
By: **Senators Jimeno, Astle, and DeGrange**
Introduced and read first time: February 6, 2004
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts - Criminal Cases - State's Right of Appeal**

3 FOR the purpose of repealing a provision of law that requires that certain charges
4 against a defendant be dismissed if a decision of a trial court excluding certain
5 evidence is affirmed after an appeal by the State; repealing a provision of law
6 that requires a defendant be released on personal recognizance bail pending the
7 prosecution and determination of an appeal by the State from a decision of a
8 trial court that excludes certain evidence offered by the State; providing for the
9 application of this Act; and generally relating to the State's right of appeal.

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

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

17 **Article - Courts and Judicial Proceedings**

18 12-302.

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

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

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

25 (i) Failed to impose the sentence specifically mandated by the
26 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. If the defendant fails to appear as required by the terms of
26 the recognizance bail, the trial court shall subject the defendant to the penalties
27 provided in § 5-211 of the Criminal Procedure Article.

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

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

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