

HOUSE BILL 1085

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CF SB 468

By: **Delegates W. Fisher, Attar, Bartlett, Cox, Griffith, Guyton, Pippy, and Shetty**
Introduced and read first time: February 6, 2020
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Appeals – Unlawful Possession of a Firearm**

3 FOR the purpose of authorizing the State to appeal from a certain decision in certain
4 criminal cases involving the unlawful possession of a firearm; and generally relating
5 to the right of appeal in criminal cases.

6 BY repealing and reenacting, with amendments,
7 Article – Courts and Judicial Proceedings
8 Section 12–302(c)
9 Annotated Code of Maryland
10 (2013 Replacement Volume and 2019 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
12 That the Laws of Maryland read as follows:

13 **Article – Courts and Judicial Proceedings**

14 12–302.

15 (c) (1) In a criminal case, the State may appeal as provided in this subsection.

16 (2) The State may appeal from a final judgment granting a motion to
17 dismiss or quashing or dismissing any indictment, information, presentment, or
18 inquisition.

19 (3) The State may appeal from a final judgment if the State alleges that
20 the trial judge:

21 (i) Failed to impose the sentence specifically mandated by the Code;
22 or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



(ii) Imposed or modified a sentence in violation of the Maryland Rules.

(4) (i) In a case involving a crime of violence as defined in § 14–101 of the Criminal Law Article, [and] in cases under §§ 5–602 through 5–609 and §§ 5–612 through 5–614 of the Criminal Law Article, **AND IN CASES UNDER §§ 5–133, 5–205, AND 5–206 OF THE PUBLIC SAFETY ARTICLE**, the State may appeal from 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 Constitution of the United States, the Maryland Constitution, or the Maryland Declaration of Rights.

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

(iii) Before taking the appeal, the State shall 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 shall 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.

(iv) Except in a homicide case, if the State appeals on the basis of this paragraph, and if on final appeal the decision of the trial court is affirmed, the charges against the defendant shall be dismissed in the case from which the appeal was taken. 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.

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

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

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

(vi) If the State loses the appeal, the jurisdiction shall pay all the costs related to the appeal, including reasonable attorney's fees incurred by the defendant

1 as a result of the appeal.

2 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
3 October 1, 2020.