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By: **Delegates Sophocleus, V. Clagett, Leopold, McMillan, Aumann,  
Boschert, G. Clagett, Dwyer, Elmore, Gilleland, Love, McDonough, and  
Sossi**

Introduced and read first time: January 28, 2004

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Courts - Criminal Cases - Release of Defendant Pending and Dismissal after**  
3 **Appeal by State**

4 FOR the purpose of repealing a provision of law that requires that certain charges  
5 against a defendant be dismissed if a decision of a trial court excluding certain  
6 evidence is affirmed after an appeal by the State; altering a provision of law so  
7 as to allow, rather than require, a court to release a certain criminal defendant  
8 under certain terms and conditions pending the outcome of a certain appeal by  
9 the State; allowing a court to order a certain criminal defendant remanded to  
10 custody pending the outcome of a certain appeal by the State; requiring that the  
11 determination and enforcement of certain conditions of release be made in  
12 accordance with certain statutory provisions; making a stylistic change;  
13 providing for the application of this Act; and generally relating to release of a  
14 criminal defendant pending and release after the outcome of an appeal by the  
15 State.

16 BY repealing and reenacting, with amendments,  
17 Article - Courts and Judicial Proceedings  
18 Section 12-302(c)  
19 Annotated Code of Maryland  
20 (2002 Replacement Volume and 2003 Supplement)

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

23 **Article - Courts and Judicial Proceedings**

24 12-302.

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

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

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

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

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

10          (3)    (i)     In a case involving a crime of violence as defined in § 14-101 of  
11 the Criminal Law Article, and in cases under §§ 5-602 through 5-609 and §§ 5-612  
12 through 5-614 of the Criminal Law Article, the State may appeal from a decision of a  
13 trial court that excludes evidence offered by the State or requires the return of  
14 property alleged to have been seized in violation of the Constitution of the United  
15 States, the [Constitution of Maryland] MARYLAND CONSTITUTION, or the Maryland  
16 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 that  
21 the appeal is not taken for purposes of delay and that the evidence excluded or the  
22 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)    [If the State appeals on the basis of this paragraph, and if on  
27 final appeal the decision of the trial court is affirmed, the charges against the  
28 defendant shall be dismissed in the case from which the appeal was taken. In that  
29 case, the State may not prosecute the defendant on those specific charges or on any  
30 other related charges arising out of the same incident.

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

1                    [(vi)]     (V)     If the State loses the appeal, the jurisdiction shall pay all  
2 the costs related to the appeal, including reasonable attorney fees incurred by the  
3 defendant as a result of the appeal.

4     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
5 construed to apply only prospectively and may not be applied or interpreted to have  
6 any effect on or application to any appeal taken by the State before the effective date  
7 of this Act.

8     SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take  
9 effect October 1, 2004.