

SENATE BILL 126

E2
HB 1264/16 – JUD

8lr1396

By: **Senator Zirkin**

Introduced and read first time: January 11, 2018

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Right of Appeal – Unlawful Possession of Firearm**

3 FOR the purpose of authorizing the State, in a criminal case involving the unlawful
4 possession of certain firearms, to appeal from a decision of a trial court that excludes
5 evidence offered by the State or requires the return of property alleged to have been
6 seized in violation of certain constitutional provisions; and generally relating to right
7 of appeal.

8 BY repealing and reenacting, with amendments,
9 Article – Courts and Judicial Proceedings
10 Section 12–302(c)
11 Annotated Code of Maryland
12 (2013 Replacement Volume and 2017 Supplement)

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

15 **Article – Courts and Judicial Proceedings**

16 12–302.

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

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

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

23 (i) Failed to impose the sentence specifically mandated by the Code;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 or

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

4 (4) (i) In a case involving a crime of violence as defined in § 14–101 of
5 the Criminal Law Article, and in cases under §§ 5–602 through 5–609 and §§ 5–612 through
6 5–614 of the Criminal Law Article, the State may appeal from a decision of a trial court
7 that excludes evidence offered by the State or requires the return of property alleged to
8 have been seized in violation of the Constitution of the United States, the Maryland
9 Constitution, or the Maryland Declaration of Rights.

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

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

18 (iv) Except in a homicide case, if the State appeals on the basis of this
19 paragraph, and if on final appeal the decision of the trial court is affirmed, the charges
20 against the defendant shall be dismissed in the case from which the appeal was taken. In
21 that 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 this
25 paragraph or paragraph (2) 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 in §
28 5–211 of the Criminal Procedure Article.

29 2. A. Pending the prosecution and determination of an
30 appeal taken under this paragraph or paragraph (2) of this subsection, in a case in which
31 the 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 the
33 court considers appropriate or may order the defendant remanded to custody pending the
34 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 Criminal
37 Procedure Article.

38 (vi) If the State loses the appeal, the jurisdiction shall pay all the

1 costs related to the appeal, including reasonable attorney's fees incurred by the defendant
2 as a result of the appeal.

3 **(5) IN A CASE INVOLVING A VIOLATION OF § 5-133, § 5-205, OR §**
4 **5-206 OF THE PUBLIC SAFETY ARTICLE, THE STATE MAY APPEAL FROM A DECISION**
5 **OF A TRIAL COURT THAT:**

6 **(I) EXCLUDES EVIDENCE OFFERED BY THE STATE; OR**

7 **(II) REQUIRES THE RETURN OF PROPERTY ALLEGED TO HAVE**
8 **BEEN SEIZED IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES, THE**
9 **MARYLAND CONSTITUTION, OR THE MARYLAND DECLARATION OF RIGHTS.**

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2018.