

HOUSE BILL 166

Unofficial Copy
E1

2000 Regular Session
0lr0422
CF 0lr0421

By: **Delegates Cadden, Owings, Taylor, Rzepkowski, Ports, Leopold, Boschert, Stocksdale, Edwards, Redmer, Cane, Elliott, Sophocleus, McHale, Fulton, K. Kelly, Rosso, Cryor, Hutchins, Boutin, Parrott, Hecht, Glassman, Kach, Klima, Branch, Mohorovic, Weir, Eckardt, Hubers, Dewberry, Stern, DeCarlo, Bozman, Minnick, Malone, Conway, O'Donnell, Wood, Walkup, D'Amato, Guns, Mitchell, Cole, J. Kelly, Klausmeier, Greenip, Hammen, Rudolph, W. Baker, Getty, Riley, Flanagan, Snodgrass, McKee, Shank, Moe, Amedori, and Brinkley**

Introduced and read first time: January 19, 2000

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Firearms Offenses - Project Exile**

3 FOR the purpose of making it a felony to possess and intend to use a firearm, display
4 a firearm in a threatening manner, or attempt to use a firearm on school
5 property; requiring that a person convicted of a certain felony be subject to a
6 certain penalty; increasing certain criminal penalties for a person who is
7 convicted of possessing a regulated firearm after having been previously
8 convicted of a crime of violence or felony; prohibiting a District Court
9 commissioner from authorizing the release pretrial of a defendant charged with
10 a certain crime; requiring a judge to consider as a rebuttable presumption that
11 a defendant charged with a certain crime will flee and pose a danger to another
12 person or the community; allowing the court or District Court commissioner to
13 consider including certain requirements as conditions of release pretrial;
14 allowing the State to appeal from a certain decision of the District Court or to
15 apply to the Court of Special Appeals for leave to appeal an order of the circuit
16 court setting the amount and conditions of bail claimed to be insufficient before
17 trial or after conviction; and generally relating to the penalties and conditions
18 for release pretrial for certain firearms offenses.

19 BY repealing and reenacting, with amendments,
20 Article 27 - Crimes and Punishments
21 Section 36A and 616 1/2(l)
22 Annotated Code of Maryland
23 (1996 Replacement Volume and 1999 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article 27 - Crimes and Punishments

1 Section 281A(b) and 445(d)(1)
2 Annotated Code of Maryland
3 (1996 Replacement Volume and 1999 Supplement)

4 BY adding to
5 Article 27 - Crimes and Punishments
6 Section 449(f) and 616 1/2(p)
7 Annotated Code of Maryland
8 (1996 Replacement Volume and 1999 Supplement)

9 BY repealing and reenacting, with amendments,
10 Article - Courts and Judicial Proceedings
11 Section 3-707 and 12-401(b)
12 Annotated Code of Maryland
13 (1998 Replacement Volume and 1999 Supplement)

14 Preamble

15 WHEREAS, Project Exile is a legislative initiative designed to make gun
16 carrying criminals face immediate prosecution, stiff mandatory prison sentences, and
17 reduced opportunities for prison release -- in effect to "exile" criminals to prison for
18 at least five years; and

19 WHEREAS, The goal of Project Exile is to reduce the incidence of gun violence
20 and the firearm "carry rate" -- the frequency with which persons arrested for felonies
21 are found to be carrying firearms; and

22 WHEREAS, "Project Exile" has proven to be a highly successful program
23 operating in Richmond, Virginia, involving federal, state, and local law enforcement
24 agencies, resulting in greatly reduced homicide, armed robbery, and carry rates; and

25 WHEREAS, It would benefit the residents of Maryland to design a Project Exile
26 program for this State; now, therefore,

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

29 **Article 27 - Crimes and Punishments**

30 36A.

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

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

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

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

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

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

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

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

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

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

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

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

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

29 281A.

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

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

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

5 (2) (i) For a second or subsequent offense, for a term of not less than
6 10 nor more than 20 years.

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

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

14 445.

15 (d) A person may not possess a regulated firearm if the person:

16 (1) Has been convicted of:

17 (i) A crime of violence;

18 (ii) Any violation classified as a felony in this State;

19 (iii) Any violation classified as a misdemeanor in this State that
20 carries a statutory penalty of more than 2 years; or

21 (iv) Any violation classified as a common law offense where the
22 person received a term of imprisonment of more than 2 years.

23 449.

24 (F) (1) (I) A PERSON WHO VIOLATES § 445(D)(1)(I) OF THIS SUBHEADING IS
25 GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT OF NOT
26 LESS THAN 5 YEARS OR MORE THAN 20 YEARS.

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

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

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

1 (2) (I) A PERSON WHO VIOLATES § 445(D)(1)(II) OF THIS SUBHEADING IS
2 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT
3 OF NOT LESS THAN 2 YEARS OR MORE THAN 10 YEARS.

4 (II) IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN
5 THE MINIMUM SENTENCE OF 2 YEARS.

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

8 (IV) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE
9 CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN
10 LESS THAN 2 YEARS.

11 616 1/2.

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

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

20 1. Suitable bail;

21 2. Any other conditions that will reasonably assure that the
22 defendant will not flee or pose a danger to another person or the community; or

23 3. Both bail and other conditions described under item 2 of
24 this subparagraph.

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

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

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

- 1 (1) MAINTAIN EMPLOYMENT OR, IF UNEMPLOYED, ACTIVELY SEEK
2 EMPLOYMENT;
- 3 (2) MAINTAIN OR BEGIN AN EDUCATIONAL PROGRAM;
- 4 (3) AVOID ALL CONTACT WITH AN ALLEGED VICTIM OF THE CRIME AND
5 WITH ANY POTENTIAL WITNESS WHO MAY TESTIFY CONCERNING THE CRIME;
- 6 (4) COMPLY WITH A SPECIFIED CURFEW;
- 7 (5) REFRAIN FROM POSSESSING A FIREARM, DESTRUCTIVE DEVICE, OR
8 OTHER DANGEROUS WEAPON;
- 9 (6) REFRAIN FROM USE OF ALCOHOL OR CONTROLLED DANGEROUS
10 SUBSTANCES; OR
- 11 (7) SUBMIT TO DRUG OR ALCOHOL TESTING UNTIL THE DISPOSITION OF
12 THE DEFENDANT'S CASE.

13 **Article - Courts and Judicial Proceedings**

14 3-707.

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

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

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

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

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

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

34 (D) THE STATE MAY APPLY TO THE COURT OF SPECIAL APPEALS FOR LEAVE
35 TO APPEAL AN ORDER OF THE CIRCUIT COURT SETTING THE AMOUNT AND

1 CONDITIONS OF BAIL CLAIMED TO BE INSUFFICIENT BEFORE TRIAL OR AFTER
2 CONVICTION.

3 12-401.

4 (b) In a criminal case:

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

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

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

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

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

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2000.