

HOUSE BILL 88

E2
HB 900/08 – JUD

9lr1376
CF SB 181

By: **Delegate Anderson (By Request – Baltimore City Administration)**

Introduced and read first time: January 20, 2009

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: February 24, 2009

CHAPTER _____

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 (2008 Replacement Volume)

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.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

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

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

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

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

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

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

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

22 1. suitable bail;

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

25 3. both bail and other conditions described under item 2
26 of this subparagraph.

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

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

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

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

7 (ii) arson in the second degree or attempting, aiding, counseling,
8 or procuring arson in the second degree under § 6–103 of the Criminal Law Article;

9 (iii) burglary in the first degree under § 6–202 of the Criminal
10 Law Article;

11 (iv) burglary in the second degree under § 6–203 of the Criminal
12 Law Article;

13 (v) burglary in the third degree under § 6–204 of the Criminal
14 Law Article;

15 (vi) causing abuse to a child under § 3–601 or § 3–602 of the
16 Criminal Law Article;

17 (vii) a crime that relates to a destructive device under § 4–503 of
18 the Criminal Law Article;

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

21 (ix) manslaughter by vehicle or vessel under § 2–209 of the
22 Criminal Law Article; and

23 (x) a crime of violence.

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

27 (3) A judge may authorize the pretrial release of a defendant described
28 in paragraph (1) of this subsection on suitable bail and on any other conditions that
29 will reasonably ensure that the defendant will not flee or pose a danger to another
30 person or the community.

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

1 (e) (1) A District Court commissioner may not authorize the pretrial
2 release of a defendant charged with violating:

3 (i) the provisions of a temporary protective order described in §
4 4-505(a)(2)(i) of the Family Law Article or the provisions of a protective order
5 described in § 4-506(d)(1) of the Family Law Article that order the defendant to
6 refrain from abusing or threatening to abuse a person eligible for relief; or

7 (ii) the provisions of an order for protection, as defined in
8 § 4-508.1 of the Family Law Article, issued by a court of another state or of a Native
9 American tribe that order the defendant to refrain from abusing or threatening to
10 abuse a person eligible for relief, if the order is enforceable under § 4-508.1 of the
11 Family Law Article.

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

14 (i) suitable bail;

15 (ii) any other conditions that will reasonably ensure that the
16 defendant will not flee or pose a danger to another person or the community; or

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

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

25 **(F) (1) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE**
26 **THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH ONE OF THE**
27 **FOLLOWING CRIMES IF THE DEFENDANT HAS PREVIOUSLY BEEN CONVICTED OF**
28 **ONE OF THE FOLLOWING CRIMES:**

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

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

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

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

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

5 (VI) USE OF A WEAPON AS A SEPARATE CRIME UNDER §
6 5-621 OF THE CRIMINAL LAW ARTICLE;

7 (VII) POSSESSION OF A REGULATED FIREARM UNDER § 5-133
8 OF THE PUBLIC SAFETY ARTICLE;

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

12 (IX) POSSESSION OF A RIFLE OR SHOTGUN BY A PERSON
13 WITH A MENTAL DISORDER UNDER § 5-205 OF THE PUBLIC SAFETY ARTICLE.

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

16 1. SUITABLE BAIL;

17 2. ANY OTHER CONDITIONS THAT WILL REASONABLY
18 ENSURE THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO
19 ANOTHER PERSON OR THE COMMUNITY; OR

20 3. BOTH BAIL AND OTHER CONDITIONS DESCRIBED
21 UNDER ITEM 2 OF THIS SUBPARAGRAPH.

22 (II) WHEN A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF
23 THIS SUBSECTION IS PRESENTED TO THE COURT UNDER MARYLAND RULE
24 4-216(F), THE JUDGE SHALL ORDER THE CONTINUED DETENTION OF THE
25 DEFENDANT IF THE JUDGE DETERMINES THAT NEITHER SUITABLE BAIL NOR
26 ANY CONDITION OR COMBINATION OF CONDITIONS WILL REASONABLY ENSURE
27 THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER
28 PERSON OR THE COMMUNITY BEFORE THE TRIAL.

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

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.