

HOUSE BILL 425

Unofficial Copy
E2

2002 Regular Session
2lr1311
CF 2lr1310

By: **Delegate Vallario (Task Force to Examine Maryland's Crime Victims' Rights Laws) and Delegates Barkley, Boschert, Bronrott, Brown, Cadden, Conroy, Conway, DeCarlo, Dembrow, Dewberry, Doory, Dypski, Edwards, Finifter, Frush, Fulton, Giannetti, Glassman, Goldwater, Griffith, Grosfeld, Hammen, Harrison, Healey, Hecht, Heller, Hixson, Hubbard, Hubers, Hutchins, Kach, Kelly, Klima, La Vay, Love, McHale, Menes, Moe, Mohorovic, Morhaim, O'Donnell, Owings, Parrott, Petzold, Pielke, Pitkin, Proctor, Rawlings, Riley, Rosso, Rudolph, Shank, Shriver, Snodgrass, Sophocleus, Taylor, Valderrama, and Wood**

Introduced and read first time: January 30, 2002
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Victims' Rights - Right to Restitution - Leave to Appeal**

3 FOR the purpose of authorizing the State to file for leave to appeal to the Court of
4 Special Appeals from an interlocutory or final order that denies or fails to
5 consider certain rights to restitution to a victim under certain circumstances;
6 and generally relating to a victim's right to restitution and leave to appeal.

7 BY repealing and reenacting, with amendments,
8 Article - Courts and Judicial Proceedings
9 Section 12-302(c)
10 Annotated Code of Maryland
11 (1998 Replacement Volume and 2001 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article - Criminal Procedure
14 Section 11-103(a)
15 Annotated Code of Maryland
16 (2001 Volume)

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

1 **Article - Courts and Judicial Proceedings**

2 12-302.

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

4 (1) The State may appeal from a final judgment granting a motion to
5 dismiss or quashing or dismissing any indictment, information, presentment, or
6 inquisition.7 (2) The State may appeal from a final judgment if the State alleges that
8 the trial judge failed to impose the sentence specifically mandated by the Code.9 (3) (i) In a case involving a crime of violence as defined in § 643B of
10 Article 27, and in cases under §§ 286 and 286A of Article 27, the State may appeal
11 from a decision of a trial court that excludes evidence offered by the State or requires
12 the return of property alleged to have been seized in violation of the Constitution of
13 the United States, the Constitution of Maryland, or the Maryland Declaration of
14 Rights.15 (ii) The appeal shall be made before jeopardy attaches to the
16 defendant. However, in all cases the appeal shall be taken no more than 15 days after
17 the decision has been rendered and shall be diligently prosecuted.18 (iii) Before taking the appeal, the State shall certify to the court that
19 the appeal is not taken for purposes of delay and that the evidence excluded or the
20 property required to be returned is substantial proof of a material fact in the
21 proceeding. The appeal shall be heard and the decision rendered within 120 days of
22 the time that the record on appeal is filed in the appellate court. Otherwise, the
23 decision of the trial court shall be final.24 (iv) If the State appeals on the basis of this paragraph, and if on
25 final appeal the decision of the trial court is affirmed, the charges against the
26 defendant shall be dismissed in the case from which the appeal was taken. In that
27 case, the State may not prosecute the defendant on those specific charges or on any
28 other related charges arising out of the same incident.29 (v) Pending the prosecution and determination of an appeal taken
30 under paragraph (1) or (3) of this subsection, the defendant shall be released on
31 personal recognizance bail. If the defendant fails to appear as required by the terms of
32 the recognizance bail, the trial court shall subject the defendant to the penalties
33 provided in § 5-211 of the Criminal Procedure Article.34 (vi) If the State loses the appeal, the jurisdiction shall pay all the
35 costs related to the appeal, including reasonable attorney fees incurred by the
36 defendant as a result of the appeal.37 (4) IN A CASE INVOLVING A VIOLENT CRIME AS DEFINED IN § 11-103(A)
38 OF THE CRIMINAL PROCEDURE ARTICLE, THE STATE MAY FILE AN APPLICATION FOR
39 LEAVE TO APPEAL TO THE COURT OF SPECIAL APPEALS FROM AN INTERLOCUTORY

1 OR FINAL ORDER THAT DENIES OR FAILS TO CONSIDER THE RIGHT TO RESTITUTION
2 TO A VICTIM UNDER TITLE 11, SUBTITLE 6 OF THE CRIMINAL PROCEDURE ARTICLE.

3

Article - Criminal Procedure

4 11-103.

5 (a) (1) In this section, "violent crime" means:

6 (i) a crime of violence; or

7 (ii) except as provided in paragraph (2) of this subsection, a crime
8 involving, causing, or resulting in death or serious bodily injury.

9 (2) "Violent crime" does not include an offense under the Maryland
10 Vehicle Law or under Title 8, Subtitle 7 of the Natural Resources Article unless the
11 offense is punishable by imprisonment.

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