

(PRE-FILED)

By: **Delegates Leopold, Sophocleus, McMillan, and V. Clagett**

Requested: September 29, 2003

Introduced and read first time: January 14, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Release of Defendant Pending Appeal by State**

3 FOR the purpose of altering a provision of law so as to allow, rather than require, a
4 court to release a certain criminal defendant under certain terms and conditions
5 pending the outcome of a certain appeal by the State; allowing a court to order a
6 certain criminal defendant remanded to custody pending the outcome of a
7 certain appeal by the State; requiring that the determination and enforcement
8 of certain conditions of release be made in accordance with certain statutory
9 provisions; and generally relating to release of a criminal defendant pending the
10 outcome of an appeal by the State.

11 BY repealing and reenacting, with amendments,
12 Article - Courts and Judicial Proceedings
13 Section 12-302(c)
14 Annotated Code of Maryland
15 (2002 Replacement Volume and 2003 Supplement)

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

18 **Article - Courts and Judicial Proceedings**

19 12-302.

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

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

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

26 (i) Failed to impose the sentence specifically mandated by the
27 Code; or

1 (ii) Imposed or modified a sentence in violation of the Maryland
2 Rules.

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

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

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

18 (iv) If the State appeals on the basis of this paragraph, and if on
19 final appeal the decision of the trial court is affirmed, the charges against the
20 defendant shall be dismissed in the case from which the appeal was taken. In that
21 case, the State may not prosecute the defendant on those specific charges or on any
22 other related charges arising out of the same incident.

23 (v) Pending the prosecution and determination of an appeal taken
24 under paragraph (1) or (3) of this subsection, the [defendant shall be released on
25 personal recognizance bail] COURT MAY RELEASE THE DEFENDANT ON ANY TERMS
26 AND CONDITIONS THAT THE COURT CONSIDERS APPROPRIATE, OR MAY ORDER THE
27 DEFENDANT REMANDED TO CUSTODY PENDING THE OUTCOME OF THE APPEAL. [If
28 the defendant fails to appear as required by the terms of the recognizance bail, the
29 trial court shall subject the defendant to the penalties provided in § 5-211] THE
30 DETERMINATION AND ENFORCEMENT OF ANY TERMS AND CONDITIONS OF RELEASE
31 SHALL BE IN ACCORDANCE WITH THE PROVISIONS OF TITLE 5 of the Criminal
32 Procedure Article.

33 (vi) If the State loses the appeal, the jurisdiction shall pay all the
34 costs related to the appeal, including reasonable attorney fees incurred by the
35 defendant as a result of the appeal.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 2004.