

HOUSE BILL 318

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HB 622/01 - JUD

2002 Regular Session
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By: **Delegates Cadden, Taylor, Amedori, W. Baker, Baldwin, Boutin, Bozman, Brinkley, Cane, Clagett, Conway, Cryor, D'Amato, DeCarlo, Dewberry, Eckardt, Edwards, Elliott, Fulton, Getty, Glassman, Greenip, Hecht, Hubers, Hutchins, James, Kach, Klausmeier, Klima, Leopold, Linton, Malone, McClenahan, McHale, Minnick, Mitchell, Mohorovic, O'Donnell, Owings, Parrott, Ports, Redmer, Riley, Rosso, Rudolph, Rzepkowski, Shank, Sophocleus, Stocksdales, Stull, Walkup, Weir, and Wood**

Introduced and read first time: January 24, 2002
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Firearms Offenses - Project Exile**

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

19 BY repealing and reenacting, without amendments,
20 Article 27 - Crimes and Punishments
21 Section 445(d)
22 Annotated Code of Maryland
23 (1996 Replacement Volume and 2001 Supplement)

24 BY repealing
25 Article 27 - Crimes and Punishments

1 Section 449(e)
2 Annotated Code of Maryland
3 (1996 Replacement Volume and 2001 Supplement)

4 BY adding to
5 Article 27 - Crimes and Punishments
6 Section 449(e)
7 Annotated Code of Maryland
8 (1996 Replacement Volume and 2001 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 2001 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article - Criminal Law
16 Section 4-102
17 Annotated Code of Maryland
18 (As enacted by Chapter ____ (H.B. 11) of the Acts of the General Assembly of
19 2002)

20 BY repealing and reenacting, without amendments,
21 Article - Criminal Law
22 Section 5-621(a) through (c)
23 Annotated Code of Maryland
24 (As enacted by Chapter ____ (H.B. 11) of the Acts of the General Assembly of
25 2002)

26 BY repealing and reenacting, with amendments,
27 Article - Criminal Procedure
28 Section 5-202(c)
29 Annotated Code of Maryland
30 (2001 Volume)

31 Preamble

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

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

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

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

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

11 **Article 27 - Crimes and Punishments**

12 445.

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

14 (1) Has been convicted of:

15 (i) A crime of violence;

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

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

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

21 (2) Is:

22 (i) A fugitive from justice;

23 (ii) A habitual drunkard;

24 (iii) Addicted to or a habitual user of any controlled dangerous
25 substances;

26 (iv) Suffering from a mental disorder as defined in § 10-101(f)(2) of
27 the Health - General Article and has a history of violent behavior against another
28 person or self, or has been confined for more than 30 consecutive days to a facility as
29 defined in § 10-101 of the Health - General Article, unless the person possesses a
30 physician's certification that the person is capable of possessing a regulated firearm
31 without undue danger to the person or to others; or

32 (v) A respondent against whom a current non ex parte civil
33 protective order has been entered under § 4-506 of the Family Law Article.

1 (3) Is less than 30 years of age at the time of possession and has been
2 adjudicated delinquent by a juvenile court for committing:

3 (i) A crime of violence;

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

5 (iii) Any violation classified as a misdemeanor in this State that
6 carries a statutory penalty of more than 2 years.

7 449.

8 [(e) A person who was previously convicted of a crime of violence as defined in
9 § 441(e) of this article or convicted of a violation of § 286 or § 286A of this article, and
10 who is in illegal possession of a firearm as defined in § 445(d)(1)(i) and (ii) of this
11 article, is guilty of a felony and upon conviction shall be imprisoned for not less than
12 5 years, no part of which may be suspended and the person may not be eligible for
13 parole. Each violation shall be considered a separate offense.]

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

17 (II) THE COURT MAY NOT IMPOSE LESS THAN THE MINIMUM
18 SENTENCE OF 5 YEARS.

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

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

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

27 (II) THE COURT MAY NOT IMPOSE LESS THAN THE MINIMUM
28 SENTENCE OF 2 YEARS.

29 (III) THE SENTENCE IMPOSED UNDER THIS PARAGRAPH IS TO BE
30 SERVED CONSECUTIVELY 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 2 YEARS.

1 **Article - Courts and Judicial Proceedings**

2 3-707.

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

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

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

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

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

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

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

26 12-401.

27 (b) In a criminal case:

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

29 (I) A DECISION OF THE DISTRICT COURT SETTING THE AMOUNT
30 AND CONDITIONS OF BAIL;

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

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

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

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 **Article - Criminal Law**

4 4-102.

5 (a) This section does not apply to:

6 (1) a law enforcement officer in the regular course of the officer's duty;

7 (2) a person hired by a county board of education specifically for the
8 purpose of guarding public school property;

9 (3) a person engaged in organized shooting activity for educational
10 purposes; or

11 (4) a person who, with a written invitation from the school principal,
12 displays or engages in a historical demonstration using a weapon or a replica of a
13 weapon for educational purposes.

14 (b) [A] ON PUBLIC SCHOOL PROPERTY, A person may not:

15 (1) carry or possess a firearm, knife, or deadly weapon of any kind
16 [on public school property]; OR

17 (2) POSSESS AND INTEND TO USE A FIREARM, DISPLAY A FIREARM
18 IN A THREATENING MANNER, OR ATTEMPT TO USE A FIREARM.

19 (c) (1) (I) A PERSON WHO VIOLATES SUBSECTION (B)(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) THE COURT MAY NOT IMPOSE LESS THAN THE MINIMUM
23 SENTENCE OF 5 YEARS.

24 (III) THE SENTENCE IMPOSED UNDER THIS PARAGRAPH IS TO BE
25 SERVED CONSECUTIVELY 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 (2)(I) Except as provided in [paragraph (2) of this subsection]
30 SUBPARAGRAPH (II) OF THIS PARAGRAPH, a person who violates SUBSECTION (B)(1)
31 OF this section is guilty of a misdemeanor and on conviction is subject to
32 imprisonment not exceeding 3 years or a fine not exceeding \$1,000.

1 [(2)] (II) A person who is convicted of carrying or possessing a handgun
2 in violation of SUBSECTION (B)(1) OF this section shall be sentenced under Subtitle 2
3 of this title.

4 5-621.

5 (a) (1) In this section the following words have the meanings indicated.

6 (2) "Drug trafficking crime" means a felony or a conspiracy to commit a
7 felony involving the possession, distribution, manufacture, or importation of a
8 controlled dangerous substance under §§ 5-602 through 5-609 and 5-614 of this
9 article.

10 (3) "Forfeiting authority" means the office or person designated by
11 agreement between the State's Attorney for a county and the chief executive officer of
12 the governing body that has jurisdiction over the assets subject to forfeiture.

13 (b) During and in relation to a drug trafficking crime, a person may not:

14 (1) possess a firearm under sufficient circumstances to constitute a
15 nexus to the drug trafficking crime; or

16 (2) use, wear, carry, or transport a firearm.

17 (c) (1) In addition to the sentence provided for the drug trafficking crime, a
18 person who violates subsection (b) of this section is guilty of a felony and on conviction
19 is subject to:

20 (i) for a first violation, imprisonment for not less than 5 years and
21 not exceeding 20 years; or

22 (ii) for each subsequent violation, imprisonment for not less than
23 10 years and not exceeding 20 years.

24 (2) (i) The court shall impose a minimum sentence of 5 years under
25 paragraph (1)(ii) of this subsection.

26 (ii) The court shall impose a minimum sentence of 10 years under
27 paragraph (1)(ii) of this subsection.

28 (3) (i) A court may not suspend any part of a mandatory minimum
29 sentence.

30 (ii) Except as provided in § 4-305 of the Correctional Services
31 Article, a person sentenced under this subsection is not eligible for parole.

32 (iii) A sentence imposed under paragraph (1)(ii) of this subsection
33 shall be consecutive to and not concurrent with any other sentence imposed by virtue
34 of the commission of the drug trafficking crime.

Article - Criminal Procedure

2 5-202.

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

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

7 (ii) in any other jurisdiction of a crime that would be a crime of
8 violence if committed in this State] OR POSSESSION OF A FIREARM IN VIOLATION OF
9 ARTICLE 27, § 445(D) OF THE CODE OR § 4-102 OR § 5-621(B) OF THE CRIMINAL LAW
10 ARTICLE.

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

13 1. suitable bail;

14 2. any other conditions that will reasonably ensure that the
15 defendant will not flee or pose a danger to another person or the community; or

16 3. both bail and other conditions described under item 2 of
17 this subparagraph.

18 (ii) When a defendant described in paragraph (1) of this subsection
19 is presented to the court under Maryland Rule 4-216(g), the judge shall order the
20 continued detention of the defendant if the judge determines that neither suitable
21 bail nor any condition or combination of conditions will reasonably ensure that the
22 defendant will not flee or pose a danger to another person or the community before
23 the trial.

24 (3) There is a rebuttable presumption that a defendant described in
25 paragraph (1) of this subsection will flee and pose a danger to another person or the
26 community.

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

31 (I) MAINTAIN EMPLOYMENT OR, IF UNEMPLOYED, ACTIVELY SEEK
32 EMPLOYMENT;

33 (II) MAINTAIN OR BEGIN AN EDUCATIONAL PROGRAM;

34 (III) AVOID ALL CONTACT WITH AN ALLEGED VICTIM OF THE CRIME
35 AND WITH ANY POTENTIAL WITNESS WHO MAY TESTIFY CONCERNING THE CRIME;

36 (IV) COMPLY WITH A SPECIFIED CURFEW;

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

3 (VI) REFRAIN FROM USE OF ALCOHOL OR CONTROLLED
4 DANGEROUS SUBSTANCES; OR

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

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2002.