

Department of Legislative Services  
Maryland General Assembly  
2005 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 642

(Senator Jimeno, *et al.*)

Judicial Proceedings

Judiciary

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

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This bill limits to non-homicide cases the requirement that charges against a criminal defendant be dismissed and that no further prosecution under related charges be undertaken if a decision of the trial court excluding evidence or requiring the return of property alleged to have been seized in violation of the U.S. Constitution, the Maryland Constitution, or the Maryland Declaration of Rights is affirmed following an appeal by the State.

The bill applies prospectively to appeals taken after the October 1, 2005 effective date.

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Fiscal Summary

**State Effect:** Potential expenditure increase from continued incarcerations and additional appeals by the State. The actual impact depends on the number of appeals taken by the State.

**Local Effect:** Minimal – see above.

**Small Business Effect:** None.

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Analysis

**Current Law:** In a case involving a crime of violence, and in cases involving certain drug offenses, the State may appeal a decision of a trial court that excludes evidence offered by the State or requires the return of property alleged to have been seized in

violation of the U.S. Constitution, the Maryland Constitution, or the Maryland Declaration of Rights.

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.

The appeal is required to be made before jeopardy attaches to the defendant. However, in all cases the appeal must be taken no more than 15 days after the decision has been rendered and must be diligently prosecuted.

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

If the trial court’s ruling is affirmed, the applicable charges against the defendant must be dismissed. In that case, the State may not prosecute the defendant on those specific charges or on any other related charges arising out of the same incident.

**Background:** The State had no right to appeal an order granting a defendant's motion to suppress evidence under common law. Until 1982, the State had no statutory right to appeal such an order, because suppression orders are not final judgments.

Several other jurisdictions allow the State to appeal the exclusion of evidence prior to jeopardy attaching to the defendant. Indiana, Missouri, North Carolina, South Carolina, North Dakota, and South Dakota statutorily allow the state to appeal the exclusion of evidence, provided that jeopardy has not attached. However, these states do not mandate dismissal in the event that the appeals court affirms the lower court's ruling.

The current statute has received substantial attention in the cases 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 the crime, but their confessions were ruled inadmissible by the trial court. The Court of Appeals ruled that the statements of one of the defendants was inadmissible. The case is now pending before the U.S. Supreme Court. The Court of Appeals ruled in February 2004 that the confession of the other defendant was, in fact, admissible and remanded the matter for trial. That defendant was convicted of first-degree murder in January.

**State Expenditures:** General fund expenditures could increase minimally due to more people being committed to Division of Correction (DOC) facilities. The number of people affected by this change is expected to be minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$1,850 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$310 per month. Excluding medical care, the average variable costs total \$120 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2006 are estimated to range from \$17 to \$65 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

General fund expenditures could also increase minimally for the Administrative Office of the Courts due to more appeals by the State. It is likely that more appeals of the

suppression of evidence will be taken by the State due to the removal of the disincentive to appeal – the potential for dismissal of all charges.

**Local Expenditures:** Expenditures could increase minimally if defendants are detained, tried, and convicted. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$33 to \$119 per inmate in fiscal 2006.

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### **Additional Information**

**Prior Introductions:** HB 304 of 2004 contained a similar provision. It was withdrawn after a hearing in the Judiciary Committee.

**Cross File:** HB 25 (Delegate Sophocleus, *et al.*) – Judiciary.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Office of the Public Defender, Office of the Attorney General, Department of Legislative Services

**Fiscal Note History:** First Reader - February 13, 2005  
mp/jr Revised - Senate Third Reader - April 1, 2005

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