

**Department of Legislative Services**  
Maryland General Assembly  
2017 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

House Bill 1215

(Delegate Anderson, *et al.*)

Judiciary

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**Criminal Procedure - Pretrial Release**

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This bill (1) establishes standards, criteria, and requirements for the pretrial release of criminal defendants; (2) prohibits a District Court commissioner from authorizing the pretrial release of specified defendants; and (3) requires a judicial officer to consider specified factors when making pretrial release decisions.

The bill takes effect June 1, 2017.

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**Fiscal Summary**

**State Effect:** Potential significant decrease in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) if, when compared to current practice, the bill's provisions reduce pretrial detention expenditures in Baltimore City, partially offset to the extent the bill necessitates additional supervision personnel. Revenues are not affected.

**Local Effect:** Potential significant decrease in local expenditures if, when compared to current practice, the bill's provisions reduce pretrial detention expenditures in local jurisdictions. Local revenues are not affected.

**Small Business Effect:** Potential meaningful impact on small business bail bondsmen to the extent that the bill results in greater use of bail than under the Maryland Rules set to take effect July 1, 2017.

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## Analysis

### **Bill Summary:**

*Interpretation of Pretrial Release Provisions:* The bill establishes that specified statutory provisions regarding the pretrial release of criminal defendants must be liberally construed to authorize release of a defendant pending trial, with or without nonfinancial conditions, bail, or both, unless it is shown by *clear and convincing evidence* that the defendant (1) will not appear when required or (2) will pose a danger to an alleged victim, witness, other persons, or the community.

*Release on Personal Recognizance:* A defendant charged only with one or more misdemeanors must be released on personal recognizance. However, a defendant may not be released on personal recognizance if:

- the defendant is charged with:
  - aiding, counseling, or procuring arson in the first degree;
  - arson in the second degree or attempting, aiding, counseling, or procuring arson in the second degree;
  - burglary in the first, second, or third degree;
  - causing abuse to a child under § 3-601 or § 3-602 of the Criminal Law Article;
  - a crime that relates to a destructive device under § 4-503 of the Criminal Law Article;
  - a crime that relates to a controlled dangerous substance under §§ 5-602 through 5-609, § 5-612, or § 5-613 of the Criminal Law Article;
  - manslaughter by vehicle or vessel under § 2-209 of the Criminal Law Article;
  - a crime of violence;
  - a crime requiring registration as a sex offender under Title 11, Subtitle 7 of this article; or
  - any other felony.
- the defendant has been convicted of one of the aforementioned offenses within the previous five years;
- the defendant has been charged with a crime punishable by life imprisonment without parole;
- the defendant is charged with a domestically related crime, as defined in § 6-233 of the Criminal Procedure Article;
- the defendant is charged in more than one pending criminal proceeding; or

- the defendant has failed to appear in any criminal proceeding within the previous three years; or
- a judicial officer determines and states in a written order that nonfinancial conditions or bail or both are reasonable and necessary because release on personal recognizance will not reasonably ensure the appearance of the defendant as required, or will endanger the safety of a person or the community.

*Bail Determinations:* Notwithstanding any other law or rule to the contrary, in circumstances in which a judicial officer may impose bail, a judicial officer may not set bail higher than necessary to ensure the future appearance of the defendant or protect the safety of a victim, a witness, another person, or the community.

A judicial officer may not set bail (1) solely for the purpose of detaining the defendant; (2) to punish the defendant; or (3) to placate public opinion.

A defendant may satisfy any bail imposed by a judicial officer and must be released pending trial on providing:

- 10% of the amount of any bail of \$2,500 or less;
- 100% of the amount of any bail in U.S. currency or the equivalent;
- a deed of trust on real estate with an equity value in excess of the amount of bail; or
- a bail bond issued by an authorized bail bondsman or surety insurer.

*Release Determinations:* A defendant who is released before trial must be released on personal recognizance or on bail. However, additional conditions may be imposed in accordance with the bill's provisions.

If a judicial officer finds, after an individualized hearing, that no amount of bail or any conditions of release or combination of both will reasonably ensure the appearance of the defendant as required and the safety of a victim, a witness, another person, or the community, the defendant may not be released.

A judicial officer must consider the following information, to the extent available, when determining whether to release a defendant before trial and the amount of bail or appropriate conditions or both to impose on the defendant when released:

- the nature and circumstances of the offense charged;
- the nature of the evidence against the defendant;
- the potential sentence on conviction;
- the defendant's prior convictions and history of arrests;

- the defendant's prior record of appearance or nonappearance at court proceedings;
- the defendant's prior record of flight to avoid prosecution;
- the defendant's family and community ties;
- the defendant's employment status and employment history;
- the defendant's financial resources, including any lawful source of income, expenses paid by the defendant, and available financial support from the defendant's family or others;
- the defendant's mental health status;
- the defendant's length of residence in the community and the State;
- any recommendation of an agency that conducts a pretrial release investigation;
- any recommendation of the State's Attorney or arresting law enforcement officer;
- any information or recommendation presented by the defendant or the defendant's attorney;
- the danger posed by the defendant to an alleged victim, another person, or the community;
- the written or oral statement of the victim;
- any history of requests for an issuance of peace orders or protective orders against the defendant;
- the danger to self posed by the defendant; and
- any other factor bearing on the risk of a willful failure to appear and the safety of an alleged victim, another person, or the community.

*Additional Conditions of Release:* In addition to ordering the defendant released on either personal recognizance or bail, a judicial officer may impose any of the following conditions:

- committing the defendant to the custody of a recognized organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;
- placing the defendant under the supervision of a government agency authorized to perform such supervision and capable of enforcing compliance with the terms of release imposed by the judicial officer;
- requiring the defendant to be subject to home detention monitoring, with costs and fees to be paid by the defendant, unless waived by the court;
- subjecting the defendant to reasonable restrictions with respect to travel, association, and residence;

- prohibiting the defendant from having contact with an alleged victim, including exclusion from the victim's place of residence, place of education, place of business, or place of employment;
- subjecting the defendant, for good cause shown, to one or more of the conditions authorized under § 9-304 of the Criminal Law Article reasonably necessary to stop or prevent the intimidation of a victim or witness or a violation of § 9-302, § 9-303, or § 9-305 of the Criminal Law Article; or
- subjecting the defendant to any other condition reasonably necessary and calculated to ensure the appearance of the defendant as required, protect the safety of the alleged victim, and ensure that the defendant will not pose a danger to another person or the community.

*Advising Defendant of Rights When Imposing Nonfinancial Conditions of Release:* When a judicial officer imposes one or more nonfinancial conditions of release on a defendant, the judicial officer must advise the defendant of the defendant's rights under the U.S. and Maryland constitutions. The release of a defendant on one or more nonfinancial conditions may not be premised on a waiver of any constitutional right or protection unless such a waiver is given knowingly, voluntarily, and intelligently after a meaningful opportunity to consult with counsel. The imposition of a nonfinancial condition may not limit or modify any constitutional right or protection of a defendant.

*Bail and Status Reviews of Individuals Who Remain Incarcerated:* Once a week, the managing official of each local detention facility must provide the State's Attorney, the Public Defender, and District Court judges for the county with a report listing the defendants incarcerated in the county who are awaiting trial.

To avoid unnecessary detention, the State's Attorney, the Public Defender, and District Court judges must review the report to ascertain the basis for the incarceration of the defendants listed.

If a defendant is represented by counsel other than the Office of the Public Defender, defendant's counsel must be included in the review of the report on behalf of that defendant.

If a defendant remains in custody for longer than 72 hours after the conclusion of the defendant's bail review hearing in the District Court, the defendant, or counsel on behalf of the defendant, may file a motion to claim that the basis for the continued incarceration is the defendant's lack of access to financial resources. "Financial resources" includes any lawful source of income, proof of expenses paid by the defendant, and available financial support from the defendant's family or others.

The court must review a motion filed and any supporting information during the weekly population review. In considering the motion, the court must presume that the amount of bail required by the District Court is reasonable and necessary, and may alter the bail amount only if the defendant proves, by a preponderance of the evidence, that (1) new or amended information relating to the defendant's ability to pay the bail exists or (2) the court failed to consider relevant information when bail was set.

If the court determines that the defendant is incarcerated solely due to the inability to afford the amount of bail imposed, the court may modify the terms of release for the defendant by reducing the bail or allowing the release of the defendant on personal recognizance with conditions.

*Detention Pending Trial:* If a judicial officer determines that no amount of bail or conditions of release will reasonably ensure the appearance of the defendant as required and the safety of an alleged victim, witness, other person, and the community, then the judicial officer must order that the defendant be detained pending trial.

There is a rebuttable presumption that a defendant charged with first-degree murder is ineligible for pretrial release and must be detained pending trial. A defendant charged with escape from a correctional facility or other place of confinement must be presumed ineligible for pretrial release and must be detained pending trial.

When a defendant has been detained by a District Court commissioner and is presented to a judge in accordance with Maryland Rule 4-216(f), the judge must order the continued detention of the defendant if the judge determines *by clear and convincing evidence* that neither suitable bail nor any condition or combination of conditions of release will reasonably ensure that the defendant will not flee or pose a danger to another person or the community before trial.

*Individuals Who May Not Be Released by a District Court Commissioner:* The bill expands the pool of individuals for whom a District Court commissioner may authorize conditions of pretrial release. Under the bill, a District Court commissioner may not authorize the pretrial release of a defendant who is charged with one of the following crimes:

- being a drug kingpin under § 5-613 of the Criminal Law Article;
- a violation of a provision of a temporary protective order described in § 4-505(a)(2)(i) of the Family Law Article or a provision of a protective order described in § 4-506(d)(1) of the Family Law Article that orders the defendant to refrain from abusing or threatening to abuse a person eligible for relief;
- a violation of a provision 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 orders 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;

- wearing, carrying, or transporting a handgun under § 4-203 of the Criminal Law Article;
- use of a handgun or an antique firearm in commission of a crime under § 4-204 of the Criminal Law Article;
- a violation of a prohibition relating to assault weapons under § 4-303 of the Criminal Law Article;
- use of a machine gun in a crime of violence under § 4-404 of the Criminal Law Article;
- use of a machine gun for an aggressive purpose under § 4-405 of the Criminal Law Article;
- use of a weapon as a separate crime under § 5-621 of the Criminal Law Article;
- possession of a regulated firearm by a prohibited person under § 5-133 of the Public Safety Article;
- transporting a regulated firearm for unlawful sale or trafficking under § 5-140 of the Public Safety Article; or
- possession of a rifle or shotgun by a person with a mental disorder under § 5-205 of the Public Safety Article.

A District Court commissioner may not authorize the pretrial release of a person who is registered as a sex offender under Title 11, Subtitle 7 of the Criminal Procedure Article or a sex offender who is required to register by another jurisdiction; by a federal, military, or tribal court; or by a foreign government.

A District Court commissioner may not authorize the pretrial release of a defendant charged with a crime of violence if the defendant has been previously convicted:

- in this State of a crime of violence;
- of a crime, in any other jurisdiction, that would be a crime of violence if committed in this State; or
- one of the offenses from the aforementioned list of charges designated ineligible for pretrial release by a District Court commissioner.

A District Court commissioner may not authorize the pretrial release of a defendant charged with committing one of the following crimes while the defendant was released on bail or personal recognizance:

- aiding, counseling, or procuring arson in the first degree under § 6-102 of the Criminal Law Article;
- arson in the second degree or attempting, aiding, counseling, or procuring arson in the second degree under § 6-103 of the Criminal Law Article;
- burglary in the first degree under § 6-202 of the Criminal Law Article;
- burglary in the second degree under § 6-203 of the Criminal Law Article;
- burglary in the third degree under § 6-204 of the Criminal Law Article;
- causing abuse to a child under § 3-601 or § 3-602 of the Criminal Law Article;
- a crime that relates to a destructive device under § 4-503 of the Criminal Law Article;
- a crime that relates to a controlled dangerous substance under §§ 5-602 through 5-609, § 5-612, or § 5-613 of the Criminal Law Article;
- manslaughter by vehicle or vessel under § 2-209 of the Criminal Law Article;
- a crime of violence;
- a crime requiring registration as a sex offender under Title 11, Subtitle 7 of this article; or
- any other felony.

A judge may release the defendants described above on the additional conditions of release authorized under the bill, bond, or both bond and additional conditions of release.

**Current Law:** The statutory provisions pertaining to release on personal recognizance must be liberally construed to carry out the purpose of relying on criminal sanctions instead of financial loss to ensure the appearance of a defendant in a criminal case before verdict or pending a new trial.

In general, if the court believes, based on all the circumstances, that a minor or adult defendant in a criminal case will appear as required for trial before verdict or pending trial, the defendant may be released on personal recognizance. A failure to appear as required by personal recognizance is subject to specified penalties.

A criminal defendant is entitled to be released pending trial unless a judge ultimately determines that no conditions can be placed on the defendant's release to reasonably ensure the defendant's appearance at trial and the safety of the alleged victim, another person, and the community. Most defendants are eligible for and are released on personal recognizance. However, if a judicial officer determines that release on personal recognizance alone is not appropriate, or the defendant is by law ineligible for release on recognizance, the defendant may be released prior to trial only by posting bail in an amount set by the judicial officer.

A defendant is by law ineligible for release on personal recognizance if charged with (1) a crime punishable by life imprisonment without parole or (2) a crime of violence, certain drug offenses, or certain other serious crimes, after having been previously convicted of one of these crimes.

In most cases, pretrial release determinations are made at a defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants. Pretrial release of such defendants may be authorized only by a judge, and only on suitable bail, on any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to others, or on both bail and such other conditions. Please see **Appendix 1 – Defendants Ineligible for Pretrial Release by a District Court Commissioner** for a comprehensive list of defendants ineligible for pretrial release by a District Court commissioner.

A defendant who is denied pretrial release by a District Court commissioner or who for any reason remains in custody after a District Court commissioner has determined conditions of release under Maryland Rule 4-216 must be presented to a District Court judge immediately if the court is in session, or if the court is not in session, at the next session of the court.

Whether released on recognizance or bail, one or more conditions may be imposed, including:

- committing the defendant to the custody of a designated person or organization (including a private home detention company) that agrees to supervise the defendant and assist in ensuring the defendant's future appearance in court;
- placing the defendant under the supervision of a probation officer or other appropriate public official, such as a governmental pretrial services unit, which in some jurisdictions can provide home detention, electronic monitoring, and drug testing or treatment pending trial;
- restricting the defendant's travel, associations, or residence;
- prohibiting contact with the alleged victim;
- subjecting the defendant to any other conditions reasonably necessary to (1) ensure the appearance of the defendant as required; (2) protect the safety of the alleged victim; and (3) ensure that the defendant will not pose a danger to another person or the community; and
- for good cause shown, imposing one or more statutorily authorized conditions reasonably necessary to stop or prevent intimidation of a victim or witness or a violation of certain laws relating to obstruction of justice.

In determining whether a defendant should be released and the conditions of pretrial release, the judicial officer (judge or commissioner) is required to take into account the following information, to the extent available: (1) the nature and circumstances of the offense; (2) the nature of the evidence against the defendant and the potential sentence upon conviction; (3) the defendant's prior record and history with regard to appearing in court as required or flight from prosecution; (4) the defendant's employment status and history, family ties, financial resources, reputation, character and mental condition, and length of residence in the community and the State; (5) the potential danger of the defendant to himself or herself, the alleged victim, the community, or others; (6) recommendations of the State's Attorney and any agency that conducts a pretrial release investigation; (7) information provided by the defendant or the defendant's counsel; and (8) any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

Bail is intended to ensure the presence of the defendant in court, not as punishment. If there is a concern that the defendant will fail to appear in court, but otherwise does not appear to pose a significant threat to the public, the defendant may be required to post a bail bond rather than be released on recognizance. A bail bond is the written obligation of the defendant, with or without a surety or collateral security, conditioned on the personal appearance of the defendant in court as required and providing for payment of a specified penalty (the amount of the bail) upon default.

Once the bail has been set, the defendant may secure release by posting cash or other collateral with the court, such as a corporate surety bond, a certified check, intangible property, or encumbrances on real property, in an amount required by the judicial officer.

If expressly authorized by a circuit court, a defendant or a private surety acting for the defendant may post a bail bond by executing it in the full penalty amount and depositing with the clerk of court 10% of the penalty amount or \$25, whichever is greater. In a criminal or traffic case in the District Court in which a bail bond has been set and if expressly authorized by the court or District Court commissioner, the defendant or a private surety acting for the defendant may post the bail bond by executing it in the full penalty amount and depositing with the clerk of the court or a commissioner the greater of 10% of the penalty amount or \$25. A judicial officer may increase the percentage of cash surety required in a particular case but may not authorize a cash deposit of less than \$25. This option is not available to a defendant in the District Court who has been arrested for failure to appear in court or for contempt of court.

**Background:** When an individual is charged with a crime, Maryland law currently allows District Court commissioners and judges to permit release on personal recognizance, set a

bail amount, or order pretrial detention. To meet a bail amount, an arrestee must either make a payment directly to the court, post property, or seek the assistance of a bail bondsman.

*Bail Systems Scrutinized Nationally:* Bail systems have come under increased scrutiny nationwide due to the disproportionate financial burden placed on lower income individuals and the risk that they will be held before trial solely because of their financial status. Advocates for bail reform contend that alternative pretrial release strategies perform as well as or better than bail for court appearance rates and public safety without imposing a disparate impact on low-income defendants.

In February 2015, the U.S. Department of Justice (DOJ) filed a statement of interest in a case pending in federal district court in Alabama, *Varden v. City of Clanton*, in which an arrestee was held for a week because she could not afford to pay the preset bail for her charges. The DOJ statement argued that such fixed-sum bail schemes violate the Equal Protection Clause of the Fourteenth Amendment because “they essentially mandate pretrial detention for anyone who is too poor to pay the predetermined fee.” The case was settled shortly after DOJ filed its statement. Under the settlement agreement, the city agreed to release most individuals arrested for violations of city ordinances on unsecured bonds and to conduct a bail hearing within 48 hours after arrest for anyone who was not released.

In August 2016, DOJ filed an *amicus curiae* brief in *Walker v. City of Calhoun, Georgia* stating that a bail system that required an arrestee to pay a fixed amount violated the Fourteenth Amendment because it failed to engage in a meaningful consideration of the arrestee’s ability to pay the bail and alternatives to money bail. The plaintiff in the case alleged that he was kept in jail for six days because of his inability to pay a \$160 bail, which was determined according to the City of Calhoun’s preset bail schedule.

In January 2016, a federal district court granted Mr. Walker’s request for a preliminary injunction and ordered the City of Calhoun to implement constitutional post-arrest procedures. The court also prohibited the city from keeping arrestees in custody solely because of their inability to pay their monetary bonds and ordered the city to release present and future misdemeanor arrestees in its custody on personal recognizance or unsecured bond until it can implement lawful procedures. The court also granted Mr. Walker’s motion for class certification. The U.S. Court of Appeals for the Eleventh Circuit heard oral arguments in the case on February 23, 2017.

Though the *Varden* and *Walker* cases involve bail schedules and preset bail amounts, DOJ officials have stated that the department’s position applies to any system that incarcerates an individual solely because of the individual’s inability to pay a cash bond, fee, or fine.

*Imposition of Bail in Maryland:* Maryland does not utilize preset bail schedules or fixed-sum bail systems. Rather, judges and commissioners in Maryland are required to

consider a number of factors when determining whether an arrestee is to be held in pretrial detention, released with a money bail, or released on recognizance. According to information provided by the Maryland Judiciary during the 2016 session, approximately 50% of arrestees are released immediately on personal recognizance or by unsecured personal bonds, 10% post bonds the same evening, and 10% post bonds prior to a judicial bail review hearing.

In an advisory letter dated October 11, 2016, the Office of the Attorney General stated its belief that, if presented with an appropriate case, the Court of Appeals would determine that the State's laws and rules require judicial officers to inquire into an arrestee's ability to meet a financial condition of release. The advisory letter concluded that if a judge or commissioner determines that pretrial detention without bail is not necessary, then they "may not impose a financial condition set solely to detain the defendant," and release conditions must be the "least onerous" possible to meet the State's interests in public safety and ensure the appearance of the defendant. The office also determined that if bail is set at a financially unreachable level for a defendant for whom pretrial detention is not justified, the Court of Appeals would likely determine that the bail is excessive under the Eighth Amendment of the U.S. Constitution and Article 25 of the Maryland Declaration of Rights. State law does not require that bail be set within an arrestee's ability to pay.

*Ensuring Least Onerous Conditions:* The Chief Judge of the District Court of Maryland, John P. Morrissey, issued a guidance letter to all District and circuit court judges and District Court commissioners on October 25, 2016, advising them on several aspects of the bail-setting process under current law. In particular, Chief Judge Morrissey cautioned that judicial officers are to apply the "least onerous" conditions that will ensure public safety and the appearance of the defendant and that cash bail is not an appropriate means of ensuring public safety. He also advised that judicial officers should avoid "defendants being detained who do not need to be detained."

Also on October 25, 2016, Maryland Attorney General Brian E. Frosh requested that the Maryland Judiciary's Standing Committee on Rules of Practice and Procedure consider changes to the Maryland Rules to ensure that arrestees do not remain incarcerated solely because they cannot afford bail. The 24-member panel considers proposed amendments to the Maryland Rules of Procedure and submits recommendations for amendments to the Court of Appeals. On February 7, 2017, the Maryland Court of Appeals approved changes to the Maryland Rules regarding pretrial release of criminal defendants.

While the amended rules still authorize the imposition of financial conditions of release, the rules (1) establish that unless a judicial officer finds that no permissible nonfinancial condition of release will reasonably ensure the defendant's appearance in court or public safety, the judicial officer must release the defendant on personal recognizance or unsecured bond, with or without conditions; (2) require a judicial officer to impose the

least onerous conditions of release to ensure the defendant's appearance as required and ensure public safety; and (3) require a judicial officer to consider the specific facts and circumstances applicable to the defendant, including the defendant's ability to meet financial conditions of release. **Appendix 2 – Summary of Recent Changes to the Maryland Rules Regarding Pretrial Release of Criminal Defendants** contains a summary of recent changes to the Maryland Rules.

**Appendix 3 – Initial Appearances and Outcomes by Jurisdiction** contains statistics on initial appearances and release determinations in the District Court during fiscal 2016.

**State Expenditures:** General fund expenditures for DPSCS may decrease significantly if, when compared to current practice, the bill reduces pretrial detentions in Baltimore City, partially offset by increases in general fund expenditures if DPSCS needs to hire additional supervision personnel. General fund expenditures for the Judiciary may increase if additional personnel are needed to handle motions and weekly reviews of inmate populations under the bill. This analysis does not account for any changes to the failure to appear rate as a result of the bill's provisions, which cannot be determined without actual experience under the bill.

The bill (1) establishes a clear and convincing evidentiary standard for specified pretrial release decisions; (2) requires that specified defendants be released on personal recognizance unless otherwise disqualified under the bill; (3) authorizes a defendant to self-post bail of \$2,500 or less (currently only available if authorized by a judicial officer); (4) prohibits a judicial officer from setting bail higher than necessary to ensure the future appearance of the defendant or protect the safety of the victim, a witness, another person, or the community; and (5) prohibits a judicial officer from setting bail solely to detain the defendant, punish the defendant, or placate public opinion. To the extent that these factors increase the number of defendants in Baltimore City who are able to be released pretrial, general fund expenditures for detention may decrease significantly. The magnitude of this decrease cannot be reliably predicted at this time and can only be determined with actual experience under the bill. Furthermore, the bill appears to expand the pool of defendants for whom a District Court commissioner may not authorize pretrial release, which may also impact the overall effect of the bill on pretrial detention populations.

The Judiciary does not have data on the number of individuals charged with only one or more misdemeanors, since statistics on defendants are kept by case and not by charge and cases can contain multiple charges. These individuals must be released on personal recognize under the bill, unless disqualified under other provisions in the bill.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The

Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

However, should the bill lead to increased referrals to pretrial supervision to the point that additional personnel are needed to maintain acceptable caseloads, general fund expenditures for DPSCS may increase. The Pretrial Release Services Program (PRSP) provides pretrial supervision and services for defendants in Baltimore City. The Division of Parole and Probation (DPP) provides supervision for pretrial defendants when ordered to do so by the courts. Neither PRSP nor DPP can estimate how many more defendants may be released to pretrial supervision as a result of the bill and cannot determine the fiscal impact of the bill at this time.

The Governor's proposed fiscal 2018 budget includes \$3.8 million for PRSP, and PRSP has 88 positions. The cost associated with hiring an additional pretrial investigator is \$56,757 in fiscal 2018, including salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The cost associated with hiring an additional pretrial case agent is \$68,882 in fiscal 2018. These estimates assume a July 1, 2017 hiring date.

OPD advises that the bill does not have a fiscal or operational impact on the agency and that while the bill may increase bail review hearings, OPD is already representing indigent defendants at judicial bail review hearings statewide.

The Judiciary advises that the administrative judge of the District Court regularly reviews a list of incarcerated defendants from local detention centers to see if any pending trial date should be advanced due to the length of a defendant's incarceration. According to the Judiciary, the bill formalizes a process involving coordination with four different entities.

Under the bill, District Court judges must review inmate lists on a weekly basis. The Judiciary advises that this requirement may impact judicial availability for District Court dockets and may require additional personnel to process motions and coordinate weekly reviews. The Department of Legislative Services advises that while the bill is likely to result in operational delays in the District Court, the need for additional personnel may be mitigated to the extent that the current process can be altered to accommodate the requirements of the bill or the creation of automated reports.

**Local Expenditures:** Local expenditures may decrease significantly if, when compared to current practice, the bill results in a reduction in pretrial detentions in local jurisdictions. These expenditures may be offset to the extent that the bill results in increased need for pretrial services personnel.

**Exhibit 1** contains information on local jurisdictions with pretrial services units, based on information from legislative reports and recent developments. Based on the most recent

available information, 11 counties currently have pretrial services units. The programs vary in their policies and duties.

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**Exhibit 1**  
**Pretrial Services Units in Local Jurisdictions**

<b><u>Jurisdictions with Pretrial Services Units</u></b>	<b><u>Jurisdictions Without Pretrial Services Units</u></b>
Anne Arundel County	Allegany County
Baltimore City	Caroline County
Baltimore County	Cecil County
Calvert County	Charles County
Carroll County	Garrett County
Frederick County	Howard County
Harford County	Kent County
Montgomery County	Queen Anne's County
Prince George's County	Somerset County
St. Mary's County	Talbot County
Wicomico County	Washington County
	Worcester County

Source: Task Force to Study the Laws and Policies Relating to Representation of Indigent Criminal Defendants by the Office of the Public Defender – Survey by Pretrial Justice Institute; Maryland Association of Counties; Department of Legislative Services

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Montgomery County advises that the bill does not have a fiscal impact on the county, since its pretrial release services program is fully operational and already accomplishes the bill's requirements.

The Maryland Association of Counties (MACo) advises that the bill does not have a direct impact on local government finances or operations as it makes changes to the procedures and consideration a District Court commissioner makes when making the determination of whether and how to release a defendant pending trial. MACo advises, however, that it does not have the necessary information to estimate any impact or changes to local jail populations given the changes within the bill.

Dorchester County advises that the bill increases operating costs for its State's Attorney's Office to comply with the requirement for ongoing monitoring of local detention populations.

Garrett County advises that while the bill results in fewer inmates in jail pending trial, substantial additional resources are needed to locate individuals who fail to appear because they were not held on an appropriate bond.

The State's Attorneys' Association advises that the effect of the bill on prosecutors is unknown at this time.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 983 (Senator Muse) - Judicial Proceedings.

**Information Source(s):** Baltimore, Dorchester, Garrett, and Montgomery counties; Maryland Association of Counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - March 1, 2017

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## **Appendix 1 – Defendants Ineligible for Pretrial Release by a District Court Commissioner**

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Please refer to § 5-202 of the Criminal Procedure Article for complete information on defendants who are not eligible for pretrial release by a District Court commissioner.

### *In General*

In most cases, pretrial release determinations are made at the defendant's initial appearance before a District Court commissioner. A commissioner may not, however, authorize the release of certain defendants, including defendants who are registered sex offenders in the State or defendants required to register as a sex offender by another jurisdiction/court/government and defendants charged:

- with a crime punishable by life imprisonment;
- with escaping from a correctional facility or any other place of confinement in the State;
- as a drug kingpin;
- with a crime of violence (as defined under § 14-101 of the Criminal Law Article), if the defendant has been previously convicted of a crime of violence under the laws of this State, has been convicted under the laws of another state of a crime classified as a crime of violence in Maryland or has been convicted of specified weapons-related offenses; and
- with violating the provisions of a domestic violence protective order (temporary or otherwise) ordering the defendant to refrain from abusing or threatening to abuse a person eligible for relief (applies to orders issued by a court in Maryland, by another state, or by a Native American tribe).

### *Repeat Offender – Defendant Charged with a Specified Crime Who Has a Prior Conviction for a Specified Crime*

A District Court commissioner may not authorize the pretrial release of a defendant charged with one of the following crimes ***if the defendant has previously been convicted of a crime of violence or one of the following crimes:***

- wearing, carrying, or transporting a handgun under § 4-203 of the Criminal Law Article;
- use of a handgun or an antique firearm in commission of a crime under § 4-204 of the Criminal Law Article;

- violating prohibitions relating to assault weapons under § 4-303 of the Criminal Law Article;
- use of a machine gun in a crime of violence under § 4-404 of the Criminal Law Article;
- use of a machine gun for an aggressive purpose under § 4-405 of the Criminal Law Article;
- use of a weapon as a separate crime under § 5-621 of the Criminal Law Article;
- possession of a regulated firearm under § 5-133 of the Public Safety Article;
- transporting a regulated firearm for unlawful sale or trafficking under § 5-140 of the Public Safety Article; or
- possession of a rifle or shotgun by a person with a mental disorder under § 5-205 of the Public Safety Article.

*Repeat Offender – Defendant Charged with Committing a Specified Crime While Released on Bail or Personal Recognizance on a Prior Charge of Committing a Specified Crime*

A District Court commissioner also may not authorize the pretrial release of a defendant charged with committing one of the following crimes ***while the defendant was released on bail or personal recognizance for a pending prior charge of committing one of the following crimes:***

- aiding, counseling, or procuring arson in the first degree;
- arson in the second degree or attempting, aiding, counseling, or procuring arson in the second degree;
- burglary in the first, second, or third degree;
- child abuse or sexual abuse of a minor;
- manufacture or possession of a destructive device;
- various offenses related to controlled dangerous substances (CDS), except for possessing or administering CDS;
- manslaughter by vehicle or vessel; and
- a crime of violence.

## **Appendix 2 – Summary of Recent Changes to the Maryland Rules Regarding Pretrial Release of Criminal Defendants (Effective July 1, 2017)**

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On February 7, 2017, the Maryland Court of Appeals approved significant changes to the Maryland Rules on pretrial release of defendants. The rules take effect July 1, 2017.

*General Principles:* The new rules are designed to promote the release of defendants on their own recognizance or unsecured bond, when necessary. A judicial officer should impose additional conditions on release only if needed to ensure the defendant's appearance in court; to protect the community, victims, witnesses, or other persons; and to maintain the integrity of the judicial process, as demonstrated by the circumstance of the individual case. Preference should be given to additional conditions without financial terms.

*Interpretation of Rules:* The rules must be construed to permit the release of a defendant pending trial except if the judicial officer finds that if the defendant is released, there is a reasonable likelihood that the defendant will not appear as required or will be a danger to the victim, witnesses, another person, or the community.

*Individualized Consideration:* A judicial officer must consider the specific facts and circumstances applicable to the defendant when determining whether or on what conditions to release a defendant, including the ability of the defendant to meet a special condition of release with financial terms or comply with a special condition.

*Least Onerous Conditions:* If a judicial officer determines that a defendant should be released other than on personal recognizance or unsecured bond with special conditions, the judicial officer must impose the least onerous condition(s) of release to reasonably ensure the defendant's appearance in court and the safety of specified individuals and the community.

*Priority Given to Release on Personal Recognizance or Unsecured Bond:* Except as prohibited under § 5-101 or § 5-202 of the Criminal Procedure Article (no personal recognizance for specified defendants and individuals ineligible for pretrial release by a District Court commissioner), unless the judicial officer finds that no permissible nonfinancial condition of release will reasonably ensure the appearance of the defendant or safety of victims, witnesses, other persons, or the community, the judicial officer must release the defendant on personal recognizance or unsecured bond, with or without special conditions. If the judicial officer makes such a finding, the judicial officer must state the basis for it on the record.

*Required Conditions of Release:* The following conditions of release are required for all defendants: (1) the defendant will not engage in any criminal conduct while on pretrial release; and (2) the defendant will appear in court when required to do so.

*Special Conditions of Release:* Special conditions of release that may be imposed on a defendant include:

- statutory conditions to stop or prevent witness intimidation, including a general no-contact order;
- reasonable travel or residential restrictions;
- maintaining or seeking employment;
- maintaining or commencing an education program;
- a reasonable curfew;
- refraining from possessing a firearm, destructive device, or dangerous weapon;
- refraining from use of alcohol, narcotics, or controlled dangerous substances;
- medical, psychological, or psychiatric treatment or drug/alcohol counseling;
- electronic monitoring;
- periodic reporting to designated supervisory persons;
- committing the defendant to the custody or supervision of a designated person or organization that agrees to supervise the defendant and assist in ensuring the defendant's appearance in court;
- execution of unsecured bonds by the defendant and an uncompensated surety who meets specified requirements;
- execution of a bond secured by the deposit of collateral security of a value in excess of 10% of the penalty amount of the bond or by the obligation of a surety, including a surety insurer acceptable to the judicial officer (preference to uncompensated surety with personal relationship to the defendant and posting of collateral security by that surety); and
- any other lawful condition that will help ensure the appearance of the defendant or safety of specified individuals or the community.

*Conditions of Defendant's Resources:* A judicial officer may not impose a special condition of release with financial terms in a form or amount that results in the pretrial detention of the defendant solely because of the defendant's inability to meet the financial condition. The judicial officer may consider resources available to the defendant from all lawful sources when determining the defendant's ability to meet a financial condition of release.

*Imposition of Special Conditions:* Special conditions of release with financial terms are appropriate only to ensure the appearance of the defendant and may not be imposed solely to prevent future criminal conduct during the pretrial period or to protect the safety of any

person or the community or to punish the defendant or placate public opinion. Judicial officers may not use a predetermined charge-based schedule to set financial terms of release.

The judicial officer may also impose one or more special conditions of release if the officer finds that such conditions are necessary to ensure the defendant's appearance and protect the safety of victims, other persons, or the community.

*Recommendations by Pretrial Services Units:* When determining whether or not to release a defendant and the conditions of release, a judicial officer must consider the recommendations of a pretrial services unit that has administered a validated risk assessment to the defendant and is willing to provide an acceptable level of supervision over the defendant during the pretrial period if asked to do so.

*Additional Factors for Consideration:* Additional factors the judicial officer must consider are:

- the nature and circumstances of the offense charged, the nature of the evidence against the defendant, and the potential sentence upon conviction;
- the defendant's prior record of appearance at court proceedings or flight to avoid prosecution or failure to appear at court proceedings;
- the defendant's family ties, employment status and history, financial resources, reputation, character and mental condition, length of residence in the community, and length of residence in this State;
- any request made under § 5-201 of the Criminal Procedure Article for reasonable protections for the safety of the victim;
- any recommendation of an agency that conducts pretrial release investigations;
- any information presented by the State's Attorney and any recommendation of the State's Attorney;
- any information presented by the defendant or defendant's attorney;
- the danger of the defendant to the alleged victim, another person, or the community;
- the danger of the defendant to himself or herself; and
- any other factor bearing on the risk of a willful failure to appear and the safety of the alleged victim, another person, or the community, including all prior convictions and any prior adjudications of delinquency that occurred within three years of the date the defendant is charged as an adult.

*Refunds of Posted Collateral Security:* If the judicial officer requires collateral security, the officer must advise the defendant that any posted cash or property will be refunded at the conclusion of the criminal proceedings if the defendant has not defaulted in the performance of the conditions of the bond.

### Appendix 3 – Initial Appearances and Outcomes by Jurisdiction

<u>County</u>	<u>Number of Initial Appearances</u>	No Probable Cause Release		<u>Personal Recognizance</u>	<u>Unsecured Personal Bond</u>	% Personal Recognizance and Unsecured Personal Bond		<u>Held on Bond</u>	<u>% Held on Bond</u>	<u>Held Without Bond</u>	<u>% Held Without Bond</u>
		<u>Personal Recognizance</u>	<u>Release</u>			<u>30.4%</u>	<u>53.4%</u>				
Allegany	2,201	25	580	65		30.4%	53.4%	1,175	345		15.7%
Anne Arundel	13,699	579	6,280	1,064		57.8%	34.0%	4,658	887		6.5%
Baltimore City	29,223	97	11,855	785		43.6%	46.1%	13,482	2,996		10.3%
Baltimore	17,392	110	5,720	905		38.7%	50.8%	8,829	1,067		6.1%
Calvert	2,202	22	645	776		65.5%	30.2%	665	87		4.0%
Caroline	838	1	268	194		55.3%	35.9%	301	72		8.6%
Carroll	2,055	20	748	357		54.7%	32.4%	665	263		12.8%
Cecil	3,636	8	988	648		45.2%	37.1%	1,348	633		17.4%
Charles	4,529	130	2,525	223		63.5%	28.5%	1,292	311		6.9%
Dorchester	1,275	5	238	148		30.7%	59.9%	764	109		8.5%
Frederick	4,101	89	1,590	291		48.0%	41.2%	1,690	343		8.4%
Garrett	575	1	232	38		47.1%	41.9%	241	63		11.0%
Harford	3,326	62	1,644	42		52.6%	34.8%	1,158	388		11.7%
Howard	4,001	19	647	1,249		47.9%	41.7%	1,669	355		8.9%
Kent	454	0	102	84		41.0%	44.7%	203	53		11.7%
Montgomery	13,617	141	3,518	2,917		48.3%	45.9%	6,249	772		5.7%
Prince George's	27,265	829	11,866	777		49.4%	37.3%	10,165	1,835		6.7%
Queen Anne's	1,121	8	190	166		32.5%	49.8%	558	171		15.3%
St. Mary's	2,144	33	1,168	294		69.7%	25.0%	535	110		5.1%
Somerset	687	12	107	175		42.8%	39.7%	273	90		13.1%
Talbot	978	10	406	186		61.6%	34.8%	340	35		3.6%
Washington	3,903	97	1,624	159		48.2%	37.7%	1,473	477		12.2%
Wicomico	4,539	212	1,079	424		37.8%	46.4%	2,105	521		11.5%
Worcester	3,433	318	1,699	257		66.2%	27.4%	940	196		5.7%
<b>Total</b>	<b>147,194</b>	<b>2,828</b>	<b>55,719</b>	<b>12,224</b>		<b>48.1%</b>	<b>41.3%</b>	<b>60,778</b>	<b>12,179</b>		<b>8.3%</b>

No Probable Cause Release: Commissioner found no probable cause for all charges and must release without conditions.

Unsecured Personal Bond: Commissioner released on unsecured personal bond. Defendant does not need to post money to be released, but owes money if he/she fails to appear.

Held on Bond: Commissioner held defendant on bond. Defendant is released if bond is paid.

Held Without Bond: Commissioner held defendant without bond due to statutory requirements under § 5-202 of the Criminal Procedure Article (restrictions on release by commissioner), fugitives, or discretionary holds without bond (significant danger, etc.).

Note: Total initial appearances include manual circuit court entries and civil body attachments in which pretrial release determinations are not recorded. Individual category totals will not add up to grand total of initial appearances.

Source: Maryland Judiciary; Department of Legislative Services