

SENATE BILL 1069

E2

3lr3426

By: **Senator Shank**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 19, 2013

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Issuance of Summonses and Arrest Warrants and**
3 **Restrictions on Pretrial Release**

4 FOR the purpose of prohibiting a District Court commissioner from issuing a
5 summons if the defendant is charged with a certain crime of violence;
6 prohibiting a commissioner from authorizing the pretrial release of a defendant
7 charged with committing a crime while the defendant was released on bail or
8 personal recognizance for a pending prior criminal charge; prohibiting a
9 commissioner from authorizing the pretrial release of a defendant charged with
10 committing a crime while on parole; and generally relating to the issuance of
11 summonses and arrest warrants and restrictions on pretrial release.

12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 2–607(c)(6)
15 Annotated Code of Maryland
16 (2006 Replacement Volume and 2012 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Criminal Procedure
19 Section 5–202
20 Annotated Code of Maryland
21 (2008 Replacement Volume and 2012 Supplement)

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That the Laws of Maryland read as follows:

24 **Article – Courts and Judicial Proceedings**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 2-607.

2 (c) (6) (i) An individual may file an application for a statement of
3 charges with a District Court commissioner.

4 (ii) **[On] SUBJECT TO SUBPARAGRAPH (IV) OF THIS**
5 **PARAGRAPH, ON** review of an application for a statement of charges, a District Court
6 commissioner may issue a summons or an arrest warrant.

7 (iii) A District Court commissioner may issue an arrest warrant
8 only on a finding that:

9 1. There is probable cause to believe that the defendant
10 committed the offense charged in the charging document; and

11 2. A. The defendant previously has failed to respond
12 to a summons that has been personally served or a citation;

13 B. The whereabouts of the defendant are unknown and
14 the issuance of a warrant is necessary to subject the defendant to the jurisdiction of
15 the court;

16 C. The defendant is in custody for another offense; or

17 D. There is probable cause to believe that the defendant
18 poses a danger to another person or to the community.

19 **(IV) A DISTRICT COURT COMMISSIONER MAY NOT ISSUE A**
20 **SUMMONS UNDER THIS PARAGRAPH IF THE DEFENDANT IS CHARGED WITH A**
21 **CRIME OF VIOLENCE, AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE.**

22 **Article – Criminal Procedure**

23 5-202.

24 (a) A District Court commissioner may not authorize pretrial release for a
25 defendant charged with escaping from a correctional facility or any other place of
26 confinement in the State.

27 (b) (1) A District Court commissioner may not authorize the pretrial
28 release of a defendant charged as a drug kingpin under § 5-613 of the Criminal Law
29 Article.

30 (2) A judge may authorize the pretrial release of a defendant charged
31 as a drug kingpin on suitable bail and on any other conditions that will reasonably
32 ensure that the defendant will not flee or pose a danger to another person or the
33 community.

1 (3) There is a rebuttable presumption that, if released, a defendant
2 charged as a drug kingpin will flee and pose a danger to another person or the
3 community.

4 (c) (1) A District Court commissioner may not authorize the pretrial
5 release of a defendant charged with a crime of violence if the defendant has been
6 previously convicted:

7 (i) in this State of a crime of violence; or

8 (ii) in any other jurisdiction of a crime that would be a crime of
9 violence if committed in this State.

10 (2) (i) A judge may authorize the pretrial release of a defendant
11 described in paragraph (1) of this subsection on:

12 1. suitable bail;

13 2. any other conditions that will reasonably ensure that
14 the defendant will not flee or pose a danger to another person or the community; or

15 3. both bail and other conditions described under item 2
16 of this subparagraph.

17 (ii) When a defendant described in paragraph (1) of this
18 subsection is presented to the court under Maryland Rule 4–216(f), the judge shall
19 order the continued detention of the defendant if the judge determines that neither
20 suitable bail nor any condition or combination of conditions will reasonably ensure
21 that the defendant will not flee or pose a danger to another person or the community
22 before the trial.

23 (3) There is a rebuttable presumption that a defendant described in
24 paragraph (1) of this subsection will flee and pose a danger to another person or the
25 community.

26 (d) (1) A District Court commissioner may not authorize the pretrial
27 release of a defendant charged with committing [one of the following crimes] **A CRIME**
28 while the defendant was released on bail or personal recognizance for a pending prior
29 **CRIMINAL** charge [of committing one of the following crimes:

30 (i) aiding, counseling, or procuring arson in the first degree
31 under § 6–102 of the Criminal Law Article;

32 (ii) arson in the second degree or attempting, aiding, counseling,
33 or procuring arson in the second degree under § 6–103 of the Criminal Law Article;

1 (iii) burglary in the first degree under § 6–202 of the Criminal
2 Law Article;

3 (iv) burglary in the second degree under § 6–203 of the Criminal
4 Law Article;

5 (v) burglary in the third degree under § 6–204 of the Criminal
6 Law Article;

7 (vi) causing abuse to a child under § 3–601 or § 3–602 of the
8 Criminal Law Article;

9 (vii) a crime that relates to a destructive device under § 4–503 of
10 the Criminal Law Article;

11 (viii) a crime that relates to a controlled dangerous substance
12 under §§ 5–602 through 5–609 or § 5–612 or § 5–613 of the Criminal Law Article;

13 (ix) manslaughter by vehicle or vessel under § 2–209 of the
14 Criminal Law Article; and

15 (x) a crime of violence].

16 (2) A defendant under this subsection remains ineligible to give bail or
17 be released on recognizance on the subsequent charge until all prior charges have
18 finally been determined by the courts.

19 (3) A judge may authorize the pretrial release of a defendant described
20 in paragraph (1) of this subsection on suitable bail and on any other conditions that
21 will reasonably ensure that the defendant will not flee or pose a danger to another
22 person or the community.

23 (4) There is a rebuttable presumption that a defendant described in
24 paragraph (1) of this subsection will flee and pose a danger to another person or the
25 community if released before final determination of the prior charge.

26 (e) (1) A District Court commissioner may not authorize the pretrial
27 release of a defendant charged with violating:

28 (i) the provisions of a temporary protective order described in §
29 4–505(a)(2)(i) of the Family Law Article or the provisions of a protective order
30 described in § 4–506(d)(1) of the Family Law Article that order the defendant to
31 refrain from abusing or threatening to abuse a person eligible for relief; or

32 (ii) the provisions of an order for protection, as defined in §
33 4–508.1 of the Family Law Article, issued by a court of another state or of a Native
34 American tribe that order the defendant to refrain from abusing or threatening to

1 abuse a person eligible for relief, if the order is enforceable under § 4–508.1 of the
2 Family Law Article.

3 (2) A judge may allow the pretrial release of a defendant described in
4 paragraph (1) of this subsection on:

5 (i) suitable bail;

6 (ii) any other conditions that will reasonably ensure that the
7 defendant will not flee or pose a danger to another person or the community; or

8 (iii) both bail and other conditions described under item (ii) of
9 this paragraph.

10 (3) When a defendant described in paragraph (1) of this subsection is
11 presented to the court under Maryland Rule 4–216(f), the judge shall order the
12 continued detention of the defendant if the judge determines that neither suitable bail
13 nor any condition or combination of conditions will reasonably ensure that the
14 defendant will not flee or pose a danger to another person or the community before the
15 trial.

16 (f) (1) A District Court commissioner may not authorize the pretrial
17 release of a defendant charged with one of the following crimes if the defendant has
18 previously been convicted of one of the following crimes:

19 (i) wearing, carrying, or transporting a handgun under § 4–203
20 of the Criminal Law Article;

21 (ii) use of a handgun or an antique firearm in commission of a
22 crime under § 4–204 of the Criminal Law Article;

23 (iii) violating prohibitions relating to assault pistols under §
24 4–303 of the Criminal Law Article;

25 (iv) use of a machine gun in a crime of violence under § 4–404 of
26 the Criminal Law Article;

27 (v) use of a machine gun for an aggressive purpose under §
28 4–405 of the Criminal Law Article;

29 (vi) use of a weapon as a separate crime under § 5–621 of the
30 Criminal Law Article;

31 (vii) possession of a regulated firearm under § 5–133 of the Public
32 Safety Article;

1 (viii) transporting a regulated firearm for unlawful sale or
2 trafficking under § 5–140 of the Public Safety Article; or

3 (ix) possession of a rifle or shotgun by a person with a mental
4 disorder under § 5–205 of the Public Safety Article.

5 (2) (i) A judge may authorize the pretrial release of a defendant
6 described in paragraph (1) of this subsection on:

7 1. suitable bail;

8 2. any other conditions that will reasonably ensure that
9 the defendant will not flee or pose a danger to another person or the community; or

10 3. both bail and other conditions described under item 2
11 of this subparagraph.

12 (ii) When a defendant described in paragraph (1) of this
13 subsection is presented to the court under Maryland Rule 4–216(f), the judge shall
14 order the continued detention of the defendant if the judge determines that neither
15 suitable bail nor any condition or combination of conditions will reasonably ensure
16 that the defendant will not flee or pose a danger to another person or the community
17 before the trial.

18 (3) There is a rebuttable presumption that a defendant described in
19 paragraph (1) of this subsection will flee and pose a danger to another person or the
20 community.

21 (g) (1) A District Court commissioner may not authorize the pretrial
22 release of a defendant who is registered under Title 11, Subtitle 7 of this article.

23 (2) (i) A judge may authorize the pretrial release of a defendant
24 described in paragraph (1) of this subsection on:

25 1. suitable bail;

26 2. any other conditions that will reasonably ensure that
27 the defendant will not flee or pose a danger to another person or the community; or

28 3. both bail and other conditions described under item 2
29 of this subparagraph.

30 (ii) When a defendant described in paragraph (1) of this
31 subsection is presented to the court under Maryland Rule 4–216(f), the judge shall
32 order the continued detention of the defendant if the judge determines that neither
33 suitable bail nor any condition or combination of conditions will reasonably ensure

1 that the defendant will not flee or pose a danger to another person or the community
2 before the trial.

3 (3) There is a rebuttable presumption that a defendant described in
4 paragraph (1) of this subsection will flee and pose a danger to another person or the
5 community.

6 **(H) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE THE**
7 **PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH COMMITTING A CRIME**
8 **WHILE ON PAROLE.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2013.