

Department of Legislative Services
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FISCAL AND POLICY NOTE
First Reader

Senate Bill 408

(Senator Ready, *et al.*)

Judicial Proceedings

**Criminal Procedure - Pretrial Release - Assault on a Law Enforcement Officer
(Police Protection Act)**

This bill prohibits a District Court commissioner from authorizing the pretrial release of a defendant charged with assault in the first degree against a victim who is a law enforcement officer or felony second-degree assault against a victim who is a law enforcement officer. When such a defendant is presented to a judge under the Maryland Rules, a judge may order the pretrial release of such a defendant on suitable bail, any other conditions that will reasonably ensure that the defendant will not flee or pose a danger to another person or the community, or both bail and other such conditions. However, a judge must order the continued detention of such a defendant if neither bail nor any other conditions will reasonably ensure that the defendant will not be a flight risk or pose a danger to another person or the community. There is a rebuttable presumption that such a defendant will flee and pose a danger to another person or the community.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures if the bill increases pretrial detention times in Baltimore City. The District Court and the Office of the Public Defender can address any potential increases in judicial bail review hearings with existing budgeted resources. Revenues are not affected.

Local Effect: Potential minimal increase in local expenditures for pretrial detentions. Local revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: 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. 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.

Assault

A person may not commit an assault. However, the consequences of an assault vary depending on the circumstances involved.

First-degree Assault: A person commits a first-degree assault if he/she (1) intentionally causes or attempts to cause serious physical injury to another person or (2) commits an assault with a firearm, including a handgun, assault pistol, machine gun, or other specified firearms. A person who commits a first-degree assault is guilty of a felony and subject to imprisonment for up to 25 years.

Felony Second-degree Assault: A person commits a felony second-degree assault if he/she intentionally causes "physical injury" to another if the person knows or has reason to know that the other person is a (1) law enforcement officer or parole or probation agent engaged in the performance of the officer/agent's official duties or (2) a firefighter, an emergency medical technician, a rescue squad member, or any other first responder engaged in providing emergency medical care or rescue services. "Physical injury" means any impairment of physical condition, excluding minor injuries. Violators are subject to imprisonment for up to 10 years and/or a maximum fine of \$5,000.

Misdemeanor Second-degree Assault: The misdemeanor second-degree assault statute applies to assaults that are not considered to be felony assaults in the first or second degrees. Under the misdemeanor second-degree assault statute, a person is prohibited from committing an assault. A violator is subject to imprisonment for up to 10 years and/or a maximum fine of \$2,500. Assault means the crimes of assault, battery, and assault and battery, which are defined through case law.

The District Court has concurrent jurisdiction with the circuit courts over felony second-degree assaults.

Background: According to the Judiciary, during fiscal 2018, there were:

- 8,161 violations in the District Court and 4,763 violations in the circuit courts of § 3-202 of the Criminal Law Article (first-degree assault);
- 533 violations in the District Court and 229 violations in the circuit courts of § 3-203(c)(2) of the Criminal Law Article (felony second-degree assault against a law enforcement officer, parole agent, probation agent, firefighter, emergency medical technician, rescue squad member, or first responder); and
- 38,482 violations in the District Court and 12,661 violations in the circuit courts of § 3-203 of the Criminal Law Article (misdemeanor second-degree assault).

Data is not available on the number of cases listed above that involved a victim who was a law enforcement officer at the time the offense was committed. A violation is a charge filed with the court. It is not a conviction, and one person may be associated with multiple violations.

Additional Information

Prior Introductions: SB 736 of 2018 received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill. Its cross file, HB 1128, received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Baltimore, Carroll, Harford, Queen Anne's, and St. Mary's counties; Maryland State Commission on Criminal Sentencing Policy; 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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mm/kdm

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Appendix 1 – Defendants Ineligible for Pretrial Release by a District Court Commissioner

Please refer to § 5-202 of the Criminal Procedure Article for complete 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 or defendants required to register as a sex offender 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; and
- 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.