

Department of Legislative Services  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**

House Bill 1237  
Judiciary

(Delegate Schuh, *et al.*)

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**Criminal Procedure - Restrictions on Pretrial Release - Criminal Gang Offenses -  
Repeat Offenders**

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This bill prohibits a District Court commissioner from authorizing the pretrial release of a defendant charged with a criminal gang offense if the defendant has previously been convicted of a criminal gang offense under the Criminal Law Article. A judge may, however, authorize the pretrial release of such a defendant on suitable bail and/or conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community.

When the defendant is presented to a judge after being denied pretrial release by a commissioner, the judge must order the continued detention of the defendant if the judge determines that neither suitable bail nor conditions of pretrial release will reasonably ensure that the defendant will not flee or pose a danger to another person or the community before trial. There is a rebuttable presumption that a defendant subject to this bill will flee and pose a danger to another person or the community.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in State expenditures from denial of pretrial release to repeat criminal gang offenders in Baltimore City. Any increase in bail review duties by District Court commissioners can be handled with existing budgeted resources.

**Local Effect:** Potential minimal increase in local incarceration expenditures from denial of pretrial release for repeat criminal gang offenders in jurisdictions other than Baltimore City.

**Small Business Effect:** None.

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## Analysis

### Current Law:

#### *Pretrial Release*

A District Court commissioner may not authorize pretrial release for: (1) a defendant charged with escaping from a correctional facility or any other place of confinement in the State; (2) a defendant charged as a drug kingpin; (3) a defendant charged with one of nine specified firearms offenses if the defendant has been previously convicted of one of those crimes; (4) a defendant charged with committing 1 of 10 specified crimes while on pretrial release on a charge of committing 1 of the offenses; (5) a defendant charged with violating provisions of a temporary or final protective order ordering the defendant to refrain from abusing or threatening to abuse a person eligible for relief; or (6) a defendant charged with a crime of violence if the defendant has been previously convicted of a crime of violence in Maryland or in any other jurisdiction of a crime that would be a crime of violence if committed in Maryland. With the exception of escapees, a judge may grant the pretrial release of defendants who fall into any of these categories under conditions similar to the ones specified in the bill. Except for escapees and violators of protective orders, there is a rebuttable presumption that all of these defendants pose a flight risk and a danger to another person or the community.

Under Maryland Rules relating to the review of a commissioner's pretrial release order, a defendant who is denied pretrial release by a commissioner or who for any reason remains in custody for 24 hours after a commissioner has determined conditions of release must be presented immediately to the District Court. The District Court must review the commissioner's pretrial release determination and take appropriate action. If the defendant remains in custody after the review, the District Court must set forth in writing or on the record the reasons for the continued detention.

#### *Criminal Gang Offenses*

“Criminal gang” is defined as a group or ongoing association of three or more persons whose members:

- individually or collectively engage in a pattern of criminal gang activity;
- have as one of their primary objectives or activities the commission of one or more underlying crimes; and
- have in common an identifying sign, symbol, name, leader, or purpose.

An underlying crime includes all “crimes of violence” as defined in State law and felony violations of specified crimes.

A violation of any of the following (defined as a “crime of violence” under the Criminal Law Article and for which mandatory sentences apply) is an “underlying crime” for purposes of the prohibition against gang activity:

- abduction;
- first degree arson;
- kidnapping;
- manslaughter, except involuntary manslaughter;
- mayhem;
- maiming;
- murder;
- rape;
- robbery;
- robbery with a dangerous weapon;
- carjacking and armed carjacking;
- first or second degree sexual offense;
- use of a handgun in the commission of a felony or other crime of violence;
- first degree child abuse;
- sexual abuse of a minor (under specified circumstances);
- an attempt to commit any of the above crimes;
- continuing course of conduct involving rape or sexual offense with a child;
- assault in the first degree, or assault with intent to murder, rape, rob, or commit a first or second degree sexual offense.

A felony violation of the following crimes is also an underlying crime:

- second degree assault;
- extortion;
- manufacturing or possessing a destructive device;
- manufacturing, distributing, possessing with intent to distribute, or dispensing a controlled dangerous substance;
- second degree arson;
- attempting to burn a structure or property;

- burglary in the first, second, or third degree;
- general theft or unauthorized taking of a motor vehicle;
- obstruction of justice;
- retaliation for testimony or intimidating or corrupting a juror; or
- illegal possession of a firearm.

“Pattern of criminal gang activity” is defined as the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes or acts by a juvenile that would be an underlying crime if committed by an adult, provided the crimes or acts were not part of the same incident.

A person may not threaten an individual, or a friend or family member of an individual, with physical violence with the intent to coerce, induce, or solicit the individual to participate in or prevent the individual from leaving a criminal gang. Violators are guilty of a misdemeanor and subject to maximum penalties of two years imprisonment and/or a \$1,000 fine. A separate offense and enhanced penalties exist for similar behavior that occurs in a school vehicle or within a specified distance of school property.

A person is prohibited from (1) participating in a criminal gang knowing that the members of the gang engage in an ongoing pattern of criminal gang activity; or (2) knowingly or willfully directing or participating in the commission of an underlying crime (or act by a juvenile that would be an underlying crime if committed by an adult) committed for the benefit of, at the direction of, or in association with a criminal gang. A violator is guilty of a felony and subject to maximum penalties of 10 years imprisonment or 20 years if death to a victim occurs, and/or a \$100,000 fine. A sentence imposed under this section may run consecutive to or concurrently with a sentence for any underlying crime that was used to establish participation in criminal gang activity. A person may be charged with a violation of this section only by indictment, criminal information, or petition alleging a delinquent act.

**Background:** According to the Maryland Sentencing Guidelines Database, in fiscal 2009, there was one conviction in the State’s circuit courts for participation as a member of a criminal gang in the commission of a crime resulting in the death of a victim. There were four convictions for gang participation in the commission of a crime that did not result in the death of a victim.

**State Fiscal Effect:** The Division of Pretrial Detention and Services (DPDS) is responsible for processing and managing the care, custody, and control of Baltimore City arrestees and inmates, primarily at the Baltimore City Detention Center. DPDS also provides bail recommendations to the courts in Baltimore City and supervises defendants

who have been released to the community to await trial. Any additional detentions that may result from the bill's provisions are expected to be minimal.

**Local Expenditures:** Outside of Baltimore City, defendants awaiting trial are housed in local detention facilities. Per diem operating costs of local detention facilities are expected to range from \$57 to \$157 per inmate in fiscal 2011.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Montgomery County, Commission on Criminal Sentencing Policy, Governor's Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Department of Juvenile Services, State's Attorneys' Association, Department of Legislative Services

**Fiscal Note History:** First Reader - February 28, 2010  
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Analysis by: Amy A. Devadas

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510