

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 260 (Senator Shank)
Judicial Proceedings

**Criminal Procedure - Issuance of Summonses and Arrest Warrants and
Restrictions on Pretrial Release**

This bill prohibits a District Court commissioner from issuing a summons based on an application for a statement of charges filed by an individual if the defendant is charged with a crime of violence. The bill also prohibits a District Court commissioner from authorizing the pretrial release of (1) a defendant charged with committing a crime while the defendant was released on bail or personal recognizance for a pending prior criminal charge or (2) a defendant charged with committing a crime while on parole.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) for pretrial detentions at the Central Booking facility in Baltimore City and for the Judiciary to accommodate additional District Court bail review hearings generated by the bill.

Local Effect: Minimal increase in local expenditures for increased pretrial detentions.

Small Business Effect: None.

Analysis

Current Law:

Application for a Statement of Charges: A District Court commissioner may issue a summons or an arrest warrant after reviewing an application for a statement of charges filed by an individual. A District Court commissioner may issue an arrest warrant only

on a finding that there is probable cause to believe that the defendant committed the offense charged in the charging document and (1) the defendant previously has failed to respond to a summons that has been personally served or a citation; (2) the whereabouts of the defendant are unknown and the issuance of a warrant is necessary to subject the defendant to the jurisdiction of the court; (3) the defendant is in custody for another offense; or (4) there is probable cause to believe that the defendant poses a danger to another person or to the community.

A summons notifies the defendant of the time and place to make an initial appearance to answer the charges. It may be served on the defendant by mail or in person. A summons will be issued unless (1) an arrest warrant has been issued; (2) the defendant is in custody; or (3) the charging document is a citation.

There are several circumstances in which an arrest warrant may be issued in lieu of a summons. An arrest warrant may be issued from either the District Court or a circuit court if the defendant is not in custody and there is a substantial likelihood that the defendant will not respond to a summons. Additionally, the District Court may issue an arrest warrant if either the defendant previously failed to respond to a summons or citation or the defendant's whereabouts are unknown, or if there are concerns about the safety of the victim.

Pretrial Release by a District Court Commissioner: 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. 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 **Appendix 1** for a comprehensive list of defendants ineligible for pretrial release by a District Court commissioner.

Under § 14-101 of the Criminal Law Article, a "crime of violence" is (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first and second degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor under the age of 13 years under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

State Expenditures: General fund expenditures increase minimally for DPSCS for pretrial detentions at the Central Booking facility in Baltimore City and for the Judiciary to accommodate additional District Court bail reviews generated by the bill.

DPSCS advises that the department can handle the bill with existing resources provided that the bill does not generate a large increase in the pretrial population.

The Judiciary advises that the bill could have a significant impact by increasing the number of District Court bail reviews, especially considering that traffic offenses are also considered crimes. However, given that the bill probably affects a relatively small portion of the overall initial appearance population and that 45% of initial appearances before a District Court commissioner result in a bail review under existing statute, the bill only has an impact if the population affected by the bill is in the 50% of initial appearances that result in a release on recognizance or the 5% who meet the conditions of their commissioner release (*e.g.*, a bail bond) prior to a judicial bail review, which is typically held on the next day court is in session.

The bill's provisions regarding the issuance of a criminal summons by a District Court commissioner is unlikely to have a fiscal effect on the Judiciary or DPSCS, since resources will be reallocated to other District Court commissioner or DPSCS functions.

In fiscal 2011, private citizens filed 28,095 applications for a statement of charges with District Court commissioners, resulting in 12,907 warrants.

Additional Information

Prior Introductions: SB 1069 of 2013 was referred to the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; Judiciary (Administrative Office of the Courts); Department of State Police; Department of Public Safety and Correctional Services; Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2014
ncs/kdm

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

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

Please refer to Criminal Procedure Article, § 5-202 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 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 Criminal Law Article, § 14-101), if the defendant has been previously convicted of a crime of violence under the laws of this State or has been convicted under the laws of another state of a crime classified as a crime of violence in Maryland; 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, 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 one of the following crimes:***

- wearing, carrying, or transporting a handgun;
- use of a handgun or an antique firearm in commission of a crime;
- violating prohibitions relating to assault pistols under § 4-303 of the Criminal Law Article;
- use of a machine gun in a crime of violence;
- use of a machine gun for an aggressive purpose;

- possessing, using, wearing, carrying, or transporting a firearm during and in relation to a drug trafficking 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; or
- possession of a rifle or shotgun by a person with a mental disorder.

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.