

SENATE BILL 475

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2001 Regular Session
11r0836
CF 11r0206

By: **Senators Jimeno, Astle, Bromwell, Colburn, Collins, Currie, DeGrange, Della, Dorman, Ferguson, Forehand, Green, Hafer, Haines, Harris, Hoffman, Hogan, Hollinger, Hooper, Jacobs, Kasemeyer, Lawlah, Madden, Middleton, Mooney, Munson, Neall, Roesser, Ruben, Sfikas, Stoltzfus, Stone, Teitelbaum, and Van Hollen**

Introduced and read first time: February 2, 2001
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; altering certain criminal penalties for a person who is convicted
7 of possessing a regulated firearm after having been previously convicted of a
8 crime of violence or felony; prohibiting a District Court commissioner from
9 authorizing the pretrial release of a defendant charged with a certain crime;
10 requiring a judge to consider as a rebuttable presumption that a defendant
11 charged with a certain crime will flee and pose a danger to another person or the
12 community; allowing the court or District Court commissioner to consider
13 including certain requirements as conditions of pretrial release; allowing the
14 State to appeal from a certain decision of the District Court or to apply to the
15 Court of Special Appeals for leave to appeal an order of the circuit court setting
16 the amount and conditions of bail claimed to be insufficient before trial or after
17 conviction; and generally relating to the penalties and conditions for pretrial
18 release for certain firearms offenses.

19 BY repealing and reenacting, with amendments,
20 Article 27 - Crimes and Punishments
21 Section 36A
22 Annotated Code of Maryland
23 (1996 Replacement Volume and 2000 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 2000 Supplement)

1 BY repealing
2 Article 27 - Crimes and Punishments
3 Section 449(e)
4 Annotated Code of Maryland
5 (1996 Replacement Volume and 2000 Supplement)

6 BY adding to
7 Article 27 - Crimes and Punishments
8 Section 449(e)
9 Annotated Code of Maryland
10 (1996 Replacement Volume and 2000 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article - Criminal Procedure
13 Section 5-202(c)
14 Annotated Code of Maryland
15 (As enacted by Chapter _____ (S.B. _____/H.B. _____) (1lr0739) of the Acts of the
16 General Assembly of 2001)

17 BY repealing and reenacting, with amendments,
18 Article - Courts and Judicial Proceedings
19 Section 3-707 and 12-401(b)
20 Annotated Code of Maryland
21 (1998 Replacement Volume and 2000 Supplement)

22 Preamble

23 WHEREAS, Project Exile is a legislative initiative designed to make gun
24 carrying criminals face immediate prosecution, stiff mandatory prison sentences, and
25 reduced opportunities for prison release -- in effect to "exile" criminals to prison for
26 at least 5 years; and

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

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

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

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

Article 27 - Crimes and Punishments

2 36A.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 281A.

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

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

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

13 (2) (i) For a second or subsequent offense, for a term of not less than
14 10 nor more than 20 years.

15 (ii) It is mandatory upon the court to impose no less than a
16 minimum consecutive sentence of 10 years, no part of which may be suspended and
17 the person may not be eligible for parole except in accordance with the provisions of §
18 4-305 of the Correctional Services Article.

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

22 445.

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

24 (1) Has been convicted of:

25 (i) A crime of violence;

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

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

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

31 449.

32 [(e) A person who was previously convicted of a crime of violence as defined in
33 § 441(e) of this article or convicted of a violation of § 286 or § 286A of this article, and
34 who is in illegal possession of a firearm as defined in § 445(d)(1)(i) and (ii) of this
35 article, is guilty of a felony and upon conviction shall be imprisoned for not less than

1 5 years, no part of which may be suspended and the person may not be eligible for
2 parole. Each violation shall be considered a separate offense.]

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

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

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

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

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

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

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

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

23 **Article - Criminal Procedure**

24 5-202.

25 (c) (1) A District Court commissioner may not authorize the pretrial release
26 of a defendant charged with a crime of violence [if the defendant has been previously
27 convicted:

28 (i) in this State of a crime of violence; or

29 (ii) in any other jurisdiction of a crime that would be a crime of
30 violence if committed in this State] OR POSSESSION OF A FIREARM IN VIOLATION OF
31 ARTICLE 27, § 36A, § 281A(B), OR § 445(D) OF THE CODE.

32 (2) (i) A judge may authorize the pretrial release of a defendant
33 described in paragraph (1) of this subsection on:

34 1. suitable bail;

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

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

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

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

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

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

20 12-401.

21 (b) In a criminal case:

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

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

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

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

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

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

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2001.