

HOUSE BILL 38

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(PRE-FILED)

4r0785
CF SB 61

By: **Chair, Judiciary Committee (By Request – Maryland Judicial Conference)**

Requested: November 1, 2013

Introduced and read first time: January 8, 2014

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Court of Special Appeals – Writs of Actual Innocence, Illegal Sentences, and**
3 **Coram Nobis Petitions – Review by Application for Leave to Appeal**

4 FOR the purpose of requiring that appellate review of final judgments in certain
5 criminal proceedings be sought by application for leave to appeal; providing for
6 the application of this Act; and generally relating to appellate review of final
7 judgments in certain criminal proceedings.

8 BY repealing and reenacting, with amendments,
9 Article – Courts and Judicial Proceedings
10 Section 12–302
11 Annotated Code of Maryland
12 (2013 Replacement Volume and 2013 Supplement)

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

15 **Article – Courts and Judicial Proceedings**

16 12–302.

17 (a) Unless a right to appeal is expressly granted by law, § 12–301 of this
18 subtitle does not permit an appeal from a final judgment of a court entered or made in
19 the exercise of appellate jurisdiction in reviewing the decision of the District Court, an
20 administrative agency, or a local legislative body.

21 (b) Section 12–301 of this subtitle does not apply to appeals in contempt
22 cases, which are governed by § 12–304 of this subtitle and § 12–402 of this title.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (c) In a criminal case, the State may appeal as provided in this subsection.

2 (1) The State may appeal from a final judgment granting a motion to
3 dismiss or quashing or dismissing any indictment, information, presentment, or
4 inquisition.

5 (2) The State may appeal from a final judgment if the State alleges
6 that the trial judge:

7 (i) Failed to impose the sentence specifically mandated by the
8 Code; or

9 (ii) Imposed or modified a sentence in violation of the Maryland
10 Rules.

11 (3) (i) In a case involving a crime of violence as defined in § 14–101
12 of the Criminal Law Article, and in cases under §§ 5–602 through 5–609 and §§ 5–612
13 through 5–614 of the Criminal Law Article, the State may appeal from a decision of a
14 trial court that excludes evidence offered by the State or requires the return of
15 property alleged to have been seized in violation of the Constitution of the United
16 States, the Maryland Constitution, or the Maryland Declaration of Rights.

17 (ii) The appeal shall be made before jeopardy attaches to the
18 defendant. However, in all cases the appeal shall be taken no more than 15 days after
19 the decision has been rendered and shall be diligently prosecuted.

20 (iii) Before taking the appeal, the State shall certify to the court
21 that the appeal is not taken for purposes of delay and that the evidence excluded or
22 the property required to be returned is substantial proof of a material fact in the
23 proceeding. The appeal shall be heard and the decision rendered within 120 days of
24 the time that the record on appeal is filed in the appellate court. Otherwise, the
25 decision of the trial court shall be final.

26 (iv) Except in a homicide case, if the State appeals on the basis
27 of this paragraph, and if on final appeal the decision of the trial court is affirmed, the
28 charges against the defendant shall be dismissed in the case from which the appeal
29 was taken. In that case, the State may not prosecute the defendant on those specific
30 charges or on any other related charges arising out of the same incident.

31 (v) 1. Except as provided in subparagraph 2 of this
32 subparagraph, pending the prosecution and determination of an appeal taken under
33 paragraph (1) or (3) of this subsection, the defendant shall be released on personal
34 recognizance bail. If the defendant fails to appear as required by the terms of the
35 recognizance bail, the trial court shall subject the defendant to the penalties provided
36 in § 5–211 of the Criminal Procedure Article.

1 2. A. Pending the prosecution and determination of
2 an appeal taken under paragraph (1) or (3) of this subsection, in a case in which the
3 defendant is charged with a crime of violence, as defined in § 14–101 of the Criminal
4 Law Article, the court may release the defendant on any terms and conditions that the
5 court considers appropriate or may order the defendant remanded to custody pending
6 the outcome of the appeal.

7 B. The determination and enforcement of any terms and
8 conditions of release shall be in accordance with the provisions of Title 5 of the
9 Criminal Procedure Article.

10 (vi) If the State loses the appeal, the jurisdiction shall pay all
11 the costs related to the appeal, including reasonable attorney’s fees incurred by the
12 defendant as a result of the appeal.

13 (d) Section 12–301 of this subtitle does not permit an appeal from the
14 decision of the judges of a circuit court sitting in banc pursuant to Article IV, § 22 of
15 the Maryland Constitution, if the party seeking to appeal is the party who moved to
16 have the point or question reserved for consideration of the court in banc.

17 (e) (1) In this subsection, “conditional plea of guilty” means a guilty plea
18 with which the defendant preserves in writing any pretrial issues that the defendant
19 intends to appeal.

20 (2) Except as provided in paragraph (3) of this subsection, § 12–301 of
21 this subtitle does not permit an appeal from a final judgment entered following a plea
22 of guilty in a circuit court. Review of such a judgment shall be sought by application
23 for leave to appeal.

24 (3) An appeal from a final judgment entered following a conditional
25 plea of guilty may be taken in accordance with the Maryland Rules.

26 (f) Section 12–301 of this subtitle does not permit an appeal from the order
27 of a sentence review panel of a circuit court under Title 8 of the Criminal Procedure
28 Article, unless the panel increases the sentence.

29 (g) Section 12–301 of this subtitle does not permit an appeal from an order of
30 a circuit court revoking probation. Review of an order of a circuit court revoking
31 probation shall be sought by application for leave to appeal.

32 **(H) (1) SECTION 12–301 OF THIS SUBTITLE DOES NOT PERMIT AN**
33 **APPEAL FROM A FINAL JUDGMENT:**

34 **(I) DISMISSING, DENYING, OR GRANTING A PETITION FOR A**
35 **WRIT OF ACTUAL INNOCENCE UNDER § 8–301 OF THE CRIMINAL PROCEDURE**
36 **ARTICLE;**

1 **(II) DISMISSING, DENYING, OR GRANTING A PETITION FOR A**
2 **WRIT OF CORAM NOBIS; OR**

3 **(III) DISMISSING, DENYING, OR GRANTING A MOTION TO**
4 **CORRECT AN ILLEGAL SENTENCE.**

5 **(2) REVIEW OF A FINAL JUDGMENT OF A CIRCUIT COURT IN A**
6 **CASE DESCRIBED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE**
7 **SOUGHT BY APPLICATION FOR LEAVE TO APPEAL FILED BY THE PARTY**
8 **AGGRIEVED BY THE DECISION, INCLUDING THE ATTORNEY GENERAL OR A**
9 **STATE'S ATTORNEY.**

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
11 construed to apply only prospectively and may not be applied or interpreted to have
12 any effect on or application to any petition for a writ of actual innocence, petition for a
13 writ of coram nobis, or motion to correct an illegal sentence filed in a circuit court
14 before the effective date of this Act.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2014.