

SENATE BILL 181

E2
HB 900/08 – JUD

9lr1369
CF HB 88

By: **Senator McFadden (By Request – Baltimore City Administration)**

Introduced and read first time: January 22, 2009

Assigned to: Judicial Proceedings

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 (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.

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.

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

5 (VIII) TRANSPORTING A REGULATED FIREARM FOR
6 **UNLAWFUL SALE OR TRAFFICKING UNDER § 5-140 OF THE PUBLIC SAFETY**
7 **ARTICLE; OR**

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

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

12 1. **SUITABLE BAIL;**

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

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

18 (II) WHEN A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF
19 **THIS SUBSECTION IS PRESENTED TO THE COURT UNDER MARYLAND RULE**
20 **4-216(F), THE JUDGE SHALL ORDER THE CONTINUED DETENTION OF THE**
21 **DEFENDANT IF THE JUDGE DETERMINES THAT NEITHER SUITABLE BAIL NOR**
22 **ANY CONDITION OR COMBINATION OF CONDITIONS WILL REASONABLY ENSURE**
23 **THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER**
24 **PERSON OR THE COMMUNITY BEFORE THE TRIAL.**

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

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 **October 1, 2009.**