

# SENATE BILL 642

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By: **Senators Gladden and McFadden (By Request - Baltimore City Administration)**

Introduced and read first time: February 1, 2008

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Restrictions on Pretrial Release - Offenses Involving**  
3 **Firearms - Repeat Offenders**

4 FOR the purpose of prohibiting a District Court commissioner from authorizing the  
5 pretrial release of a defendant charged with a certain offense involving a  
6 firearm if the defendant previously was convicted of a certain offense involving  
7 a firearm; providing that a judge may authorize the pretrial release of a certain  
8 defendant on suitable bail or certain other conditions or both; requiring a judge  
9 to order the continued detention of a certain defendant under certain  
10 circumstances at a certain time; creating a rebuttable presumption that a  
11 certain defendant will flee and pose a danger to another person or the  
12 community; and generally relating to restrictions on pretrial release.

13 BY repealing and reenacting, with amendments,  
14 Article - Criminal Procedure  
15 Section 5-202  
16 Annotated Code of Maryland  
17 (2001 Volume and 2007 Supplement)

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

20 **Article - Criminal Procedure**

21 5-202.

22 (a) A District Court commissioner may not authorize pretrial release for a  
23 defendant charged with escaping from a correctional facility or any other place of  
24 confinement in the State.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) (1) A District Court commissioner may not authorize the pretrial  
2 release of a defendant charged as a drug kingpin under § 5–613 of the Criminal Law  
3 Article.

4 (2) A judge may authorize the pretrial release of a defendant charged  
5 as a drug kingpin on suitable bail and on any other conditions that will reasonably  
6 ensure that the defendant will not flee or pose a danger to another person or the  
7 community.

8 (3) There is a rebuttable presumption that, if released, a defendant  
9 charged as a drug kingpin will flee and pose a danger to another person or the  
10 community.

11 (c) (1) A District Court commissioner may not authorize the pretrial  
12 release of a defendant charged with a crime of violence if the defendant has been  
13 previously convicted:

14 (i) in this State of a crime of violence; or

15 (ii) in any other jurisdiction of a crime that would be a crime of  
16 violence if committed in this State.

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

19 1. suitable bail;

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

22 3. both bail and other conditions described under item 2  
23 of this subparagraph.

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

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

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

- 1                   (i)     aiding, counseling, or procuring arson in the first degree  
2     under § 6–102 of the Criminal Law Article;
- 3                   (ii)    arson in the second degree or attempting, aiding, counseling,  
4     or procuring arson in the second degree under § 6–103 of the Criminal Law Article;
- 5                   (iii)  burglary in the first degree under § 6–202 of the Criminal  
6     Law Article;
- 7                   (iv)   burglary in the second degree under § 6–203 of the Criminal  
8     Law Article;
- 9                   (v)     burglary in the third degree under § 6–204 of the Criminal  
10    Law Article;
- 11                  (vi)    causing abuse to a child under § 3–601 or § 3–602 of the  
12    Criminal Law Article;
- 13                  (vii)  a crime that relates to a destructive device under § 4–503 of  
14    the Criminal Law Article;
- 15                  (viii) a crime that relates to a controlled dangerous substance  
16    under §§ 5–602 through 5–609 or § 5–612 or § 5–613 of the Criminal Law Article;
- 17                  (ix)    manslaughter by vehicle or vessel under § 2–209 of the  
18    Criminal Law Article; and
- 19                  (x)     a crime of violence.
- 20                  (2)     A defendant under this subsection remains ineligible to give bail or  
21    be released on recognizance on the subsequent charge until all prior charges have  
22    finally been determined by the courts.
- 23                  (3)     A judge may authorize the pretrial release of a defendant described  
24    in paragraph (1) of this subsection on suitable bail and on any other conditions that  
25    will reasonably ensure that the defendant will not flee or pose a danger to another  
26    person or the community.
- 27                  (4)     There is a rebuttable presumption that a defendant described in  
28    paragraph (1) of this subsection will flee and pose a danger to another person or the  
29    community if released before final determination of the prior charge.
- 30                  (e)     (1)    A District Court commissioner may not authorize the pretrial  
31    release of a defendant charged with violating:
- 32                               (i)     the provisions of a temporary protective order described in §  
33    4–505(a)(2)(i) of the Family Law Article or the provisions of a protective order

1 described in § 4-506(d)(1) of the Family Law Article that order the defendant to  
2 refrain from abusing or threatening to abuse a person eligible for relief; or

3 (ii) the provisions of an order for protection, as defined in  
4 § 4-508.1 of the Family Law Article, issued by a court of another state or of a Native  
5 American tribe that order the defendant to refrain from abusing or threatening to  
6 abuse a person eligible for relief, if the order is enforceable under § 4-508.1 of the  
7 Family Law Article.

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

10 (i) suitable bail;

11 (ii) 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 (iii) both bail and other conditions described under  
14 subparagraph (ii) of this paragraph.

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

21 **(F) (1) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE**  
22 **THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH ONE OF THE**  
23 **FOLLOWING CRIMES IF THE DEFENDANT HAS PREVIOUSLY BEEN CONVICTED OF**  
24 **ONE OF THE FOLLOWING CRIMES:**

25 **(I) WEARING, CARRYING, OR TRANSPORTING A HANDGUN**  
26 **UNDER § 4-203 OF THE CRIMINAL LAW ARTICLE;**

27 **(II) USE OF A HANDGUN OR AN ANTIQUE FIREARM IN**  
28 **COMMISSION OF A CRIME UNDER § 4-204 OF THE CRIMINAL LAW ARTICLE;**

29 **(III) VIOLATING PROHIBITIONS RELATING TO ASSAULT**  
30 **PISTOLS UNDER § 4-303 OF THE CRIMINAL LAW ARTICLE;**

31 **(IV) USE OF A MACHINE GUN IN A CRIME OF VIOLENCE**  
32 **UNDER § 4-404 OF THE CRIMINAL LAW ARTICLE;**

33 **(V) USE OF A MACHINE GUN FOR AN AGGRESSIVE PURPOSE**  
34 **UNDER § 4-405 OF THE CRIMINAL LAW ARTICLE;**

1                   (VI) USE OF A WEAPON AS A SEPARATE CRIME UNDER §  
2 **5-621 OF THE CRIMINAL LAW ARTICLE;**

3                   (VII) FIREARM CRIMES UNDER § **5-622 OF THE CRIMINAL**  
4 **LAW ARTICLE;**

5                   (VIII) POSSESSION OF A REGULATED FIREARM UNDER § **5-133**  
6 **OF THE PUBLIC SAFETY ARTICLE;**

7                   (IX) SALE, TRANSFER, OR DISPOSAL OF A STOLEN  
8 **REGULATED FIREARM UNDER § 5-138 OF THE PUBLIC SAFETY ARTICLE;**

9                   (X) TRANSPORTING A REGULATED FIREARM FOR  
10 **UNLAWFUL SALE OR TRAFFICKING UNDER § 5-140 OF THE PUBLIC SAFETY**  
11 **ARTICLE;**

12                   (XI) REMOVAL OR ALTERATION OF AN IDENTIFICATION  
13 **MARK OR NUMBER ON A FIREARM UNDER § 5-142 OF THE PUBLIC SAFETY**  
14 **ARTICLE;**

15                   (XII) POSSESSION OF A SHORT-BARRELED RIFLE OR A  
16 **SHORT-BARRELED SHOTGUN UNDER § 5-203 OF THE PUBLIC SAFETY ARTICLE;**

17                   (XIII) POSSESSION OF A RIFLE OR SHOTGUN BY A PERSON  
18 **WITH A MENTAL DISORDER UNDER § 5-205 OF THE PUBLIC SAFETY ARTICLE;**  
19 **OR**

20                   (XIV) MANUFACTURE OR SALE OF HANDGUNS UNDER § **5-406**  
21 **OF THE PUBLIC SAFETY ARTICLE.**

22                   (2) (I) A JUDGE MAY AUTHORIZE THE PRETRIAL RELEASE OF A  
23 **DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION ON:**

24                               1.     **SUITABLE BAIL;**

25                               2.     **ANY OTHER CONDITIONS THAT WILL REASONABLY**  
26 **ENSURE THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO**  
27 **ANOTHER PERSON OR THE COMMUNITY; OR**

28                               3.     **BOTH BAIL AND OTHER CONDITIONS DESCRIBED**  
29 **UNDER ITEM 2 OF THIS SUBPARAGRAPH.**

1                   **(II) WHEN A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF**  
2 **THIS SUBSECTION IS PRESENTED TO THE COURT UNDER MARYLAND RULE**  
3 **4-216(F), THE JUDGE SHALL ORDER THE CONTINUED DETENTION OF THE**  
4 **DEFENDANT IF THE JUDGE DETERMINES THAT NEITHER SUITABLE BAIL NOR**  
5 **ANY CONDITION OR COMBINATION OF CONDITIONS WILL REASONABLY ENSURE**  
6 **THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER**  
7 **PERSON OR THE COMMUNITY BEFORE THE TRIAL.**

8                   **(3) THERE IS A REBUTTABLE PRESUMPTION THAT A DEFENDANT**  
9 **DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION WILL FLEE AND POSE A**  
10 **DANGER TO ANOTHER PERSON OR THE COMMUNITY.**

11                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12                   October 1, 2008.