

HOUSE BILL 1077

E2
HB 1066/08 – JUD

9lr2629

By: **Delegates Conaway and Boteler**

Introduced and read first time: February 13, 2009

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Subsequent Sexual Offenders – Reduced Diminution Credits, Parole**
3 **Elimination, and Restrictions on Pretrial Release**

4 FOR the purpose of decreasing the number of days per month that an inmate who has
5 been convicted of certain sexual offenses is allowed as a deduction in advance
6 from the inmate's term of confinement; eliminating parole eligibility for sexual
7 offenders who are serving terms of imprisonment for certain offenses against
8 minors committed on or after a certain date after having been previously
9 convicted of certain sexual offenses against minors; providing that a certain
10 provision of law does not restrict a certain authority of the Governor to pardon
11 or remit a certain sentence; prohibiting a District Court commissioner from
12 authorizing the pretrial release of a defendant charged with a certain sexual
13 offense against a minor if the defendant has previously been convicted of a
14 certain sexual offense against a minor; providing that a judge may authorize the
15 pretrial release of a certain defendant on suitable bail or certain other
16 conditions or both; requiring a judge to order the continued detention of a
17 certain defendant under certain circumstances at a certain time; creating a
18 rebuttable presumption that a certain defendant will flee and pose a danger to
19 another person or the community; making stylistic changes; and generally
20 relating to diminution credits, parole eligibility, and pretrial release for
21 subsequent sexual offenders.

22 BY repealing and reenacting, with amendments,
23 Article – Correctional Services
24 Section 3–704 and 7–301
25 Annotated Code of Maryland
26 (2008 Replacement Volume and 2008 Supplement)

27 BY repealing and reenacting, with amendments,
28 Article – Criminal Procedure
29 Section 5–202

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Annotated Code of Maryland
(2008 Replacement Volume)

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

Article – Correctional Services

3–704.

(a) An inmate shall be allowed a deduction in advance from the inmate's term of confinement.

(b) (1) The deduction allowed under subsection (a) of this section shall be calculated:

(i) from the first day of commitment to the custody of the Commissioner through the last day of the inmate's term of confinement;

(ii) except as provided in paragraph (2) of this subsection, at the rate of 10 days for each calendar month; and

(iii) on a prorated basis for any portion of a calendar month.

[(2) If an inmate's term of confinement includes a consecutive or concurrent sentence for a crime of violence as defined in § 14–101 of the Criminal Law Article or a crime of manufacturing, distributing, dispensing, or possessing a controlled dangerous substance in violation of §§ 5–602 through 5–609, § 5–612, or § 5–613 of the Criminal Law Article, the deduction described in subsection (a) of this section shall be calculated at the rate of 5 days for each calendar month.]

(2) THE DEDUCTION DESCRIBED IN SUBSECTION (A) OF THIS SECTION SHALL BE CALCULATED AT THE RATE OF 5 DAYS FOR EACH CALENDAR MONTH IF AN INMATE'S TERM OF CONFINEMENT INCLUDES A CONSECUTIVE OR CONCURRENT SENTENCE FOR:

(I) A CRIME OF VIOLENCE AS DEFINED IN § 14–101 OF THE CRIMINAL LAW ARTICLE;

(II) A CRIME OF MANUFACTURING, DISTRIBUTING, DISPENSING, OR POSSESSING A CONTROLLED DANGEROUS SUBSTANCE IN VIOLATION OF § 5–602, § 5–603, § 5–604, § 5–605, § 5–606, § 5–607, § 5–608, § 5–609, § 5–612, OR § 5–613 OF THE CRIMINAL LAW ARTICLE; OR

(III) A VIOLATION OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE COMMITTED ON OR AFTER OCTOBER 1, 2009, AGAINST A MINOR,

1 **IF THE INMATE HAS BEEN CONVICTED ON A PRIOR OCCASION NOT ARISING**
2 **FROM THE SAME INCIDENT OF ANY VIOLATION OF TITLE 3, SUBTITLE 3 OF THE**
3 **CRIMINAL LAW ARTICLE AGAINST A MINOR.**

4 (c) A deduction under this section may not be allowed for a period during
5 which an inmate does not receive credit for service of the inmate's term of
6 confinement, including a period:

7 (1) during which the inmate's sentence is stayed;

8 (2) during which the inmate is not in the custody of the Commissioner
9 because of escape; or

10 (3) for which the Maryland Parole Commission has declined to grant
11 credit after revocation of parole or mandatory supervision.

12 7-301.

13 (a) (1) Except as otherwise provided in this section, the Commission shall
14 request that the Division of Parole and Probation make an investigation for inmates in
15 a local correctional facility and the Division of Correction make an investigation for
16 inmates in a State correctional facility that will enable the Commission to determine
17 the advisability of granting parole to an inmate who:

18 (i) has been sentenced under the laws of the State to serve a
19 term of 6 months or more in a correctional facility; and

20 (ii) has served in confinement one-fourth of the inmate's
21 aggregate sentence.

22 (2) Except as provided in paragraph (3) of this subsection, or as
23 otherwise provided by law or in a predetermined parole release agreement, an inmate
24 is not eligible for parole until the inmate has served in confinement one-fourth of the
25 inmate's aggregate sentence.

26 (3) An inmate may be released on parole at any time in order to
27 undergo drug or alcohol treatment, mental health treatment, or to participate in a
28 residential program of treatment in the best interest of an inmate's expected or
29 newborn child if the inmate:

30 (i) is not serving a sentence for a crime of violence, as defined
31 in § 14-101 of the Criminal Law Article;

32 (ii) is not serving a sentence for a violation of Title 3, Subtitle 6,
33 § 5-608(d), § 5-609(d), § 5-612, § 5-613, § 5-614, § 5-621, § 5-622, or § 5-628 of the
34 Criminal Law Article; and

1 (iii) has been determined to be amenable to treatment.

2 (b) Except as provided in subsection (c) of this section, if an inmate has been
3 sentenced to a term of imprisonment during which the inmate is eligible for parole and
4 a term of imprisonment during which the inmate is not eligible for parole, the inmate
5 is not eligible for parole consideration under subsection (a) of this section until the
6 inmate has served the greater of:

7 (1) one-fourth of the inmate's aggregate sentence; or

8 (2) a period equal to the term during which the inmate is not eligible
9 for parole.

10 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph,
11 an inmate who has been sentenced to the Division of Correction after being convicted
12 of a violent crime committed on or after October 1, 1994, is not eligible for parole until
13 the inmate has served the greater of:

14 1. one-half of the inmate's aggregate sentence for
15 violent crimes; or

16 2. one-fourth of the inmate's total aggregate sentence.

17 (ii) An inmate who has been sentenced to the Division of
18 Correction after being convicted of a violent crime committed on or after October 1,
19 1994, and who has been sentenced to more than one term of imprisonment, including a
20 term during which the inmate is eligible for parole and a term during which the
21 inmate is not eligible for parole, is not eligible for parole until the inmate has served
22 the greater of:

23 1. one-half of the inmate's aggregate sentence for
24 violent crimes;

25 2. one-fourth of the inmate's total aggregate sentence;
26 or

27 3. a period equal to the term during which the inmate is
28 not eligible for parole.

29 (2) An inmate who is serving a term of imprisonment for a violent
30 crime committed on or after October 1, 1994, shall receive an administrative review of
31 the inmate's progress in the correctional facility after the inmate has served the
32 greater of:

33 (i) one-fourth of the inmate's aggregate sentence; or

(ii) if the inmate is serving a term of imprisonment that includes a mandatory term during which the inmate is not eligible for parole, a period equal to the term during which the inmate is not eligible for parole.

(D) (1) AN INMATE IS NOT ELIGIBLE FOR PAROLE CONSIDERATION AND MAY NOT BE GRANTED PAROLE AT ANY TIME DURING THE INMATE'S SENTENCE IF THE INMATE:

(I) IS SERVING A TERM OF IMPRISONMENT FOR A VIOLATION OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE COMMITTED ON OR AFTER OCTOBER 1, 2009, AGAINST A MINOR; AND

(II) HAS BEEN CONVICTED ON A PRIOR OCCASION NOT ARISING FROM THE SAME INCIDENT OF ANY VIOLATION OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE AGAINST A MINOR.

(2) THIS SUBSECTION DOES NOT RESTRICT THE AUTHORITY OF THE GOVERNOR TO PARDON OR REMIT ANY PART OF A SENTENCE UNDER § 7-601 OF THIS TITLE.

[(d)] (E) (1) Except as provided in paragraphs (2) and (3) of this subsection, an inmate who has been sentenced to life imprisonment is not eligible for parole consideration until the inmate has served 15 years or the equivalent of 15 years considering the allowances for diminution of the inmate's term of confinement under § 6-218 of the Criminal Procedure Article and Title 3, Subtitle 7 of this article.

(2) An inmate who has been sentenced to life imprisonment as a result of a proceeding under § 2-303 or § 2-304 of the Criminal Law Article is not eligible for parole consideration until the inmate has served 25 years or the equivalent of 25 years considering the allowances for diminution of the inmate's term of confinement under § 6-218 of the Criminal Procedure Article and Title 3, Subtitle 7 of this article.

(3) (i) If an inmate has been sentenced to imprisonment for life without the possibility of parole under § 2-203 or § 2-304 of the Criminal Law Article, the inmate is not eligible for parole consideration and may not be granted parole at any time during the inmate's sentence.

(ii) This paragraph does not restrict the authority of the Governor to pardon or remit any part of a sentence under § 7-601 of this title.

(4) If eligible for parole under this subsection, an inmate serving a term of life imprisonment may only be paroled with the approval of the Governor.

Article – Criminal Procedure

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.

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

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

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

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

(i) suitable bail;

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

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

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

(F) (1) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH A VIOLATION OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE AGAINST A MINOR, IF THE DEFENDANT HAS BEEN PREVIOUSLY CONVICTED OF ANY VIOLATION OF TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE AGAINST A MINOR.

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

1. SUITABLE BAIL;

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

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

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

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

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