

# HOUSE BILL 1186

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By: **Delegates Anderson, Carter, Cluster, Dumais, McDermott, Smigiel, Swain,  
and Vallario**

Introduced and read first time: February 7, 2014

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Pretrial Release – Setting of Bond – Personal**  
3 **Recognizance**

4 FOR the purpose of repealing a provision of law authorizing a District Court  
5 commissioner to set bond or commit persons to jail in default of bond; repealing  
6 a provision of law authorizing a District Court commissioner to generally  
7 perform all the functions of committing magistrates as exercised by the justices  
8 of the peace prior to a certain date; requiring a defendant to be released on  
9 personal recognizance under certain circumstances; providing that a person who  
10 is arrested shall be presented before a District Court commissioner for an initial  
11 appearance within a certain amount of time after arrest, and if detained by the  
12 commissioner shall be taken before a certain judicial officer without  
13 unnecessary delay and in no event later than a certain amount of time after  
14 arrest; and generally relating to pretrial release.

15 BY repealing and reenacting, with amendments,  
16 Article – Courts and Judicial Proceedings  
17 Section 2–607  
18 Annotated Code of Maryland  
19 (2013 Replacement Volume and 2013 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article – Criminal Procedure  
22 Section 5–101  
23 Annotated Code of Maryland  
24 (2008 Replacement Volume and 2013 Supplement)

25 BY repealing and reenacting, without amendments,  
26 Article – Criminal Procedure  
27 Section 5–202

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2008 Replacement Volume and 2013 Supplement)

3 BY adding to  
4 Article – Criminal Procedure  
5 Section 5–202.1  
6 Annotated Code of Maryland  
7 (2008 Replacement Volume and 2013 Supplement)

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

10 **Article – Courts and Judicial Proceedings**

11 2–607.

12 (a) (1) The administrative judge of each district, with the approval of the  
13 Chief Judge of the District Court, may appoint the number of commissioners necessary  
14 to perform the functions of the office within each county.

15 (2) In multicounty districts, the administrative judge shall obtain the  
16 recommendation of the resident judge in each county as to the number of  
17 commissioners required in the county and as to the persons to be appointed.

18 (b) (1) Commissioners shall be adult residents of the counties in which  
19 they serve, but they need not be lawyers.

20 (2) Each commissioner shall hold office at the pleasure of the Chief  
21 Judge of the District Court, and has the powers and duties prescribed by law.

22 (3) Except without additional compensation, unless otherwise fixed by  
23 law, an employee of the District Court, who is an adult, may be granted, in the same  
24 manner, commissioner powers and duties in the county where the employee is  
25 employed.

26 (c) (1) A commissioner shall receive applications and determine probable  
27 cause for the issuance of charging documents.

28 (2) A commissioner shall advise arrested persons of their  
29 constitutional rights, [set bond or commit persons to jail in default of bond or] release  
30 them on personal recognizance if circumstances warrant, and conduct investigations  
31 and inquiries into the circumstances of any matter presented to the commissioner in  
32 order to determine if probable cause exists for the issuance of a charging document,  
33 warrant, or criminal summons [and, in general, perform all the functions of  
34 committing magistrates as exercised by the justices of the peace prior to July 5, 1971].

1           (3) There shall be in each county, at all times, one or more  
2 commissioners available for the convenience of the public and police in obtaining  
3 charging documents, warrants, or criminal summonses and to advise arrested persons  
4 of their rights as required by law.

5           (4) A commissioner may exercise the powers of office in any county to  
6 which the commissioner is assigned by the Chief Judge of the District Court or a  
7 designee of the Chief Judge of the District Court.

8           (5) The Chief Judge of the District Court may authorize one or more  
9 commissioners to perform the duties of a commissioner regarding persons arrested in  
10 a county other than the county in which the commissioner resides and for which the  
11 commissioner was appointed when the arrested persons are brought before the  
12 commissioner by a peace officer of the jurisdiction in which that arrest was made.

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

15                   (ii) On review of an application for a statement of charges, a  
16 District Court commissioner may issue a summons or an arrest warrant.

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

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

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

23                                   B. The whereabouts of the defendant are unknown and  
24 the issuance of a warrant is necessary to subject the defendant to the jurisdiction of  
25 the court;

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

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

29           (d) (1) The authority under this subsection applies only to a respondent  
30 who is an adult.

31           (2) A commissioner may issue an interim order for protection of a  
32 person eligible for relief in accordance with § 4-504.1 of the Family Law Article or a  
33 petitioner in accordance with § 3-1503.1 of this article.

1 (e) Notwithstanding the residence requirements set out in subsection (b) of  
 2 this section, the Chief Judge of the District Court or a designee of the Chief Judge of  
 3 the District Court may assign a commissioner of the District Court to serve  
 4 temporarily in any county.

5 **Article – Criminal Procedure**

6 5–101.

7 (a) This section shall be liberally construed to carry out the purpose of  
 8 relying on criminal sanctions instead of financial loss to ensure the appearance of a  
 9 defendant in a criminal case before verdict or pending a new trial.

10 (b) (1) Except as provided in subsection (c) of this section, if, from all the  
 11 circumstances, the court believes that a minor or adult defendant in a criminal case  
 12 will appear as required for trial before verdict or pending trial, the defendant may be  
 13 released on personal recognizance.

14 **(2) SUBJECT TO SUBSECTION (C) OF THIS SECTION AND § 5–202**  
 15 **OF THIS TITLE, A DEFENDANT SHALL BE RELEASED ON PERSONAL**  
 16 **RECOGNIZANCE IF:**

17 **(I) THE MOST SERIOUS CRIME WITH WHICH THE**  
 18 **DEFENDANT IS CHARGED IS:**

19 **1. PUNISHABLE BY IMPRISONMENT FOR 1 YEAR OR**  
 20 **LESS;**

21 **2. OBSTRUCTING AND HINDERING;**

22 **3. A VIOLATION INVOLVING PRESCRIPTION DRUGS**  
 23 **UNDER § 5–701 OF THE CRIMINAL LAW ARTICLE;**

24 **4. TELEPHONE MISUSE UNDER § 3–804 OF THE**  
 25 **CRIMINAL LAW ARTICLE;**

26 **5. INDECENT EXPOSURE UNDER § 11–107 OF THE**  
 27 **CRIMINAL LAW ARTICLE;**

28 **6. MALICIOUS DESTRUCTION OF PROPERTY WITH A**  
 29 **VALUE OF AT LEAST \$1,000 UNDER § 6–301 OF THE CRIMINAL LAW ARTICLE;**  
 30 **OR**

31 **7. POSSESSING OR ADMINISTERING A CONTROLLED**  
 32 **DANGEROUS SUBSTANCE UNDER § 5–601 OF THE CRIMINAL LAW ARTICLE; AND**

1                   **(II) THE DEFENDANT HAS NEVER PREVIOUSLY FAILED TO**  
2 **APPEAR AS ORDERED BY A COURT.**

3                   **[(2)] (3)** A failure to appear as required by personal recognizance is  
4 subject to the penalties provided in § 5–211 of this title.

5                   (c) A defendant may not be released on personal recognizance if the  
6 defendant is charged with:

7                   (1) a crime listed in § 5–202(d) of this title after having been convicted  
8 of a crime listed in § 5–202(d) of this title; or

9                   (2) a crime punishable by life imprisonment without parole.

10 5–202.

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

14                   (b) (1) A District Court commissioner may not authorize the pretrial  
15 release of a defendant charged as a drug kingpin under § 5–613 of the Criminal Law  
16 Article.

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

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

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

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

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

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

32                                   1. suitable bail;

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

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

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

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

14                                  (d)    (1)    A District Court commissioner may not authorize the pretrial  
15 release of a defendant charged with committing one of the following crimes while the  
16 defendant was released on bail or personal recognizance for a pending prior charge of  
17 committing one of the following crimes:

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

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

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

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

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

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

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

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

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

3 (x) a crime of violence.

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

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

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

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

16 (i) the provisions of a temporary protective order described in §  
17 4–505(a)(2)(i) of the Family Law Article or the provisions of a protective order  
18 described in § 4–506(d)(1) of the Family Law Article that order the defendant to  
19 refrain from abusing or threatening to abuse a person eligible for relief; or

20 (ii) the provisions of an order for protection, as defined in §  
21 4–508.1 of the Family Law Article, issued by a court of another state or of a Native  
22 American tribe that order the defendant to refrain from abusing or threatening to  
23 abuse a person eligible for relief, if the order is enforceable under § 4–508.1 of the  
24 Family Law Article.

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

27 (i) suitable bail;

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

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

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

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

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

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

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

10 (iii) violating prohibitions relating to assault pistols under §  
11 4–303 of the Criminal Law Article;

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

14 (v) use of a machine gun for an aggressive purpose under §  
15 4–405 of the Criminal Law Article;

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

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

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

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

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

26 1. suitable bail;

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

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

31 (ii) When a defendant described in paragraph (1) of this  
32 subsection is presented to the court under Maryland Rule 4–216(f), the judge shall



1 order the continued detention of the defendant if the judge determines that neither  
2 suitable bail nor any condition or combination of conditions will reasonably ensure  
3 that the defendant will not flee or pose a danger to another person or the community  
4 before the trial.

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

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

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 **5–202.1.**

27 **A PERSON WHO IS ARRESTED SHALL BE PRESENTED BEFORE A DISTRICT**  
28 **COURT COMMISSIONER FOR AN INITIAL APPEARANCE WITHIN 24 HOURS AFTER**  
29 **ARREST, AND IF DETAINED BY THE COMMISSIONER SHALL BE TAKEN BEFORE A**  
30 **JUDICIAL OFFICER OF THE DISTRICT COURT OR CIRCUIT COURT WITHOUT**  
31 **UNNECESSARY DELAY AND IN NO EVENT LATER THAN 48 HOURS AFTER ARREST.**

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
33 October 1, 2014.