

BY: Delegate Cadden

AMENDMENTS TO SENATE BILL NO. 211

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, after the first "of" insert "making it a felony to possess and intend to use a firearm, display a firearm in a threatening manner, or attempt to use a firearm on school property;"; and in line 25, after "penalties;" insert "prohibiting a District Court commissioner from authorizing the release pretrial of a defendant charged with a certain crime; requiring a judge to consider as a rebuttable presumption that a defendant charged with a certain crime will flee and pose a danger to another person or the community; allowing the court or District Court commissioner to consider including certain requirements as conditions of release pretrial; prohibiting a certain panel of judges when reviewing a sentence from decreasing a mandatory minimum sentence imposed for certain crimes involving handguns and assault pistols;".

On page 2, in line 10, after "program;" insert "allowing the State to appeal from a certain decision of the District Court or to apply to the Court of Special Appeals for leave to appeal an order of the circuit court setting the amount and conditions of bail claimed to be insufficient before trial or after conviction;"; in line 13, after "Section" insert "36A,"; in the same line, strike the second "and"; in the same line, after "449(e)" insert ", 616 1/2(1), and 645JC(b)"; after line 15, insert:

"BY repealing and reenacting, without amendments,

Article 27 - Crimes and Punishments

Section 281A

Annotated Code of Maryland

(1996 Replacement Volume and 1999 Supplement)";

in line 18, strike "and"; in the same line, after "445(b-1)" insert ", and 616 1/2(p)"; and after line 30, insert:

"BY repealing and reenacting, with amendments,

(Over)

Article - Courts and Judicial Proceedings  
Section 3-707 and 12-401(b)  
Annotated Code of Maryland  
(1998 Replacement Volume and 1999 Supplement)”.

AMENDMENT NO. 2

On page 2, after line 33, insert:

“36A.

(a) [No person, unless otherwise excepted in this section, shall] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON:

(1) MAY NOT carry or possess any rifle, gun, knife, or deadly weapon of any kind on any public school property in this State; OR

(2) ON PUBLIC SCHOOL PROPERTY, MAY NOT POSSESS AND INTEND TO USE A FIREARM, DISPLAY A FIREARM IN A THREATENING MANNER, OR ATTEMPT TO USE A FIREARM.

(b) Nothing in this section shall be construed to apply to:

(1) Law enforcement officers in the regular course of their duty;

(2) Persons hired by the boards of education in the counties and Baltimore City specifically for the purpose of guarding public school property;

(3) Persons engaged in organized shooting activity for educational purposes; or

(4) Persons who, with a written invitation from the school principal, display or engage in historical demonstrations using weapons or replicas of weapons for educational purposes.

(c) (1) [Any] A person who violates SUBSECTION (A)(1) OF this section [shall be] IS guilty of a misdemeanor and on conviction [shall be sentenced] IS SUBJECT to [pay] a fine of no more than \$1,000 or [shall be sentenced to the Maryland Department of Correction for a period] IMPRISONMENT of not more than 3 years. Any such person who shall be found to carry a handgun in violation of this section, shall be sentenced as provided in § 36B of this article.

(2) (I) A PERSON WHO VIOLATES SUBSECTION (A)(2) OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT OF NOT LESS THAN 5 YEARS OR MORE THAN 20 YEARS.

(II) IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN THE MINIMUM SENTENCE OF 5 YEARS.

(III) THE SENTENCE IMPOSED UNDER THIS PARAGRAPH IS TO BE SERVED CONSECUTIVE TO ANY OTHER SENTENCE.

(IV) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN LESS THAN 5 YEARS.”.

AMENDMENT NO. 3

On page 6, after line 25, insert:

“281A.

(b) During and in relation to any drug trafficking crime, a person who possesses a firearm under sufficient circumstances to constitute a nexus to the drug trafficking crime or who uses, wears, carries, or transports a firearm is guilty of a separate felony and on conviction shall, in addition to the sentence provided for the drug trafficking crime, be sentenced as follows:

(1) (i) For a first offense, for a term of not less than 5 nor more than 20 years.

(ii) It is mandatory upon the court to impose no less than the minimum sentence of 5 years, no part of which may be suspended and the person may not be eligible for parole except in accordance with the provisions of § 4-305 of the Correctional Services Article; and

(2) (i) For a second or subsequent offense, for a term of not less than 10 nor more than 20 years.

(Over)

(ii) It is mandatory upon the court to impose no less than a minimum consecutive sentence of 10 years, no part of which may be suspended and the person may not be eligible for parole except in accordance with the provisions of § 4-305 of the Correctional Services Article.

(iii) The sentence shall be served consecutively and not concurrently to any other sentence imposed by virtue of the commission of the drug trafficking crime.”.

AMENDMENT NO. 4

On page 15, in line 11, after “(e)” insert:

“(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON WHO WAS PREVIOUSLY CONVICTED OF ANY VIOLATION CLASSIFIED AS A FELONY AND WHO IS IN ILLEGAL POSSESSION OF A FIREARM AS DEFINED IN § 445(D)(1)(I) AND (II) OF THIS ARTICLE, IS GUILTY OF A MISDEMEANOR AND UPON CONVICTION SHALL BE IMPRISONED FOR NOT LESS THAN 2 YEARS, NO PART OF WHICH MAY BE SUSPENDED AND THE PERSON MAY NOT BE ELIGIBLE FOR PAROLE. EACH VIOLATION SHALL BE CONSIDERED A SEPARATE OFFENSE.

(2)”.

AMENDMENT NO. 5

On page 15, after line 23, insert:

“616 1/2.

(1) (1) A District Court commissioner may not authorize the release pretrial of a defendant charged with a crime of violence under § 643B of this article OR POSSESSION OF A FIREARM IN VIOLATION OF § 36A, § 281A(B), OR § 445(D) OF THIS ARTICLE [if the defendant has been previously convicted of a crime of violence as defined under § 643B of this article regardless of whether the crime occurred in this State or elsewhere].

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

1. Suitable bail;
2. Any other conditions that will reasonably assure that the defendant will not flee or pose a danger to another person or the community; or
3. Both bail and other conditions described under item 2 of this subparagraph.

(ii) After a defendant described in paragraph (1) of this subsection has been presented to the court pursuant to Maryland Rule 4-216(g), the judge shall order the continued detention of the defendant if the judge determines that neither suitable bail nor any condition or combination of conditions will reasonably assure that the defendant will not flee or pose a danger to another person or the community prior to the trial.

(3) A rebuttable presumption exists that any defendant described in paragraph (1) of this subsection will flee and pose a danger to another person or the community.

(P) IN ADDITION TO THE CONDITIONS OF RELEASE PRETRIAL SPECIFIED ELSEWHERE IN THIS SECTION, THE COURT OR DISTRICT COURT COMMISSIONER MAY CONSIDER INCLUDING AS A CONDITION OF RELEASE PRETRIAL A REQUIREMENT THAT THE DEFENDANT:

(1) MAINTAIN EMPLOYMENT OR, IF UNEMPLOYED, ACTIVELY SEEK EMPLOYMENT;

(2) MAINTAIN OR BEGIN AN EDUCATIONAL PROGRAM;

(3) AVOID ALL CONTACT WITH AN ALLEGED VICTIM OF THE CRIME AND WITH ANY POTENTIAL WITNESS WHO MAY TESTIFY CONCERNING THE CRIME;

(4) COMPLY WITH A SPECIFIED CURFEW;

(5) REFRAIN FROM POSSESSING A FIREARM, DESTRUCTIVE DEVICE, OR OTHER DANGEROUS WEAPON;

(6) REFRAIN FROM USE OF ALCOHOL OR CONTROLLED DANGEROUS SUBSTANCES; OR

(7) SUBMIT TO DRUG OR ALCOHOL TESTING UNTIL THE DISPOSITION OF THE DEFENDANT'S CASE.

645JC.

(b) (1) The panel shall consider each application for review and shall have the power, with a hearing, to order a different sentence to be imposed or served, including, by way of illustration and not by way of limitation, an increased or decreased sentence, or a suspended sentence to be served in whole or in part, or a sentence to be suspended with or without probation, upon such terms and conditions as the panel may deem just and which could lawfully have been imposed by the sentencing court at the time of the imposition of the sentence under review, or the panel may decide that the sentence under review should remain unchanged.

(2) (i) In the manner provided in this section, and subject to [item (ii)] ITEMS (II) AND (III) of this paragraph, the panel may order a different sentence, including a decrease, in a mandatory minimum sentence otherwise required by law.

(ii) A panel may not order a decrease in a mandatory minimum sentence unless the panel's decision is unanimous.

(III) A PANEL MAY NOT DECREASE A MANDATORY MINIMUM SENTENCE IMPOSED UNDER § 36B(D) OR § 36H-6(B) OF THIS ARTICLE.”.

AMENDMENT NO. 6

On page 19, after line 8, insert:

“Article - Courts and Judicial Proceedings

3-707.

(a) If a judge refuses to issue a writ of habeas corpus sought for the purpose of determining the right to bail, or if a judge sets bail claimed to be excessive prior to trial or after conviction, but prior to final judgment, a petitioner may apply to the Court of Special Appeals for leave to appeal from the refusal.

(b) (1) A petitioner shall file the application for leave to appeal within ten days after the denial or grant of habeas corpus relief stating briefly why the order of the lower court should be reversed or modified.

(2) The record on the application for leave to appeal shall contain a copy of the petition for habeas corpus, the State's answer, if any, the order of the court, and the memorandum of reasons issued by the judge.

(3) If the Court grants the application, it may order the preparation of a transcript of any proceedings related to the habeas corpus petition.

(c) (1) The Court of Special Appeals may grant or deny the application for leave to appeal. If the Court grants the application, it may affirm, reverse, or modify the order of the lower court granting or denying the relief sought by the writ.

(2) If the Court determines that the lower court was wrong in refusing to admit to bail or that the bail set is not appropriate, it may determine the proper amount of bail. This determination is binding on the lower court, unless a change of circumstances warrants a different decision.

(D) THE STATE MAY APPLY TO THE COURT OF SPECIAL APPEALS FOR LEAVE TO APPEAL AN ORDER OF THE CIRCUIT COURT SETTING THE AMOUNT AND CONDITIONS OF BAIL CLAIMED TO BE INSUFFICIENT BEFORE TRIAL OR AFTER CONVICTION.

12-401.

(b) In a criminal case:

(Over)

(1) The State may appeal from [a]:

(I) A DECISION OF THE DISTRICT COURT SETTING THE AMOUNT AND CONDITIONS OF BAIL; OR

(II) A final judgment entered in the District Court:

[(i)] 1. If the State alleges that the trial judge failed to impose the sentence specifically mandated by the Code; or

[(ii)] 2. Granting a motion to dismiss, or quashing or dismissing a charging document.

(2) The defendant may appeal even from a final judgment entered in the District Court though imposition or execution of sentence has been suspended."