

HOUSE BILL 127

Unofficial Copy  
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HB 622/01 - JUD

2003 Regular Session  
3lr0365  
CF 3lr0369

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By: **Delegates Cadden, Owings, Amedori, Aumann, Barkley, Barve, Boschert, Boutin, Bozman, G. Clagett, V. Clagett, Conroy, Conway, Costa, DeBoy, Donoghue, Dumais, Edwards, Elliott, Frank, Fulton, Glassman, Hammen, Hutchins, James, Jameson, Kach, Kelly, Krebs, Leopold, Malone, McHale, McKee, McMillan, Minnick, Mitchell, Moe, Myers, O'Donnell, Parrott, Redmer, Rudolph, Rzepkowski, Schisler, Sophocleus, Sossi, Stern, Stocksdale, Stull, Vaughn, Walkup, Weir, and Wood**

Introduced and read first time: January 24, 2003  
Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Firearms Offenses - Project Exile**

3 FOR the purpose of allowing the State to appeal from a certain decision of the District  
4 Court or to apply to the Court of Special Appeals for leave to appeal an order of  
5 the circuit court setting the amount and conditions of bail claimed to be  
6 insufficient before trial or after conviction; making it a felony on school property  
7 to possess and intend to use a firearm, display a firearm in a threatening  
8 manner, or attempt to use a firearm; requiring that a person convicted of a  
9 certain felony be subject to a certain penalty; prohibiting a District Court  
10 commissioner from authorizing the pretrial release of a defendant charged with  
11 a certain crime; allowing the court or District Court commissioner to consider  
12 including certain requirements as conditions of pretrial release; requiring a  
13 judge to consider as a rebuttable presumption that a defendant charged with a  
14 certain crime will flee and pose a danger to another person or the community;  
15 altering certain criminal penalties for a person who is convicted of possessing a  
16 regulated firearm after having been previously convicted of a crime of violence  
17 or felony; 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 - Courts and Judicial Proceedings  
21 Section 3-707 and 12-401(b)  
22 Annotated Code of Maryland  
23 (2002 Replacement Volume)

24 BY repealing and reenacting, with amendments,  
25 Article - Criminal Law

1 Section 4-102  
2 Annotated Code of Maryland  
3 (2002 Volume)

4 BY repealing and reenacting, with amendments,  
5 Article - Criminal Procedure  
6 Section 5-202(c)  
7 Annotated Code of Maryland  
8 (2001 Volume and 2002 Supplement)

9 BY repealing  
10 Article - Public Safety  
11 Section 5-133(c)  
12 Annotated Code of Maryland  
13 (As enacted by Chapter \_\_\_\_ (S.B. 1) of the Acts of the General Assembly of 2003)

14 BY adding to  
15 Article - Public Safety  
16 Section 5-133(c)  
17 Annotated Code of Maryland  
18 (As enacted by Chapter \_\_\_\_ (S.B. 1) of the Acts of the General Assembly of 2003)

19 Preamble

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

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

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

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

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

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; OR

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) (1) A person may not carry or possess a firearm, knife, or deadly weapon  
15 of any kind on public school property.

16 (2) A PERSON ON PUBLIC SCHOOL PROPERTY MAY NOT POSSESS AND  
17 INTEND TO USE A FIREARM, DISPLAY A FIREARM IN A THREATENING MANNER, OR  
18 ATTEMPT TO USE A FIREARM.

19 (c) (1) Except as provided in [paragraph] PARAGRAPHS (2) AND (3) of this  
20 subsection, a person who violates this section is guilty of a misdemeanor and on  
21 conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding  
22 \$1,000 or both.

23 (2) A person who is convicted of carrying or possessing a handgun in  
24 violation of this section shall be sentenced under Subtitle 2 of this title.

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

28 (II) THE COURT SHALL IMPOSE A MINIMUM SENTENCE OF 5 YEARS.

29 (III) THE COURT MAY NOT SUSPEND ANY PART OF A MANDATORY  
30 MINIMUM SENTENCE.

31 (IV) THE SENTENCE SHALL TO BE SERVED CONSECUTIVELY TO ANY  
32 OTHER SENTENCE.

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

4 **Article - Criminal Procedure**

5 5-202.

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

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

10 (ii) in any other jurisdiction of a crime that would be a crime of  
11 violence if committed in this State] OR POSSESSION OF A FIREARM IN VIOLATION OF  
12 § 4-102 OR § 5-621(B) OR (C) OF THE CRIMINAL LAW ARTICLE OR § 5-133(C) OF THE  
13 PUBLIC SAFETY ARTICLE.

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

16 1. suitable bail;

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

19 3. both bail and other conditions described under item 2 of  
20 this subparagraph.

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

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

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

34 (I) MAINTAIN EMPLOYMENT OR, IF UNEMPLOYED, ACTIVELY SEEK  
35 EMPLOYMENT;

36 (II) MAINTAIN OR BEGIN AN EDUCATIONAL PROGRAM;

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

3 (IV) COMPLY WITH A SPECIFIED CURFEW;

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

6 (VI) REFRAIN FROM USE OF ALCOHOL OR CONTROLLED  
7 DANGEROUS SUBSTANCES; OR

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

10 **Article - Public Safety**

11 5-133.

12 [(c) (1) A person may not possess a regulated firearm if the person was  
13 previously convicted of:

14 (i) a crime of violence;

15 (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, §  
16 5-607, § 5-608, § 5-609, § 5-612, § 5-613, or § 5-614 of the Criminal Law Article; or

17 (iii) any other violation classified as a felony in the State.

18 (2) A person who violates this subsection is guilty of a felony and on  
19 conviction is subject to imprisonment for not less than 5 years, no part of which may  
20 be suspended.

21 (3) A person sentenced under paragraph (1) of this subsection may not be  
22 eligible for parole.

23 (4) Each violation of this subsection is a separate crime.]

24 (C) (1) (I) A PERSON MAY NOT POSSESS A REGULATED FIREARM IF THE  
25 PERSON WAS PREVIOUSLY CONVICTED OF A CRIME OF VIOLENCE.

26 (II) A PERSON WHO VIOLATES THIS PARAGRAPH IS GUILTY OF A  
27 FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS THAN 5  
28 YEARS AND NOT EXCEEDING 20 YEARS, NO PART OF WHICH MAY BE SUSPENDED.

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

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

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

4 (2) (I) A PERSON MAY NOT POSSESS A REGULATED FIREARM IF THE  
5 PERSON WAS PREVIOUSLY CONVICTED OF ANY VIOLATION OTHER THAN A CRIME OF  
6 VIOLENCE THAT IS CLASSIFIED AS A FELONY IN THE STATE.

7 (II) A PERSON WHO VIOLATES THIS PARAGRAPH IS GUILTY OF A  
8 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT FOR NOT LESS  
9 THAN 2 YEARS AND NOT EXCEEDING 10 YEARS, NO PART OF WHICH MAY BE  
10 SUSPENDED.

11 (III) IT IS MANDATORY ON THE COURT TO IMPOSE NOT LESS THAN  
12 THE MINIMUM SENTENCE OF 2 YEARS.

13 (IV) THE SENTENCE IMPOSED UNDER THIS PARAGRAPH IS TO BE  
14 SERVED CONSECUTIVELY TO ANY OTHER SENTENCE.

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

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2003.