

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 736

Judiciary

(Delegate Buckel, *et al.*)

**Criminal Procedure - Pretrial Release - Crime of Violence (No Bail for Repeat
Violent Offenders Act of 2023)**

This bill prohibits a judicial officer from authorizing the pretrial release of a defendant who is charged with a crime of violence if the defendant (1) has a pending charge for a crime of violence in Maryland or a crime in another jurisdiction that would be a crime of violence in Maryland or (2) within the previous 10 years, was convicted in Maryland of a crime of violence or was convicted in another jurisdiction of a crime that would be a crime of violence in Maryland.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not anticipated to materially affect local finances or operations, as discussed below.

Small Business Effect: None.

Analysis

Current Law:

Pretrial Release

Under Maryland Rule 4-102, a “judicial officer” means a judge or a District Court commissioner.

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. In most instances, there is a rebuttable presumption that these defendants will flee and pose a danger to another person or the community.

In particular, a District Court commissioner may not authorize the pretrial release of a defendant charged 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. Also, a District Court commissioner may not authorize the pretrial release of a defendant charged with committing a crime of violence while the defendant was released on bail or personal recognizance for a pending prior charge of committing a crime of violence.

Please see the **Appendix – 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 the Maryland Rules 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.

Crimes of Violence

Section 14-101(a) of the Criminal Law Article defines a "crime of violence" as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

State/Local Fiscal Effect: Given the nature of the criteria defendants must meet in order to be prohibited from being released before trial by a judicial officer under the bill and the existing statutory restrictions on pretrial release of these defendants, this estimate assumes that defendants affected by the bill are not released before trial on a frequent basis. Thus, the bill is not expected to materially affect State or local finances or operations, including pretrial detention costs.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1065 of 2022.

Designated Cross File: None.

Information Source(s): Baltimore, Charles, and Garrett counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of Legislative Services

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km/jkb

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

Please refer to § 5-202 of the Criminal Procedure Article for additional 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, defendants who commissioners know are required to register as sex offenders, or defendants required to register as sex offenders 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; or
- 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.