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By: Senators Jimeno, Astle, and DeGrange DeGrange, and Frosh Introduced and read first time: February 6, 2004 Assigned to: Judicial Proceedings Committee Report: Favorable with amendments Senate action: Adopted Read second time: March 31, 2004 CHAPTER 1 AN ACT concerning 2 Courts - Criminal Cases - State's Right of Appeal Release of Defendant Charged with Crime of Violence Pending Appeal by the State 4 FOR the purpose of repealing a provision of law that requires that certain charges against a defendant be dismissed if a decision of a trial court excluding certain evidence is affirmed after an appeal by the State; repealing a provision of law that requires a defendant be released on personal recognizance bail pending the prosecution and determination of an appeal by the State from a decision of a trial court that excludes certain evidence offered by the State greating a certain exception to the provision of law that requires that a certain defendant be released on personal recognizance bail pending the outcome of a certain appeal by the State; providing that a court may release a certain defendant on certain terms and conditions or may order the defendant remanded to custody pending the outcome of a certain appeal by the State; requiring that the determination and enforcement of certain conditions of release be made in accordance with certain statutory provisions; providing for the application of this Act; and generally relating to the State's right of appeal release of a criminal defendant pending the outcome of an appeal by the State. 19 BY repealing and reenacting, with amendments, Article - Courts and Judicial Proceedings Section 12-302(c) Annotated Code of Maryland (2002 Replacement Volume and 2003 Supplement)	
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25 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 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 The State may appeal from a final judgment if the State alleges that (2) 8 the trial judge: 9 (i) Failed to impose the sentence specifically mandated by the 10 Code; or 11 (ii) Imposed or modified a sentence in violation of the Maryland 12 Rules. 13 In a case involving a crime of violence as defined in § 14-101 of (3) (i) 14 the Criminal Law Article, and in cases under §§ 5-602 through 5-609 and §§ 5-612 15 through 5-614 of the Criminal Law Article, the State may appeal from a decision of a 16 trial court that excludes evidence offered by the State or requires the return of property alleged to have been seized in violation of the Constitution of the United 18 States, the Constitution of Maryland, or the Maryland Declaration of Rights. 19 The appeal shall be made before jeopardy attaches to the 20 defendant. However, in all cases the appeal shall be taken no more than 15 days after 21 the decision has been rendered and shall be diligently prosecuted. 22 Before taking the appeal, the State shall certify to the court that 23 the appeal is not taken for purposes of delay and that the evidence excluded or the 24 property required to be returned is substantial proof of a material fact in the 25 proceeding. The appeal shall be heard and the decision rendered within 120 days of 26 the time that the record on appeal is filed in the appellate court. Otherwise, the 27 decision of the trial court shall be final. 28 He Had the State appeals on the basis of this paragraph, and if on 29 final appeal the decision of the trial court is affirmed, the charges against the 30 defendant shall be dismissed in the case from which the appeal was taken. In that 31 case, the State may not prosecute the defendant on those specific charges or on any 32 other related charges arising out of the same incident. Pending EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2 33 (v)34 OF THIS SUBPARAGRAPH, PENDING the prosecution and determination of an appeal 35 taken under paragraph (1) for (3) of this subsection, the defendant shall be released 36 on personal recognizance bail. If the defendant fails to appear as required by the 37 terms of the recognizance bail, the trial court shall subject the defendant to the

38 penalties provided in § 5-211 of the Criminal Procedure Article.

SENATE BILL 490

- 1 <u>2. A. PENDING THE PROSECUTION AND DETERMINATION</u>
- 2 OF AN APPEAL TAKEN UNDER PARAGRAPH (1) OR (3) OF THIS SUBSECTION, IN A CASE
- 3 IN WHICH THE DEFENDANT IS CHARGED WITH A CRIME OF VIOLENCE, AS DEFINED
- 4 IN § 14-101 OF THE CRIMINAL LAW ARTICLE, THE COURT MAY RELEASE THE
- 5 DEFENDANT ON ANY TERMS AND CONDITIONS THAT THE COURT CONSIDERS
- 6 APPROPRIATE OR MAY ORDER THE DEFENDANT REMANDED TO CUSTODY PENDING
- 7 THE OUTCOME OF THE APPEAL.
- 8 B. THE DETERMINATION AND ENFORCEMENT OF ANY
- 9 TERMS AND CONDITIONS OF RELEASE SHALL BE IN ACCORDANCE WITH THE
- 10 PROVISIONS OF TITLE 5 OF THE CRIMINAL PROCEDURE ARTICLE.
- 11 $\frac{\{(vi)\}}{\{(vi)\}}$ If the State loses the appeal, the jurisdiction shall pay all
- 12 the costs related to the appeal, including reasonable attorney fees incurred by the
- 13 defendant as a result of the appeal.
- 14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
- 15 construed to apply only prospectively and may not be applied or interpreted to have
- 16 any effect on or application to any appeal taken by the State before the effective date
- 17 of this Act.
- SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
- 19 October 1, 2004.