

HOUSE BILL 1005

E4, E2

0lr2384

By: **Delegates Conaway and Glenn**

Introduced and read first time: February 12, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Parole Elimination and Restrictions on Pretrial Release – Cases Involving**
3 **Victim at Least 35 Years Older Than Defendant**

4 FOR the purpose of eliminating parole eligibility for a certain inmate who is serving a
5 term of imprisonment for a certain crime of violence involving a victim who was
6 at least a certain number of years older than the inmate; providing that a
7 certain provision of law does not restrict a certain authority of the Governor to
8 pardon or remit a certain sentence; prohibiting a District Court commissioner
9 from authorizing the pretrial release of a defendant charged with a crime of
10 violence involving a victim who is at least a certain number of years older than
11 the defendant; providing that a judge may authorize the pretrial release of a
12 certain defendant on suitable bail or certain other conditions or both; requiring
13 a judge to order the continued detention of a certain defendant under certain
14 circumstances at a certain time; creating a rebuttable presumption that a
15 certain defendant will flee and pose a danger to another person or the
16 community; and generally relating to parole eligibility and pretrial release for a
17 person who commits a crime of violence.

18 BY repealing and reenacting, with amendments,
19 Article – Correctional Services
20 Section 7–301
21 Annotated Code of Maryland
22 (2008 Replacement Volume and 2009 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – Criminal Procedure
25 Section 5–202
26 Annotated Code of Maryland
27 (2008 Replacement Volume and 2009 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Correctional Services**

4 7–301.

5 (a) (1) Except as otherwise provided in this section, the Commission shall
6 request that the Division of Parole and Probation make an investigation for inmates in
7 a local correctional facility and the Division of Correction make an investigation for
8 inmates in a State correctional facility that will enable the Commission to determine
9 the advisability of granting parole to an inmate who:

10 (i) has been sentenced under the laws of the State to serve a
11 term of 6 months or more in a correctional facility; and

12 (ii) has served in confinement one-fourth of the inmate’s
13 aggregate sentence.

14 (2) Except as provided in paragraph (3) of this subsection, or as
15 otherwise provided by law or in a predetermined parole release agreement, an inmate
16 is not eligible for parole until the inmate has served in confinement one-fourth of the
17 inmate’s aggregate sentence.

18 (3) An inmate may be released on parole at any time in order to
19 undergo drug or alcohol treatment, mental health treatment, or to participate in a
20 residential program of treatment in the best interest of an inmate’s expected or
21 newborn child if the inmate:

22 (i) is not serving a sentence for a crime of violence, as defined
23 in § 14–101 of the Criminal Law Article;

24 (ii) is not serving a sentence for a violation of Title 3, Subtitle 6,
25 § 5–608(d), § 5–609(d), § 5–612, § 5–613, § 5–614, § 5–621, § 5–622, or § 5–628 of the
26 Criminal Law Article; and

27 (iii) has been determined to be amenable to treatment.

28 (b) Except as provided in subsection (c) of this section, if an inmate has been
29 sentenced to a term of imprisonment during which the inmate is eligible for parole and
30 a term of imprisonment during which the inmate is not eligible for parole, the inmate
31 is not eligible for parole consideration under subsection (a) of this section until the
32 inmate has served the greater of:

33 (1) one-fourth of the inmate’s aggregate sentence; or

1 (2) a period equal to the term during which the inmate is not eligible
2 for parole.

3 (c) (1) (i) Except as provided in subparagraph (ii) of this paragraph,
4 an inmate who has been sentenced to the Division of Correction after being convicted
5 of a violent crime committed on or after October 1, 1994, is not eligible for parole until
6 the inmate has served the greater of:

7 1. one-half of the inmate's aggregate sentence for
8 violent crimes; or

9 2. one-fourth of the inmate's total aggregate sentence.

10 (ii) An inmate who has been sentenced to the Division of
11 Correction after being convicted of a violent crime committed on or after October 1,
12 1994, and who has been sentenced to more than one term of imprisonment, including a
13 term during which the inmate is eligible for parole and a term during which the
14 inmate is not eligible for parole, is not eligible for parole until the inmate has served
15 the greater of:

16 1. one-half of the inmate's aggregate sentence for
17 violent crimes;

18 2. one-fourth of the inmate's total aggregate sentence;
19 or

20 3. a period equal to the term during which the inmate is
21 not eligible for parole.

22 (2) An inmate who is serving a term of imprisonment for a violent
23 crime committed on or after October 1, 1994, shall receive an administrative review of
24 the inmate's progress in the correctional facility after the inmate has served the
25 greater of:

26 (i) one-fourth of the inmate's aggregate sentence; or

27 (ii) if the inmate is serving a term of imprisonment that
28 includes a mandatory term during which the inmate is not eligible for parole, a period
29 equal to the term during which the inmate is not eligible for parole.

30 **(D) (1) AN INMATE IS NOT ELIGIBLE FOR PAROLE CONSIDERATION**
31 **AND MAY NOT BE GRANTED PAROLE AT ANY TIME DURING THE INMATE'S**
32 **SENTENCE IF:**

1 **(I) THE INMATE IS SERVING A TERM OF IMPRISONMENT**
2 **FOR A CRIME OF VIOLENCE AS DEFINED IN § 14–101 OF THE CRIMINAL LAW**
3 **ARTICLE; AND**

4 **(II) THE CRIME FOR WHICH THE INMATE IS CONFINED**
5 **INVOLVED A VICTIM WHO WAS AT LEAST 35 YEARS OLDER THAN THE INMATE.**

6 **(2) THIS SUBSECTION DOES NOT RESTRICT THE AUTHORITY OF**
7 **THE GOVERNOR TO PARDON OR REMIT ANY PART OF A SENTENCE UNDER**
8 **§ 7–601 OF THIS TITLE.**

9 **[(d)] (E)** (1) Except as provided in paragraphs (2) and (3) of this
10 subsection, an inmate who has been sentenced to life imprisonment is not eligible for
11 parole consideration until the inmate has served 15 years or the equivalent of 15 years
12 considering the allowances for diminution of the inmate's term of confinement under §
13 6–218 of the Criminal Procedure Article and Title 3, Subtitle 7 of this article.

14 (2) An inmate who has been sentenced to life imprisonment as a result
15 of a proceeding under § 2–303 or § 2–304 of the Criminal Law Article is not eligible for
16 parole consideration until the inmate has served 25 years or the equivalent of 25 years
17 considering the allowances for diminution of the inmate's term of confinement under §
18 6–218 of the Criminal Procedure Article and Title 3, Subtitle 7 of this article.

19 (3) (i) If an inmate has been sentenced to imprisonment for life
20 without the possibility of parole under § 2–203 or § 2–304 of the Criminal Law Article,
21 the inmate is not eligible for parole consideration and may not be granted parole at
22 any time during the inmate's sentence.

23 (ii) This paragraph does not restrict the authority of the
24 Governor to pardon or remit any part of a sentence under § 7–601 of this title.

25 (4) If eligible for parole under this subsection, an inmate serving a
26 term of life imprisonment may only be paroled with the approval of the Governor.

27 **Article – Criminal Procedure**

28 5–202.

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

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

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

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

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

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

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

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

16 1. suitable bail;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (x) a crime of violence.

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

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

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

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

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

1 (ii) the provisions of an order for protection, as defined in §
2 4–508.1 of the Family Law Article, issued by a court of another state or of a Native
3 American tribe that order the defendant to refrain from abusing or threatening to
4 abuse a person eligible for relief, if the order is enforceable under § 4–508.1 of the
5 Family Law Article.

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

8 (i) suitable bail;

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

11 (iii) both bail and other conditions described under
12 subparagraph (ii) of this paragraph.

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

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

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

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

26 (iii) violating prohibitions relating to assault pistols under §
27 4–303 of the Criminal Law Article;

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

30 (v) use of a machine gun for an aggressive purpose under §
31 4–405 of the Criminal Law Article;

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

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

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

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

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

9 1. suitable bail;

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

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

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

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

23 **(G) (1) A DISTRICT COURT COMMISSIONER MAY NOT AUTHORIZE**
24 **THE PRETRIAL RELEASE OF A DEFENDANT CHARGED WITH A CRIME OF**
25 **VIOLENCE INVOLVING A VICTIM WHO IS AT LEAST 35 YEARS OLDER THAN THE**
26 **DEFENDANT.**

27 **(2) (I) A JUDGE MAY AUTHORIZE THE PRETRIAL RELEASE OF A**
28 **DEFENDANT DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION ON:**

29 **1. SUITABLE BAIL;**

30 **2. ANY OTHER CONDITIONS THAT WILL REASONABLY**
31 **ENSURE THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO**
32 **ANOTHER PERSON OR THE COMMUNITY; OR**

1 **3. BOTH BAIL AND OTHER CONDITIONS DESCRIBED**
2 **UNDER ITEM 2 OF THIS SUBPARAGRAPH.**

3 **(II) WHEN A DEFENDANT DESCRIBED IN PARAGRAPH (1) OF**
4 **THIS SUBSECTION IS PRESENTED TO THE COURT UNDER MARYLAND RULE**
5 **4-216(F), THE JUDGE SHALL ORDER THE CONTINUED DETENTION OF THE**
6 **DEFENDANT IF THE JUDGE DETERMINES THAT NEITHER SUITABLE BAIL NOR**
7 **ANY CONDITION OR COMBINATION OF CONDITIONS WILL REASONABLY ENSURE**
8 **THAT THE DEFENDANT WILL NOT FLEE OR POSE A DANGER TO ANOTHER**
9 **PERSON OR THE COMMUNITY BEFORE THE TRIAL.**

10 **(3) THERE IS A REBUTTABLE PRESUMPTION THAT A DEFENDANT**
11 **DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION WILL FLEE AND POSE A**
12 **DANGER TO ANOTHER PERSON OR THE COMMUNITY.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2010.