
By: **Delegates Menes, Barkley, Benson, Cadden, Conroy, Cryor, Dumais,
Gaines, Gutierrez, King, Krysiak, Marriott, Murray, Nathan-Pulliam,
Pendergrass, Rawlings, and Taylor**

Introduced and read first time: January 31, 2003

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Pretrial Release of Inmates for Health Reasons or to**
3 **Reduce Overcrowding**

4 FOR the purpose of requiring the court to order a certain defendant released on
5 personal recognizance or on certain conditions that do not result in the
6 continued pretrial incarceration of the defendant if the court determines that a
7 certain State interest or imposition of bail is outweighed by certain
8 circumstances of detention facility overcrowding or the defendant's health or
9 safety; prohibiting the release of a defendant if the defendant is charged with
10 certain crimes; providing for the application of this Act; and generally relating to
11 pretrial release of inmates.

12 BY repealing and reenacting, without amendments,
13 Article - Criminal Procedure
14 Section 5-101 and 5-202(d)
15 Annotated Code of Maryland
16 (2001 Volume and 2002 Supplement)

17 BY adding to
18 Article - Criminal Procedure
19 Section 5-103
20 Annotated Code of Maryland
21 (2001 Volume and 2002 Supplement)

22 BY repealing and reenacting, without amendments,
23 Article - Criminal Law
24 Section 14-101(a)
25 Annotated Code of Maryland
26 (2002 Volume)

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

3 **Article - Criminal Procedure**

4 5-101.

5 (a) This section shall be liberally construed to carry out the purpose of relying
6 on criminal sanctions instead of financial loss to ensure the appearance of a
7 defendant in a criminal case before verdict or pending a new trial.

8 (b) (1) Except as provided in subsection (c) of this section, if, from all the
9 circumstances, the court believes that a minor or adult defendant in a criminal case
10 will appear as required for trial before verdict or pending trial, the defendant may be
11 released on personal recognizance.

12 (2) A failure to appear as required by personal recognizance is subject to
13 the penalties provided in § 5-211 of this title.

14 (c) A defendant may not be released on personal recognizance if the defendant
15 is charged with:

16 (1) a crime listed in § 5-202(d) of this title after having been convicted of
17 a crime listed in § 5-202(d) of this title; or

18 (2) a crime punishable by death or life imprisonment without parole.

19 5-103.

20 (A) THE COURT SHALL ORDER A DEFENDANT RELEASED ON PERSONAL
21 RECOGNIZANCE IN ACCORDANCE WITH § 5-101 OF THIS TITLE, OR ON CONDITIONS
22 THAT DO NOT RESULT IN THE CONTINUED PRETRIAL INCARCERATION OF THE
23 DEFENDANT IF, FROM ALL THE CIRCUMSTANCES, THE COURT DETERMINES THAT A
24 STATE INTEREST THAT WOULD ORDINARILY JUSTIFY THE PRETRIAL DETENTION OF
25 THE DEFENDANT OR THE IMPOSITION OF BAIL IS OUTWEIGHED BY:

26 (1) THE NEED TO REDUCE DETENTION FACILITY OVERCROWDING; OR

27 (2) THE POTENTIAL ADVERSE EFFECTS OF INCARCERATION ON THE
28 DEFENDANT'S HEALTH OR SAFETY.

29 (B) A DEFENDANT MAY NOT BE RELEASED UNDER SUBSECTION (A) OF THIS
30 SECTION IF THE DEFENDANT IS CHARGED WITH:

31 (1) A CRIME LISTED IN § 5-202(D) OF THIS TITLE THAT IS COMMITTED
32 WHILE THE DEFENDANT WAS RELEASED ON BAIL OR PERSONAL RECOGNIZANCE FOR
33 A PENDING PRIOR CHARGE OF COMMITTING A CRIME LISTED IN § 5-202(D) OF THIS
34 TITLE;

1 (2) A CRIME OF VIOLENCE, AS DEFINED BY § 14-101(A) OF THE CRIMINAL
2 LAW ARTICLE; OR

3 (3) A CRIME PUNISHABLE BY DEATH OR LIFE IMPRISONMENT WITHOUT
4 PAROLE.

5 (C) TITLE 5 OF THE MARYLAND RULES DOES NOT APPLY TO DETERMINATIONS
6 MADE UNDER THIS SECTION.

7 5-202.

8 (d) (1) A District Court commissioner may not authorize the pretrial release
9 of a defendant charged with committing one of the following crimes while the
10 defendant was released on bail or personal recognizance for a pending prior charge of
11 committing one of the following crimes:

12 (i) aiding, counseling, or procuring arson in the first degree under
13 § 6-102 of the Criminal Law Article;

14 (ii) arson in the second degree or attempting, aiding, counseling, or
15 procuring arson in the second degree under § 6-103 of the Criminal Law Article;

16 (iii) burglary in the first degree under § 6-202 of the Criminal Law
17 Article;

18 (iv) burglary in the second degree under § 6-203 of the Criminal
19 Law Article;

20 (v) burglary in the third degree under § 6-204 of the Criminal Law
21 Article;

22 (vi) causing abuse to a child under § 3-601 or § 3-602 of the
23 Criminal Law Article;

24 (vii) a crime that relates to a destructive device under § 4-503 of the
25 Criminal Law Article;

26 (viii) a crime that relates to a controlled dangerous substance under
27 §§ 5-602 through 5-609 or § 5-612 or § 5-613 of the Criminal Law Article;

28 (ix) manslaughter by vehicle or vessel under § 2-209 of the
29 Criminal Law Article; and

30 (x) a crime of violence.

31 (2) A defendant under this subsection remains ineligible to give bail or
32 be released on recognizance on the subsequent charge until all prior charges have
33 finally been determined by the courts.

34 (3) A judge may authorize the pretrial release of a defendant described in
35 paragraph (1) of this subsection on suitable bail and on any other conditions that will

1 reasonably ensure that the defendant will not flee or pose a danger to another person
2 or the community.

3 (4) There is a rebuttable presumption that a defendant described in
4 paragraph (1) of this subsection will flee and pose a danger to another person or the
5 community if released before final determination of the prior charge.

6 **Article - Criminal Law**

7 14-101.

8 (a) In this section, "crime of violence" means:

9 (1) abduction;

10 (2) arson in the first degree;

11 (3) kidnapping;

12 (4) manslaughter, except involuntary manslaughter;

13 (5) mayhem;

14 (6) maiming, as previously proscribed under Article 27, §§ 385 and 386 of
15 the Code;

16 (7) murder;

17 (8) rape;

18 (9) robbery under § 3-402 or § 3-403 of this article;

19 (10) carjacking;

20 (11) armed carjacking;

21 (12) sexual offense in the first degree;

22 (13) sexual offense in the second degree;

23 (14) use of a handgun in the commission of a felony or other crime of
24 violence;

25 (15) an attempt to commit any of the crimes described in items (1)
26 through (14) of this subsection;

27 (16) assault in the first degree;

28 (17) assault with intent to murder;

29 (18) assault with intent to rape;

- 1 (19) assault with intent to rob;
- 2 (20) assault with intent to commit a sexual offense in the first degree; and
- 3 (21) assault with intent to commit a sexual offense in the second degree.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2003.