

SB 484 (State Right to Appeal).pdf

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February 15, 2022

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

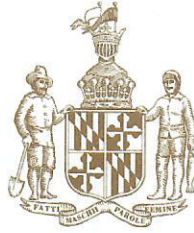
SB484 Talking Points.pdf
Uploaded by: Senator Bob Cassilly
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Judicial Proceedings Committee

Joint Committee on Administrative,
Executive, and Legislative Review

Joint Committee on Federal Relations



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February 16, 2022

**RE: Senate Bill 484 – Criminal Procedure – Right of Appeal – Unlawful Possession of a
Firearm**

Dear Committee Members:

I request your support for SB 484. The purpose of this bill is to allow the State to appeal the decisions of a criminal trial court in a case involving the unlawful possession of a firearm where the State contends that evidence of the firearm has been improperly excluded by the court, or where a decision has been made to return the firearm to the defendant. Currently, the State may only appeal the decision of a trial court in a criminal case for very limited circumstances, not including any cases involving the unlawful possession of a firearm. With the rampant gun violence in the State, this will allow State's Attorney's to get violent offenders off of the streets and properly charge those who have unlawfully possessed a firearm.

Sincerely,

A handwritten signature in blue ink, appearing to read "Bob Cassilly".

Senator Bob Cassilly

SB 484_GovernorsOffice_Support.pdf

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February 16, 2021

Chair William C. Smith, Jr.
Vice Chair Jeff Waldstreicher
Members of Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

Senate Bill 484 - Criminal Procedure - Right of Appeal - Unlawful Possession of a Firearm

POSITION: Support with Amendments

Dear Chair Smith, Vice Chair Waldstreicher, Members of the Committee:

The Administration supports SB 484 - Criminal Procedure - Right of Appeal - Unlawful Possession of a Firearm, legislation that expands the State's ability to appeal a court's decision to suppress evidence during trial. We would like to thank the sponsor for his sponsorship of this legislation.

Under current law, the State has the right to appeal a court's decision to exclude evidence in certain drug crimes and crimes of violence. Senate Bill 484 expands the list of violations that are eligible for the State's use of the interlocutory appeal to include §5-133 (unlawful possession of a regulated firearm), §5-205 (unlawful possession of a rifle or shotgun by a person - general), or §5-206 (unlawful possession of a rifle or shotgun by a person with specified prior convictions) within the Public Safety Article.

The ability for the State to appeal decisions of the court to suppress evidence during trials for firearms offenses is a crucial tool that will assist the State in addressing the gun violence crisis that we are experiencing. This bill is a step in the right direction; however, the Administration respectfully requests the addition of other firearm offenses to further expand the state's ability to appeal, including §§5-621 (possession of a firearm during and in relation to a drug trafficking crime) and 5-622 (firearm possession) of the Criminal Law Article, and §§5-133.1 (restrictions on possession of ammunition), 5-134 (restrictions on sale, rental, or transfer of regulated firearms), 5-136 (straw purchases), 5-138 (sale, transfer, or disposal of stolen regulated firearm prohibited), 5-140 (transporting regulated firearm for unlawful sale or trafficking), 5-141 (knowing participation in straw purchase), and 5-142 (remove or alteration of identification mark or number on firearm) of the Public Safety Article. The inclusion of these offenses would better align Senate Bill 484 with Senate Bill 396.

For these reasons, the Administration asks for your favorable with amendments report on Senate Bill 484. For additional details, please contact Erin Chase, Deputy Legislative Officer, at 410-974-3336 or erin.chase1@maryland.gov.