

(PRE-FILED)

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

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Assigned to: Judiciary

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CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of ~~repealing~~ creating a certain exception to a requirement that
5 certain criminal charges against a defendant be dismissed and that the State be
6 precluded from prosecuting the defendant on the charges or certain related
7 charges if a decision of a trial court excluding certain evidence is affirmed after
8 an appeal by the State under certain circumstances; providing for the
9 application of this Act; and generally relating to dismissal of criminal charges
10 and limitations on prosecution after the 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.

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, or the Maryland Declaration of Rights.

16 (ii) The appeal shall be made before jeopardy attaches to the
17 defendant. However, in all cases the appeal shall be taken no more than 15 days after
18 the decision has been rendered and shall be diligently prosecuted.

19 (iii) Before taking the appeal, the State shall certify to the court that
20 the appeal is not taken for purposes of delay and that the evidence excluded or the
21 property required to be returned is substantial proof of a material fact in the
22 proceeding. The appeal shall be heard and the decision rendered within 120 days of
23 the time that the record on appeal is filed in the appellate court. Otherwise, the
24 decision of the trial court shall be final.

25 (iv) ~~IF EXCEPT IN A HOMICIDE CASE, IF~~ the State appeals on the
26 basis of this paragraph, and if on final appeal the decision of the trial court is
27 affirmed, the charges against the defendant shall be dismissed in the case from which
28 the appeal was taken. In that case, the State may not prosecute the defendant on
29 those specific charges or on any other related charges arising out of the same
30 incident.

31 (v)} 1. Except as provided in subsubparagraph 2 of this
32 subparagraph, pending the prosecution and determination of an appeal taken under
33 paragraph (1) or (3) of this subsection, the defendant shall be released on personal
34 recognizance bail. If the defendant fails to appear as required by the terms of the
35 recognizance bail, the trial court shall subject the defendant to the penalties provided
36 in § 5-211 of the Criminal Procedure Article.

37 2. A. Pending the prosecution and determination of an
38 appeal taken under paragraph (1) or (3) of this subsection, in a case in which the
39 defendant is charged with a crime of violence, as defined in § 14-101 of the Criminal
40 Law Article, the court may release the defendant on any terms and conditions that

