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POSITION ON PROPOSED LEGISLATION

BILL: HB 1041 Criminal Procedure – Pretrial Release Restrictions – Firearm Crimes

FROM: Maryland Office of the Public Defender

POSITION: Oppose

DATE: 3/7/2023

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on House Bill 1041.

House Bill 1041 seeks to impose restrictions on pretrial release under Md. Crim. Proc. § 5-202 by limiting the authority of a court commission to order release based on certain charges and creating 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.

Pretrial determinations warrant an individualized consideration of each defendant’s circumstances in accordance with Md. Rule 4-216.1. While the underlying charge may be part of that consideration, it should not be exclusively decisive. Particularly with respect to gun charges, where multiple individuals may be initially charged with an offense based on their proximity to a firearm that they may neither possess nor even know of its existence, the charge alone is not an appropriate indicator of dangerousness or flight risk. For example, a firearm without a serial number that is recovered in a car with several occupants will result in the arrest and charge of every occupant of that car, regardless of their proximity, access, and knowledge of said firearm.

As the U.S. Supreme Court noted in *U.S. v. Salerno*, 481 U.S. 739 (1987), “[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” Pretrial incarceration is difficult, harsh, and should be reserved for situations where no less onerous condition can be met. It can have devastating consequences, including housing instability, job loss, family separation, delays or denial of needed medical care, and reputational harm – all while a person is still presumed innocent. Ensuring that these consequences are only

imposed on those who are truly a danger or flight risk requires a case-by-case evaluation with judicial discretion.

The court commissioner and bail review judge are able to look at all the factors surrounding the alleged conduct and individual circumstances to determine if the individual is a flight risk or danger to the community. By depriving the courts of the ability to vet each defendant appropriately for the least onerous pretrial release conditions, the number of pretrial detainees held and the amount of pretrial litigation would undoubtedly rise as a result.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on HB 1041.

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

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