

Department of Legislative Services

Maryland General Assembly

2002 Session

FISCAL NOTE

House Bill 425

(Delegate Vallario, *et al.*)

(Task Force to Examine Maryland's Crime Victims' Rights Laws)

Judiciary

Victims' Rights - Right to Restitution - Leave to Appeal

This bill authorizes the State to file for leave to appeal to the Court of Special Appeals from an interlocutory or final order that denies or fails to consider rights to restitution to a victim in cases involving violent crime.

Fiscal Summary

State Effect: Assuming a small number of filings, the bill's requirements could be handled with the existing budgeted resources of the Judiciary and the Office of the Attorney General.

Local Effect: The bill's responsibilities handled by State's Attorneys could be accommodated with the existing budgeted resources of each office.

Small Business Effect: None.

Analysis

Current Law: In a criminal case, the State may appeal from a final judgment granting a motion to dismiss or quashing or dismissing any indictment, information, presentment, or inquisition. An appeal may also be made if the State alleges that the trial judge failed to impose the legally mandated sentence.

In a case involving a crime of violence, and in cases involving certain drug offenses, the State may appeal from a decision of a trial court that excludes evidence offered by the

State or requires the return of property alleged to have been seized in violation of the U.S. Constitution, the Constitution of Maryland, or the Maryland Declaration of Rights.

The appeal is required to be made before jeopardy attaches to the defendant. However, in all cases the appeal must be taken no more than 15 days after the decision has been rendered and must be diligently prosecuted.

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

If the State appeals on this basis, and if on final appeal the decision of the trial court is affirmed, the applicable charges against the defendant must be dismissed. In that case, the State may not prosecute the defendant on those specific charges or on any other related charges arising out of the same incident.

Pending the prosecution and determination of such an appeal, or one involving an appeal by the State from a final judgment granting a motion to dismiss or quash an indictment or other relevant matters, the defendant must be released on personal recognizance bail. If the defendant fails to appear as required, the defendant is subject to maximum penalties of a fine of \$5,000 and/or imprisonment for five years.

If the State loses the appeal, the jurisdiction is required to pay all costs related to the appeal, including reasonable attorney fees incurred by the defendant as a result of the appeal.

In addition, a victim of a violent crime may file an application for a leave to appeal to the Court of Special Appeals from an interlocutory or final order that denies or fails to consider certain victims' rights relating to trial procedures, sentencing procedures, or victim impact statements for presentence investigation reports.

Background: In 1994 a victims' rights provision was added to the State Constitution. The Legislative Policy Committee formed the Task Force to Examine Maryland's Crime Victims' Rights Laws in 1995. The charge of the task force was to take a comprehensive look at Maryland's victims' rights laws, and to recommend substantive changes to improve the State's statutory scheme.

Since 1995, the task force has joined in the introduction and enactment of legislation that included expanding the procedures for notifying crime victims of their rights during the

criminal justice process, enacting the Victims' Rights Act of 1997, broadening victims' rights laws to apply to juvenile delinquent acts and proceedings, and expanding eligibility for awards from the Criminal Injuries Compensation Board.

Applications for leave to appeal on behalf of the State in criminal cases may be filed by the Criminal Appeals Division of the Office of the Attorney General or by a local State's Attorney. Normally, the initial filing is made by the State's Attorney who prosecuted the case and is subsequently handled by the Criminal Appeals Division.

Additional Information

Prior Introductions: None.

Cross File: SB 162 (Senator Stone) (Task Force to Examine Maryland's Crime Victims' Rights Laws) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Attorney General (Criminal Appeals Division), Office of State's Attorneys' Coordinator, Department of Legislative Services

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