

# SENATE BILL 965

E2

6lr3632  
CF 6lr3146

---

By: **Senator McFadden**

Introduced and read first time: February 5, 2016

Assigned to: Judicial Proceedings

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Right of Appeal – Unlawful Possession of Handgun or**  
3 **Regulated Firearm**

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

9 BY repealing and reenacting, with amendments,  
10 Article – Courts and Judicial Proceedings  
11 Section 12–302(c)  
12 Annotated Code of Maryland  
13 (2013 Replacement Volume and 2015 Supplement)

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

16 **Article – Courts and Judicial Proceedings**

17 12–302.

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

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

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

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (i) Failed to impose the sentence specifically mandated by the Code;  
2 or

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

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

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

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

19 (iv) Except in a homicide case, if the State appeals on the basis of this  
20 paragraph, and if on final appeal the decision of the trial court is affirmed, the charges  
21 against the defendant shall be dismissed in the case from which the appeal was taken. In  
22 that case, the State may not prosecute the defendant on those specific charges or on any  
23 other related charges arising out of the same incident.

24 (v) 1. Except as provided in subparagraph 2 of this  
25 subparagraph, pending the prosecution and determination of an appeal taken under this  
26 paragraph or paragraph (2) of this subsection, the defendant shall be released on personal  
27 recognizance bail. If the defendant fails to appear as required by the terms of the  
28 recognizance bail, the trial court shall subject the defendant to the penalties provided in §  
29 5–211 of the Criminal Procedure Article.

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

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

1 (vi) If the State loses the appeal, the jurisdiction shall pay all the  
2 costs related to the appeal, including reasonable attorney's fees incurred by the defendant  
3 as a result of the appeal.

4 (5) IN A CASE INVOLVING THE UNLAWFUL POSSESSION OF A  
5 HANDGUN AS DEFINED IN § 4-201 OF THE CRIMINAL LAW ARTICLE OR THE  
6 UNLAWFUL POSSESSION OF A REGULATED FIREARM AS DEFINED IN § 5-101 OF THE  
7 PUBLIC SAFETY ARTICLE, THE STATE MAY APPEAL FROM A DECISION OF A TRIAL  
8 COURT THAT:

9 (i) EXCLUDES EVIDENCE OFFERED BY THE STATE; OR

10 (ii) REQUIRES THE RETURN OF PROPERTY ALLEGED TO HAVE  
11 BEEN SEIZED IN VIOLATION OF THE CONSTITUTION OF THE UNITED STATES, THE  
12 MARYLAND CONSTITUTION, OR THE MARYLAND DECLARATION OF RIGHTS.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 October 1, 2016.