

SENATE BILL 303

Unofficial Copy
E1

2000 Regular Session
0lr0421
CF 0lr0422

By: **Senators Jimeno, Stoltzfus, Haines, Astle, DeGrange, Hoffman, Teitelbaum, Colburn, Ruben, Hooper, Munson, Hafer, Neall, Jacobs, Bromwell, Roesser, Lawlah, Hollinger, Baker, Sfikas, Harris, Dorman, Ferguson, Kasemeyer, Collins, Conway, Dyson, McCabe, McFadden, and Mooney**

Introduced and read first time: February 1, 2000
Assigned to: Judicial Proceedings

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
26 Section 281A(b) and 445(d)(1)
27 Annotated Code of Maryland
28 (1996 Replacement Volume and 1999 Supplement)

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

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

11 Preamble

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

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

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

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

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

26 **Article 27 - Crimes and Punishments**

27 36A.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 281A.

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

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

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

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

3 (ii) It is mandatory upon the court to impose no less than a
4 minimum consecutive sentence of 10 years, no part of which may be suspended and
5 the person may not be eligible for parole except in accordance with the provisions of §
6 4-305 of the Correctional Services Article.

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

10 445.

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

12 (1) Has been convicted of:

13 (i) A crime of violence;

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

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

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

19 449.

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

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

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

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

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

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

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

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

6 616 1/2.

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

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

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

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

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

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

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

35 (2) MAINTAIN OR BEGIN AN EDUCATIONAL PROGRAM;

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

1 (4) COMPLY WITH A SPECIFIED CURFEW;

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

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

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

8 **Article - Courts and Judicial Proceedings**

9 3-707.

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

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

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

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

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

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

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

33 12-401.

34 (b) In a criminal case:

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

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

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

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

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

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

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