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(PRE-FILED)

By: **Delegate Boschert** Requested: June 26, 2000

Introduced and read first time: January 10, 2001

Assigned to: Judiciary

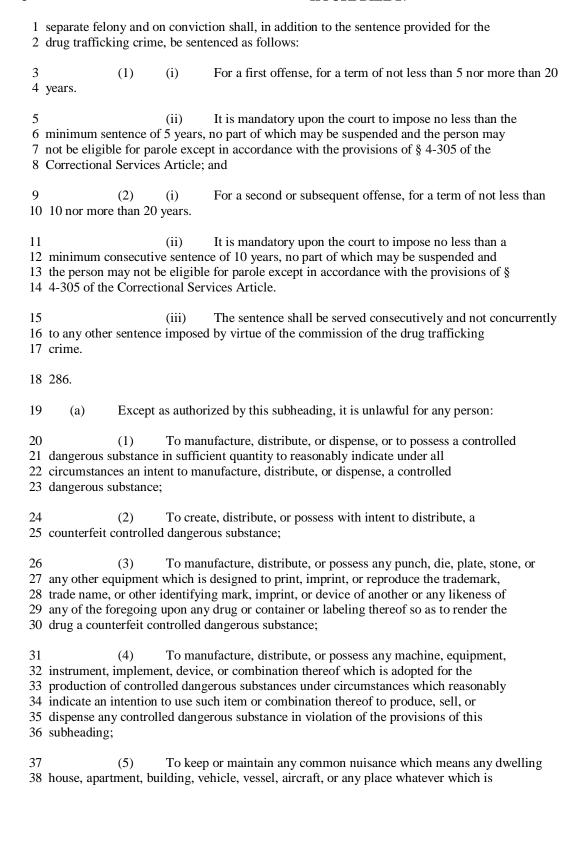
A BILL ENTITLED

1 AN ACT concerning

2 Controlled Dangerous Substance Crimes - Project Exile

- 3 FOR the purpose of establishing and requiring the imposition of certain mandatory
- 4 minimum sentences for certain violations of certain controlled dangerous
- substance crimes; altering the length of certain mandatory minimum sentences
- 6 for certain controlled dangerous substance crimes; limiting the availability of
- 7 parole for certain mandatory minimum sentences; requiring certain sentences
- 8 for certain controlled dangerous substance crimes to be imposed consecutive to
- 9 certain other sentences; requiring a judge to consider as a rebuttable
- presumption that a defendant charged with certain crimes will flee and pose a
- danger to another person or the community; allowing the court or District Court
- 12 commissioner to consider including certain requirements as conditions of
- pretrial release; 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; and generally relating to the
- penalties and conditions for pretrial release for certain controlled dangerous
- 18 substance crimes.
- 19 BY repealing and reenacting, without amendments,
- 20 Article 27 Crimes and Punishments
- 21 Section 281A(b)
- 22 Annotated Code of Maryland
- 23 (1996 Replacement Volume and 2000 Supplement)
- 24 BY repealing and reenacting, with amendments,
- 25 Article 27 Crimes and Punishments
- 26 Section 286 through 286E
- 27 Annotated Code of Maryland
- 28 (1996 Replacement Volume and 2000 Supplement)
- 29 BY repealing and reenacting, without amendments,
- 30 Article Criminal Procedure

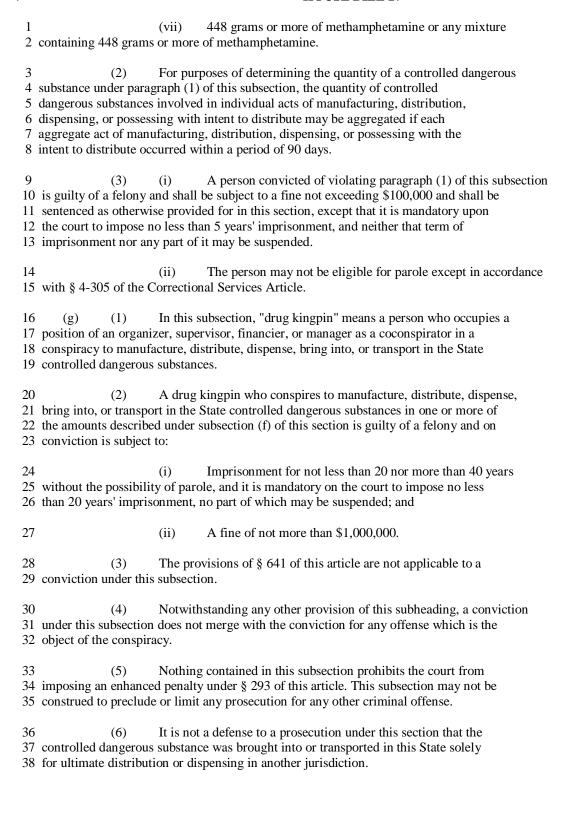
1 2 3	Section 5-202(b) Annotated Code of Maryland (As enacted by Chapter (S.B. 1) of the Acts of the General Assembly of 2001)					
4 5 6 7 8	BY repealing and reenacting, with amendments, Article - Criminal Procedure Section 5-202(c) Annotated Code of Maryland (As enacted by Chapter (S.B. 1) of the Acts of the General Assembly of 2001)					
9 10 11 12 13	BY repealing and reenacting, with amendments, Article - Courts and Judicial Proceedings Section 3-707 and 12-401(b) Annotated Code of Maryland (1998 Replacement Volume and 2000 Supplement)					
14	Preamble					
17	WHEREAS, Project Exile is a legislative initiative originally designed to make gun-carrying criminals face immediate prosecution, stiff mandatory prison sentences, and reduced opportunities for prison release in effect to "exile" criminals to prison for at least five years; and					
21	WHEREAS, "Project Exile" for firearms crimes has proven to be a highly successful program operating in Richmond, Virginia, involving federal, state, and local law enforcement agencies, resulting in greatly reduced homicide, armed robbery, and carry rates; and					
25	WHEREAS, The means employed by Project Exile to reduce the incidence of gun violence and the firearm "carry rate" truly mandatory prison sentences and reduced opportunities for prison release can reap equal benefits for our communities when applied to many controlled dangerous substance crimes; and					
27 28	WHEREAS, It would benefit the residents of Maryland to design a Project Exile program for controlled dangerous substance crimes in this State; now, therefore,					
29 30	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:					
31	Article 27 - Crimes and Punishments					
32	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					

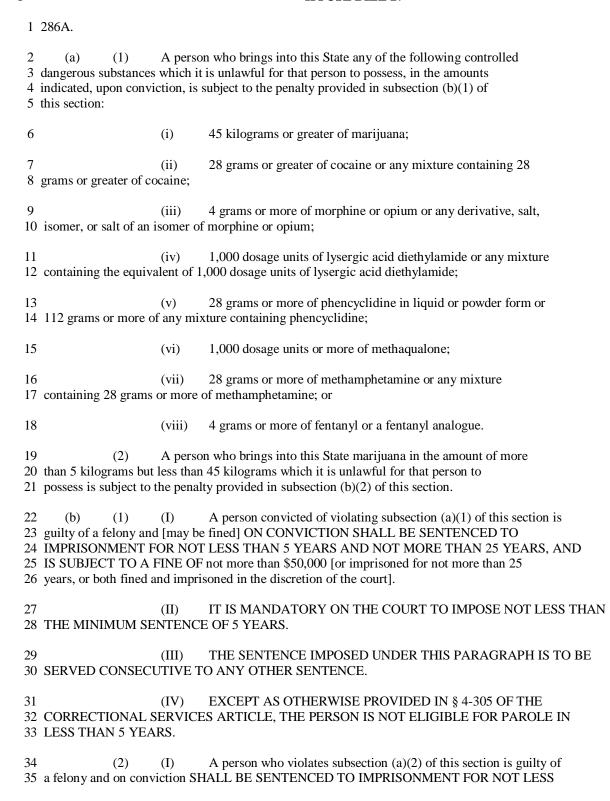


- 1 resorted to by drug abusers for purposes of illegally administering controlled
- 2 dangerous substances or which is used for the illegal manufacture, distribution,
- 3 dispensing, storage or concealment of controlled dangerous substances or controlled
- 4 paraphernalia, as defined in § 287(d) of this subheading; or
- 5 (6) To possess, pass, utter, make, or manufacture a false, forged, or
- 6 altered prescription or prescriptions for a controlled dangerous substance with the
- 7 intent to distribute the controlled dangerous substance. Information communicated to
- 8 an authorized prescriber in an effort to obtain a controlled dangerous substance in
- 9 violation of the provisions of this item shall not be deemed a privileged
- 10 communication.
- 11 (b) Any person who violates any of the provisions of subsection (a) of this
- 12 section with respect to:
- 13 (1) A substance classified in Schedules I or II which is a narcotic drug is
- 14 guilty of a felony and [is subject] ON CONVICTION SHALL BE SENTENCED to
- 15 imprisonment for NOT LESS THAN 5 YEARS AND not more than 20 years, [or] AND IS
- 16 SUBJECT TO a fine of not more than \$25,000[, or both]. THE PRISON SENTENCE OF A
- 17 PERSON SENTENCED UNDER THIS PARAGRAPH MAY NOT BE SUSPENDED TO LESS
- 18 THAN 5 YEARS, AND THE PERSON MAY BE PAROLED DURING THAT PERIOD ONLY IN
- 19 ACCORDANCE WITH § 4-305 OF THE CORRECTIONAL SERVICES ARTICLE.
- 20 (2) Phencyclidine, 1-(1-phenylcyclohexyl) piperidine,
- 21 1-phenylcyclohexylamine, or 1-piperidinocyclohexanecarbonitrile, classified in
- 22 Schedule II, or n-ethyl-1-phenylcyclohexylamine,
- 23 1-(1-phenylcyclohexyl)-pyrrolidine, 1-(1-(2-thienyl)-cyclohexyl)-piperidine, or
- 24 lysergic acid diethylamide, classified in Schedule I, is guilty of a felony and [is
- 25 subject] ON CONVICTION SHALL BE SENTENCED to imprisonment for NOT LESS THAN
- 26 5 YEARS AND not more than 20 years, [or] AND IS SUBJECT TO a fine of not more than
- 27 \$20,000[, or both]. THE PRISON SENTENCE OF A PERSON SENTENCED UNDER THIS
- 28 PARAGRAPH MAY NOT BE SUSPENDED TO LESS THAN 5 YEARS, AND THE PERSON MAY
- 29 BE PAROLED DURING THAT PERIOD ONLY IN ACCORDANCE WITH § 4-305 OF THE
- 30 CORRECTIONAL SERVICES ARTICLE.
- 31 (3) Any other controlled dangerous substance classified in Schedule I, II,
- 32 III, IV, or V shall, upon conviction, be deemed guilty of a felony and sentenced to a
- 33 term of imprisonment for not more than 5 years or a fine of not more than \$15,000, or
- 34 both. Any person who has previously been convicted under this paragraph shall be
- 35 sentenced to imprisonment for not less than 2 years. The prison sentence of a person
- 36 sentenced under this paragraph as a repeat offender may not be suspended to less
- 37 than 2 years, and the person may be paroled during that period only in accordance
- 38 with § 4-305 of the Correctional Services Article.
- 39 (c) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2)
- 40 of this section, or of conspiracy to violate subsection (b)(1) or (b)(2) of this section shall
- 41 be sentenced to imprisonment for not less than 10 years and subject to a fine not
- 42 exceeding \$100,000 if the person previously has been convicted:

1		(i)	Under s	ubsection (b)(1) or subsection (b)(2) of this section;		
2 3	this section; or	(ii)	Of cons	piracy to violate subsection (b)(1) or subsection (b)(2) of		
	Columbia, or the Unit subsection (b)(2) of the		s that wou	ffense under the laws of another state, the District of ald be a violation of subsection (b)(1) or nitted in this State.		
9 10 11	(2) The prison sentence of a person sentenced under subsection (b)(1) or subsection (b)(2) of this section, or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section or any combination of these offenses, as a second offender may not be suspended to less than 10 years, and the person may be paroled during that period only in accordance with § 4-305 of the Correctional Services 2 Article.					
15	This subsection does not prevent, prohibit, or make ineligible a convicted defendant from participating in the rehabilitation program under Title 8, Subtitle 5 of the Health - General Article, because of the length of sentence, if imposed under subsection (b)(1) of this section.					
19 20	(d) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2) of this section or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section shall be sentenced to imprisonment for the term allowed by law, but, in any event, not less than 25 years and subject to a fine not exceeding \$100,000 if the person previously:					
			result of a	wed at least 1 term of confinement of at least 180 days in a conviction of a previous violation of this		
25 26	from a single inciden	(ii) t:	Has bee	n convicted twice, where the convictions do not arise		
27			1.	Under subsection (b)(1) or subsection (b)(2) of this section		
28 29	(b)(2) of this section;		2.	Of conspiracy to violate subsection (b)(1) or subsection		
				Of an offense under the laws of another state, the District would be a violation of subsection (b)(1) or mitted in this State; or		
33			4.	Of any combination of these offenses.		
	nor any part of it may	y be susp	ended, ar	nce required under paragraph (1) of this subsection and the person may not be eligible for parole ne Correctional Services Article.		

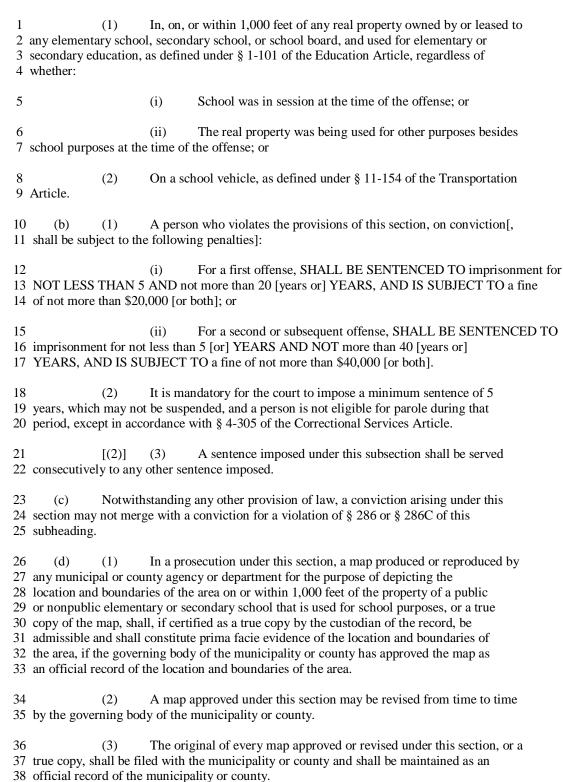
	(3) succeeding offense is the preceding offense	committe	ate occasion shall be considered one in which the second or ed after there has been a charging document filed for				
6 7 8	(e) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2) of this section or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this section shall be sentenced to imprisonment for the term allowed by law, but in any event, not less than 40 years and subject to a fine not exceeding \$100,000 if the person previously has served 3 separate terms of confinement as a result of 3 separate convictions:						
10		(i)	Under subsection (b)(1) or subsection (b)(2) of this section;				
11 12	this section;	(ii)	Of conspiracy to violate subsection (b)(1) or subsection (b)(2) of				
			Of an offense under the laws of another state, the District of s that would be a violation of subsection (b)(1) or in if committed in this State; or				
16		(iv)	Of any combination of these offenses.				
	Neither the sentence required under paragraph (1) of this subsection nor any part of it may be suspended, and the person may not be eligible for parole except in accordance with § 4-305 of the Correctional Services Article.						
22	(f) (1) If a person violates subsection (a)(1) of this section and the violation involves any of the following controlled dangerous substances, in the amounts indicated, the person is subject to the penalties provided in paragraph (3) of this subsection upon conviction:						
24		(i)	50 pounds or more of marijuana;				
25 26	mixture containing a	(ii) detectabl	448 grams or more of cocaine or 448 grams or more of any e amount of cocaine;				
27		(iii)	50 grams or more of cocaine base, commonly known as "crack";				
30	isomer, or salt of an i or more of morphine morphine or opium;	(iv) somer of or opium	28 grams or more of morphine or opium or any derivative, salt, morphine or opium or any mixture containing 28 grams or any derivative, salt, isomer, or salt of an isomer of				
32 33	containing the equiva	(v) alent of 1,	1,000 dosage units of lysergic acid diethylamide or any mixture 000 dosage units of lysergic acid diethylamide;				
34 35	or more of any mixtu	(vi) re contain	16 ounces or more of phencyclidine in liquid form or 448 grams ning phencyclidine; or				

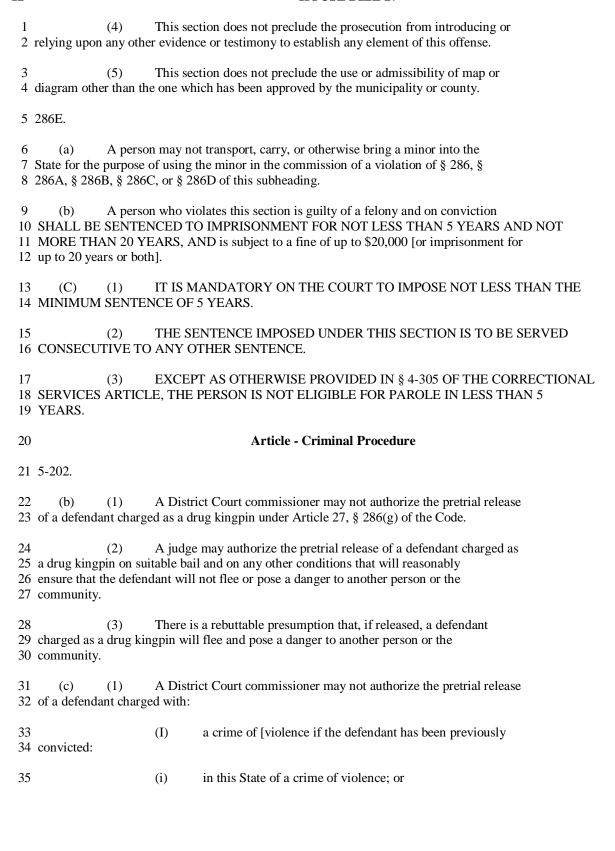




- 1 THAN 2 YEARS AND NOT MORE THAN 10 YEARS, AND is subject to a fine of not more 2 than \$10,000 [or imprisonment for not more than 10 years or both]. IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN (II)4 THE MINIMUM SENTENCE OF 2 YEARS. THE SENTENCE IMPOSED UNDER THIS PARAGRAPH IS TO BE (III)6 SERVED CONSECUTIVE TO ANY OTHER SENTENCE. 7 EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE 8 CORRECTIONAL SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN 9 LESS THAN 2 YEARS. 10 286B. 11 For purposes of this section, 12 "Noncontrolled substance" means any substance not classified as a (1)13 controlled dangerous substance by State law or regulation. 14 "Distribute" means the actual, constructive, or attempted transfer, 15 exchange, or delivering of a noncontrolled substance, other than by dispensing, from 16 one person to another with or without remuneration, whether or not there exists an agency relationship.
- 18 (b) A person may not distribute, attempt to distribute, or possess with intent
- 19 to distribute, a noncontrolled substance upon the representation that the substance is
- 20 a controlled dangerous substance.
- 21 (c) It is unlawful for a person to distribute, attempt to distribute, or possess
- 22 with intent to distribute, any noncontrolled substance intended by that person for use
- 23 or distribution as a controlled dangerous substance or under circumstances where one
- 24 reasonably should know that the noncontrolled substance will be used or distributed
- 25 for use as a controlled dangerous substance.
- 26 For the purpose of determining whether this section has been violated, the court or other authority shall include in its consideration the following: 27
- 28 Whether the noncontrolled substance was packaged in a manner (1) 29 normally used for the illegal distribution of controlled substances;
- 30 Whether the distribution or attempted distribution included an
- 31 exchange of or demand for money or other property as consideration, and whether the
- 32 amount of the consideration was substantially greater than the reasonable value of
- 33 the noncontrolled substance;
- 34 Whether the physical appearance of the noncontrolled substance is
- 35 substantially identical to that of a controlled dangerous substance.

- 1 (e) In any prosecution brought under this section, it is not a defense to a
- 2 violation of this section that the defendant believed the noncontrolled substance to
- 3 actually be a controlled dangerous substance.
- 4 (f) Any person who violates the provisions of this section with respect to the
- 5 distribution, attempt to distribute, or possession with intent to distribute a
- 6 noncontrolled substance as a controlled dangerous substance, is guilty of a felony and,
- 7 upon conviction, [is subject] SHALL BE SENTENCED to imprisonment for NOT LESS
- 8 THAN 2 YEARS AND not more than 5 years, [or] AND IS SUBJECT TO a fine of not more
- 9 than \$15,000 [or both].
- 10 (G) (1) IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN THE
- 11 MINIMUM SENTENCE OF 2 YEARS.
- 12 (2) THE SENTENCE IMPOSED UNDER THIS SECTION IS TO BE SERVED
- 13 CONSECUTIVE TO ANY OTHER SENTENCE.
- 14 (3) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE CORRECTIONAL
- 15 SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN LESS THAN 2
- 16 YEARS.
- 17 286C.
- 18 (a) A person may not hire, solicit, engage, or use a minor, in any manner, for
- 19 the purpose of manufacturing, distributing, or delivering, on behalf of that person,
- 20 any controlled dangerous substance in sufficient quantity to reasonably indicate
- 21 under all the circumstances an intent to distribute, unless the manufacturing,
- 22 delivery, or distribution has a lawful purpose.
- 23 (b) Any person who violates this section is guilty of a felony and, upon
- 24 conviction, shall be sentenced to imprisonment for [up to] NOT LESS THAN 5 YEARS
- 25 AND NOT MORE THAN 20 [years, or fined up to] YEARS, AND IS SUBJECT TO A FINE
- 26 OF NOT MORE THAN \$20,000[, or both].
- 27 (C) (1) IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN THE
- 28 MINIMUM SENTENCE OF 5 YEARS.
- 29 (2) THE SENTENCE IMPOSED UNDER THIS SECTION IS TO BE SERVED
- 30 CONSECUTIVE TO ANY OTHER SENTENCE.
- 31 (3) EXCEPT AS OTHERWISE PROVIDED IN § 4-305 OF THE CORRECTIONAL
- 32 SERVICES ARTICLE, THE PERSON IS NOT ELIGIBLE FOR PAROLE IN LESS THAN 5
- 33 YEARS.
- 34 286D.
- 35 (a) A person who manufactures, distributes, dispenses, or possesses with
- 36 intent to distribute a controlled dangerous substance in violation of § 286(a)(1) of this
- 37 subheading, or who conspires to commit any of these offenses, is guilty of a felony if
- 38 the offense occurred:





1 2	(ii) 2 violence if committed in this St		ther jurisdiction of a crime that would be a crime of LENCE; OR
3	(II) 4 286A, § 286B, § 286C, § 286D,		ATION OF ARTICLE 27, § 281(B), § 286(A) THROUGH (F), § 86E OF THE CODE.
5 6	(2) (i) described in paragraph (1) of the		may authorize the pretrial release of a defendant etion on:
7	7	1.	suitable bail;
8 9		2. a danger	any other conditions that will reasonably enure that the to another person or the community; or
10 11	0 1 this subparagraph.	3.	both bail and other conditions described under item 2 of
14 15 16	3 is presented to the court under 4 continued detention of the defe 5 bail nor any condition or comb	Maryland ndant if ination o	defendant described in paragraph (1) of this subsection d Rule 4-216(g), the judge shall order the the judge determines that neither suitable of conditions will reasonably ensure that the to another person or the community before
			ble presumption that a defendant described in e and pose a danger to another person or the
23	2 ELSEWHERE IN THIS SECT	TON, TH	O THE CONDITIONS OF PRETRIAL RELEASE SPECIFIED IE COURT OR DISTRICT COURT COMMISSIONER MAY DITION OF PRETRIAL RELEASE A REQUIREMENT
25 26	5 (I) 6 EMPLOYMENT;	MAINT	AIN EMPLOYMENT OR, IF UNEMPLOYED, ACTIVELY SEEK
27	7 (II)	MAINT	AIN OR BEGIN AN EDUCATIONAL PROGRAM;
28 29	` ,		ALL CONTACT WITH AN ALLEGED VICTIM OF THE CRIME SESS WHO MAY TESTIFY CONCERNING THE CRIME;
30	0 (IV)	COMPL	Y WITH A SPECIFIED CURFEW;
31 32	1 (V) 2 DANGEROUS SUBSTANCES		IN FROM USE OF ALCOHOL OR CONTROLLED
33 34	3 (VI) 4 DISPOSITION OF THE DEFE		Γ TO DRUG OR ALCOHOL TESTING UNTIL THE Γ'S CASE; OR
35 36	5 (VII) 6 DEVICE, OR OTHER DANG		IN FROM POSSESSING A FIREARM, DESTRUCTIVE WEAPON.

1

HOUSE BILL 27

Article - Courts and Judicial Proceedings

2	3-707.								
5	(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) 10 days after of the lower		al or gran	nt of habe	file the application as corpus relief stamodified.]
			eas corp	us, the St	e application for lea ate's answer, if any the judge.				у
13 14		(3) f any proc			s the application, i the habeas corpus		the prepar	cation of a	
	leave to app		e Court g	rants the	cial Appeals may gapplication, it may denying the relief	affirm, rev	erse, or mo		
20	(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.								
24	TO APPEA	L AN OF NS OF B	RDER OF	THE CI	Y TO THE COUR RCUIT COURT S O BE INSUFFICI	ETTING T	HE AMOU	JNT AND)
26	12-401.								
27	(b)	In a crin	ninal case	e:					
28		(1)	The Star	te may ap	peal from [a]:				
29 30	AND CONI	DITIONS	(I) OF BAI		SION OF THE DI	STRICT C	OURT SE	TTING TH	HE AMOUNT
31			(II)	A final j	udgment entered in	n the Distri	ct Court:		
32 33	sentence spe	ecifically	[(i)] mandate	1. d by the	If the State alleger Code; or	s that the tr	ial judge fa	niled to im	pose the
34 35	charging do	cument.	[(ii)]	2.	Granting a motion	n to dismiss	, or quashi	ng or disn	nissing a

- 1 (2) The defendant may appeal even from a final judgment entered in the 2 District Court though imposition or execution of sentence has been suspended.
- 3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect 4 October 1, 2001.