the agent receives notification of the arrest and submits a report to MPC. The report may contain other violations in addition to any violations tied to the arrest. Parole commissioners review the report and decide whether a retake warrant should be issued to take the offender back into custody for a hearing. At the hearing, a parole commissioner determines if the offender has violated the conditions of supervision and whether supervision should be revoked and the offender returned to custody to serve the remainder of the sentence. MPC must give credit for time incarcerated on the retake warrant prior to the hearing.

State Expenditures: General fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) increase minimally if the bill increases overall pretrial detention times in Baltimore City. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

According to MPC, the bill eliminates the need to issue a retake warrant, but if the criminal charges are dropped or the offender is found not guilty and there are technical violations in addition to the new arrest, it is possible that the offender could be released before a retake warrant could be issued by MPC. MPC advises that it can handle the bill's requirements with existing budgeted resources.

The Pretrial Release Services Program (PRSP) in Baltimore City, which is operated by DPSCS, advises that the bill has little or no impact on the program and that defendants on parole who are then charged with a crime of violence are not usually released pretrial.

The Division of Parole and Probation, the Office of the Public Defender, and the Judiciary can implement the bill with existing budgeted resources.

Local Expenditures: Local incarceration expenditures increase minimally if the bill increases overall pretrial detention times in jurisdictions other than Baltimore City.

Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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mm/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

Appendix – 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.