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## **POSITION ON PROPOSED LEGISLATION**

**BILL: HB1065 Pretrial Release - Crime of Violence**

**FROM: Maryland Office of the Public Defender**

**POSITION: Unfavorable**

**DATE: 03/04/2022**

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 1065.

House Bill 1065 seeks to impose further restrictions on pretrial release under Md. Crim. Proc. 5-202. Md. Crim. Proc. 5-202 details specific scenarios that create a rebuttable presumption at bail review that a defendant is either too great of a flight risk or threat to the community to be released before trial. However, Md. Crim. Proc. 5-202 has always left the door open for the Court to grant each defendant individualized consideration of their circumstances as mandated by Md. Rule 4-216.1 and grant pretrial release with appropriate conditions. House Bill 1065 would improperly deprive a judge of any authority to order the pretrial release of a defendant charged with a crime of violence and has a pending or prior conviction for a crime of violence within the past 10 years. In practice, the bill not only infringes on a defendant's constitutional rights but would also result in an unnecessary increase in the number of people incarcerated pretrial and would effectively increase avoidable litigation.

Problematically, under Maryland law, any citizen can submit an application for statement of charges with a District Court commissioner alleging a crime has been committed. Often, without any corroboration or further investigation, an arrest warrant is issued for a defendant based on what is claimed to have occurred. On that basis, a defendant can be charged with a crime of violence, including first degree assault, for nothing more than one's personal motivations to see a person incarcerated. By completely barring anyone charged with a crime of violence, i.e. first degree assault, who has another pending or conviction for same within the past 10 years, a complainant aware of this law could *ensure* the incarceration of another person for a formidable amount of time should this bill be passed. At bail review, attorneys are afforded to opportunity to show these motives and explain circumstances that are material to

whether someone is too dangerous to release pending trial. This legislation would deprive this subset of defendants the ability to argue these factors, even though they retain the presumption of innocence.

The passage of this bill would also likely result in added litigation and court proceedings. My main role at the Office of the Public Defender is to challenge pretrial detention, so I know first-hand the overwhelming amount of pretrial detention relief sought, particularly during the COVID-19 pandemic. This legislation effectively ensures that defendants falling under this category would be held without bail and without possible legal challenge until their preliminary hearing – in Baltimore City, that would mean at minimum 30 days without any opportunity to challenge probable cause for the felony or crime of violence charges they are facing. Should this bill pass, any defendant fitting this criteria would need to file a motion for review of bail if the case is reduced – thus requiring yet another waiting period in jail for yet another hearing before the court – when he or she may have been appropriate for release at their initial bail review. By depriving the courts of the ability to vet each defendant appropriately for the least onerous pretrial release conditions at the bail review stage, the number of pretrial detainees held and the amount of pretrial litigation would undoubtedly rise as a result.

It is important to remember that “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). Accordingly, “[t]he Supreme Court has ‘upheld preventative detention based on dangerousness only when limited to specially dangerous individuals and subject to strong procedural protections.’” *Wheeler v. State*, 160 Md. App. 566, 574 (2005). This legislation would contradict these principles by creating a category of defendants who are robbed of any ability to argue for their liberty based solely on unadjudicated charges or their past.

**For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB1065.**

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**Submitted by: Government Relations Division of the Maryland Office of the Public Defender.**

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