

SENATE BILL 303

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2000 Regular Session
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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~~ Mooney, Hogan, and Green**

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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 28, 2000

CHAPTER _____

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~~ a certain felony under certain
9 circumstances; prohibiting a District Court commissioner from authorizing the
10 release pretrial of a defendant charged with a certain crime; requiring a judge to
11 consider as a rebuttable presumption that a defendant charged with a certain
12 crime will flee and pose a danger to another person or the community; allowing
13 the court or District Court commissioner to consider including certain
14 requirements as conditions of release pretrial; allowing the State to appeal from
15 a certain decision of the District Court or to apply to the Court of Special
16 Appeals for leave to appeal an order of the circuit court setting the amount and
17 conditions of bail claimed to be insufficient before trial or after conviction; and
18 generally relating to the penalties and conditions for release pretrial for certain
19 firearms offenses.

20 BY repealing and reenacting, with amendments,
21 Article 27 - Crimes and Punishments
22 Section 36A, 449(e), and 616 1/2(l)
23 Annotated Code of Maryland

1 (1996 Replacement Volume and 1999 Supplement)

2 BY repealing and reenacting, without amendments,
3 Article 27 - Crimes and Punishments
4 Section 281A(b) and 445(d)(1)
5 Annotated Code of Maryland
6 (1996 Replacement Volume and 1999 Supplement)

7 BY adding to
8 Article 27 - Crimes and Punishments
9 Section ~~449(f)~~ and 616 1/2(p)
10 Annotated Code of Maryland
11 (1996 Replacement Volume and 1999 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article - Courts and Judicial Proceedings
14 Section 3-707 and 12-401(b)
15 Annotated Code of Maryland
16 (1998 Replacement Volume and 1999 Supplement)

17 Preamble

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

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

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

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

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

32 **Article 27 - Crimes and Punishments**

33 36A.

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

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

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

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

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

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

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

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

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

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

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

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

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

31 281A.

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

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

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

7 (2) (i) For a second or subsequent offense, for a term of not less than
8 10 nor more than 20 years.

9 (ii) It is mandatory upon the court to impose no less than a
10 minimum consecutive sentence of 10 years, no part of which may be suspended and
11 the person may not be eligible for parole except in accordance with the provisions of §
12 4-305 of the Correctional Services Article.

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

16 445.

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

18 (1) Has been convicted of:

19 (i) A crime of violence;

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

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

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

25 449.

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

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

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

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

1 (2) (4) 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 (H) 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 (e) A PERSON WHO WAS PREVIOUSLY CONVICTED OF A CRIME OF VIOLENCE
12 AS DEFINED IN § 441(E) OF THIS ARTICLE OR CONVICTED OF A VIOLATION OF § 286 OR
13 § 286A OF THIS ARTICLE, AND WHO IS IN ILLEGAL POSSESSION OF A FIREARM AS
14 DEFINED IN § 445(D)(1)(I) AND (II) OF THIS ARTICLE, IS GUILTY OF A FELONY AND
15 UPON CONVICTION SHALL BE IMPRISONED FOR NOT LESS THAN 5 YEARS, NO PART
16 OF WHICH MAY BE SUSPENDED AND THE PERSON MAY NOT BE ELIGIBLE FOR
17 PAROLE. EACH VIOLATION SHALL BE CONSIDERED A SEPARATE OFFENSE.

18 (F) Except as otherwise provided in this section, any dealer or person who
19 knowingly participates in the illegal sale, rental, transfer, purchase, possession, or
20 receipt of a regulated firearm in violation of this subheading shall be guilty of a
21 misdemeanor and upon conviction shall be fined not more than \$10,000 or imprisoned
22 for not more than 5 years, or both. Each violation shall be considered a separate
23 offense.

24 616 1/2.

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

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

33 1. Suitable bail;

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

36 3. Both bail and other conditions described under item 2 of
37 this subparagraph.

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

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

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

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

16 (2) MAINTAIN OR BEGIN AN EDUCATIONAL PROGRAM;

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

19 (4) COMPLY WITH A SPECIFIED CURFEW;

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

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

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

26 **Article - Courts and Judicial Proceedings**

27 3-707.

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

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

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

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

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

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

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

17 12-401.

18 (b) In a criminal case:

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

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

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

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

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

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

29 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2000.**

