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To: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

From: Carrie J. Williams
Office of the Attorney General

Re: Support for SB 484

The Office of the Attorney General urges the Judicial Proceedings Committee to issue a favorable report on SB 484.

SB 484 adds the crimes of possession of a firearm by a prohibited person and possession of rifle or shotgun by a prohibited person to the list of crimes for which the State can file an interlocutory appeal.

Courts and Judicial Proceedings § 12-302(c)(4) allows the State to file an interlocutory appeal where the trial court suppresses evidence based upon an alleged violation of the United States Constitution or the Maryland Declaration of Rights. Currently, § 12-302(c)(4) applies only to crimes of violence and felony drug charges. Where a circuit court suppresses evidence in other cases, including cases where a prohibited person possesses a firearm, the State has no recourse no matter how obvious the legal error. SB 484 would add possession of a firearm by a prohibited person and possession of a rifle or shotgun by a prohibited person to the list of crimes where the State can appeal.

Section 12-302(c)(4) contains a number of provisions to ensure that State appeals are rare and resolved quickly. The State must note the appeal within 15 days of the decision and certify that the appeal is not taken for the purpose of delay and the evidence suppressed is important to the prosecution. Further, an appeal taken pursuant to § 12-302(c)(4) must be heard and decided no later than 120 days after the record is filed in the appellate court. Except in crimes of violence, defendants "shall be released" on their personal recognizance pending the appeal. Finally, except in homicide cases, if the State loses the appeal, the charges must be dismissed and the State cannot recharge.

Because of these protections, and because the State understands the significance of delaying the resolution of criminal charges, State appeals are rare. Typically, interlocutory appeals are reserved for cases where the State is confident that the trial court made an error of law. Statistics bear this out. Between 2019 and 2021, there were only six State interlocutory appeals. In all six, the State prevailed and the suppression order was reversed. *See State v. James Andre Reddick, Jr.*, No. 718, Sept. Term 2021 (filed Dec. 22, 2021); *State v. Larry Lonnell Ross, Jr.*, No. 602, Sept. Term 2021 (filed Nov. 12, 2021); *State v. Troy Somerville*, No. 99, Sept. Term 2021 (filed Sept. 3, 2021); *State v. Tyron Green*, No. 001, Sept. Term 2020 (filed July 31, 2020); *State v. Demetrius Levar Stephens*, No. 1030, Sept. Term 2019 (filed Dec. 30, 2019); *State v. Robert Lowe*, No. 2699, Sept. Term 2018 (filed May 14, 2019).

When a trial court grants a motion to suppress in a case involving the possession of a firearm by a prohibited person, the State should have the opportunity to seek review of that decision. Otherwise, prohibited people will escape culpability for illegally possessing firearms simply because a trial court made an error of law. The Attorney General urges this Committee to issue a favorable report on SB 484.

cc: Committee Members