

Department of Legislative Services  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

Senate Bill 476

(Senator Frosh)

Judicial Proceedings

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**Criminal Procedure - State's Right of Appeal - Discretion to Release Defendant**

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This bill repeals a provision requiring a court to release a defendant on personal recognizance bail pending the determination of an appeal taken by the State of a court ruling: (1) dismissing an indictment, information, presentment, or inquisition; or (2) in a crime of violence or specified drug crimes, excluding evidence offered by the State or requiring the return of property found to have been seized in violation of the defendant's constitutional rights. The bill specifies that a court may release a defendant under these circumstances, on any terms and conditions the court considers appropriate, or remand the defendant to custody pending the outcome of the appeal.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in pretrial detention costs for defendants held in Baltimore City facilities.

**Local Effect:** Potential minimal increase in pretrial detention costs for defendants held outside Baltimore City.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** If the State appeals a court's ruling dismissing an indictment, information, presentment, or inquisition; or, in a crime of violence, a ruling excluding evidence offered by the State or requiring the return of property found to have been unconstitutionally seized by the State, the defendant must be released on personal

recognizance while the appeal is pending. A person released on personal recognizance is freed based on a promise to return to court, without having to post bail.

A “crime of violence” means:

- abduction;
- arson in the first degree;
- kidnapping;
- manslaughter (except involuntary manslaughter);
- mayhem;
- maiming;
- murder;
- rape;
- robbery;
- carjacking;
- armed carjacking;
- sexual offense in the first or second degree;
- use of a handgun in the commission of a felony or other crime of violence;
- an attempt to commit any of the above crimes;
- assault in the first degree; and
- assault with intent to murder, rape, rob, or commit a first or second degree sexual offense.

Covered drug crimes include:

- illegally manufacturing, distributing, possessing with intent to distribute, or dispensing a controlled dangerous substance;
- illegally manufacturing, distributing, or possessing equipment to produce a controlled dangerous substance;
- creating or distributing a counterfeit controlled dangerous substance;
- keeping a dwelling or other place for the purpose of administering illegally controlled dangerous substances, or where such substances or the paraphernalia to make them are illegally made, used, or stored;
- issuing or possessing a false prescription for a controlled dangerous substance;

- being a volume dealer or “drug kingpin,” or importing substantial amounts of certain controlled dangerous substances (all of which subject the violator to higher criminal penalties).

**Background:** The current statute has received substantial attention since the release on personal recognizance of two defendants charged with first degree murder in connection with a death that occurred in the Annapolis Historic District in September 2002. Each defendant confessed to having been involved in the crime, but their confessions were ruled inadmissible by the court. They were released pending the State’s appeal of these rulings.

Maryland is the only State that requires criminal defendants to be released on personal recognizance under the circumstances addressed in this bill.

**State Expenditures:** Baltimore City defendants are held pretrial in either the Central Booking and Intake Center or the Baltimore City Detention Center, which are both operated by the State. The estimated daily cost per inmate is \$62. The number of people affected by this bill is expected to be small.

**Local Expenditures:** Pretrial detainees, except those held in Baltimore City, are held in local detention facilities. Per diem operating costs of local detention facilities are expected to range from \$29 to \$97 per inmate in fiscal 2005.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None; however, HB 34 (Delegate Leopold, *et al.* – Judiciary) is similar.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 4, 2004  
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