

SENATE BILL 181

E2
HB 900/08 – JUD

9lr1369
CF HB 88

By: **Senator McFadden (By Request – Baltimore City Administration) and
Senators Brochin, Forehand, Gladden, Haines, Jacobs, Raskin,
Simonaire, and Stone**

Introduced and read first time: January 22, 2009
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 27, 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**

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 5–202.

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

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

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

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

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

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

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

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

23 1. suitable bail;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (x) a crime of violence.

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

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

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

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

6 (i) the provisions of a temporary protective order described in §
7 4–505(a)(2)(i) of the Family Law Article or the provisions of a protective order
8 described in § 4–506(d)(1) of the Family Law Article that order the defendant to
9 refrain from abusing or threatening to abuse a person eligible for relief; or

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

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

17 (i) suitable bail;

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

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

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

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

32 **(I) WEARING, CARRYING, OR TRANSPORTING A HANDGUN**
33 **UNDER § 4–203 OF THE CRIMINAL LAW ARTICLE;**

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

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

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

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

7 (VI) USE OF A WEAPON AS A SEPARATE CRIME UNDER §
8 5-621 OF THE CRIMINAL LAW ARTICLE;

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

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

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

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

18 1. SUITABLE BAIL;

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

22 3. BOTH BAIL AND OTHER CONDITIONS DESCRIBED
23 UNDER ITEM 2 OF THIS SUBPARAGRAPH.

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.