

(PRE-FILED)

By: **Delegates Sophocleus, McMillan, and McDonough**

Requested: July 6, 2004

Introduced and read first time: January 12, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Courts - Criminal Cases - Dismissal and Limitation on Prosecution After**
3 **Appeal by State**

4 FOR the purpose of repealing a requirement that certain criminal charges against a
5 defendant be dismissed and that the State be precluded from prosecuting the
6 defendant on the charges or certain related charges if a decision of a trial court
7 excluding certain evidence is affirmed after an appeal by the State under
8 certain circumstances; providing for the application of this Act; and generally
9 relating to dismissal of criminal charges and limitations on prosecution after 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 2004 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)] 1. Except as provided in subsubparagraph 2 of this
24 subparagraph, pending the prosecution and determination of an appeal taken under
25 paragraph (1) or (3) of this subsection, the defendant shall be released on personal
26 recognizance bail. If the defendant fails to appear as required by the terms of the
27 recognizance bail, the trial court shall subject the defendant to the penalties provided
28 in § 5-211 of the Criminal Procedure Article.

29 2. A. Pending the prosecution and determination of an
30 appeal taken under paragraph (1) or (3) of this subsection, in a case in which the
31 defendant is charged with a crime of violence, as defined in § 14-101 of the Criminal
32 Law Article, the court may release the defendant on any terms and conditions that
33 the court considers appropriate or may order the defendant remanded to custody
34 pending the outcome of the appeal.

35 B. The determination and enforcement of any terms and
36 conditions of release shall be in accordance with the provisions of Title 5 of the
37 Criminal Procedure Article.

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

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

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2005.