Rules on Bail

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The U.S. Court of Appeals yesterday struck down the District's strict rules on release of people convicted of federal crimes here.

The ruling would make it easier for hundreds of narcotics offenders to be released on bond while their cases are being appealed or while awaiting sentencing, sources in the U.S. attorney's office said.

Many narcotics offenses are federal crimes in the District. The sources said that those convicted of other federal crimes such as bank robberies, mail and forgery cases and prison escapees would also be affected by the ruling.

Not affected by the ruling, and therefore still subject to the bail provisions of the 1970 act, would be persons convicted of violations under the D.C. code. This includes most major categories of "street crime", such as rape, most robberies and murder.

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In its opinion, the court struck out against the possibility that Congress intended the 1970 act as an experiment that, if successful, would subsequently be enacted across the country.

The opinion said, "The mere fact that District residents lack congressional representation does not justify their use as human guinea pigs — particularly when basic human rights are involved."

Yesterday's unanimous ruling by a panel of the Appellate Court, which the government could appeal directly to the U.S. Supreme Court, found that Congress could not have intended the act's bail requirements to apply to federal crimes, since that would be unconstitutional under the equal protection guaranteed in the process clause of the Fifth Amendment.

Post-conviction bail requirements in all the other states, said the ruling, are set by the "more lenient standards" of the Bail Reform Act passed by Congress in 1966.

Those requirements under which a judge can release a convicted person pending appeal unless he "has reason to believe" that person will flee or pose a danger to the community, applied in the District until the crime act went into effect Feb. 1 this year.

Under the new act, bail cannot be granted here unless the judge finds "clear and convincing evidence" that the person is unlikely to flee or pose a danger, and, secondly, unless the appeal appears likely to result in a reversal.

Sources in the U.S. attorney's office said that the Feb. 1 change meant that the more than 500 persons convicted of narcotics offenses each year were, for the most part, not released following conviction. Now, they said, that would change, at least for the approximately 450 narcotics cases pending action in the courts here.

However, this is necessary in the interests of fairness, according to yesterday's ruling, written by Judge J. Skelly Wright of the U.S. Court of Appeals, and concurred in by Judge Spottswood W. Robinson III. Judge Harold Leventhal was named as a panel member, but did not participate in the decision.

In the case of a man convicted under federal narcotics laws and denied bail by U.S. District Judge L. Hart, the ruling said, "If appellant committed the same offense in Maryland . . . his request for bail would be judged under the Bail Reform Act."

The Appellate Court ordered Judge Hart to reconsider the bail request of Benjamin J. Thompson under the 1966 act and not under the new court reform act, as he had originally done.

While not allowing the bail provisions to apply to federal crimes, the opinion said there is no quarrel with their application "to purely local offenses in the District of Columbia."

At issue before the court, the opinion stated, was whether Congress had been tougher on the District in the 1970 act than it had been on the rest of the nation in the 1966 act.

Further, the opinion specifically affirmed the right of Congress, as local lawmaker for the District, to apply more stringent bail requirements for local crimes than might be in effect in other local jurisdictions.

However, the broad-ranging opinion, discussing the relationship between Washington and the Congress, said that "residents of Washington occupy a profoundly anomalous position in the federal system, and any classification which discriminates against them is particularly suspect."

The courts here are particularly justified in getting involved in the political process, said the opinion, since for District residents, "there is no political process," a reference to limited representation in Congress for the city.

Thus, the opinion went on, "The normal arguments for judical restraint become no more than hollow shibboleths grotesquely detached from the logic which once supported them."

The opinion yesterday also strongly hinted that the court might take a similar position on preventive detention, another tough aspect of the new act, as it applies to federal crimes here.

Attorneys involved in the case said yesterday it was not clear to them what effect the decision might have on preventive detention, which allows potentially dangerous criminals to be held without bond before trial and which has been used only sparingly.