

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 1393  
Judiciary

(Delegate Dumais, *et al.*)

Judicial Proceedings

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Criminal Procedure - Petition for Writ of Actual Innocence - Nontrial  
Convictions

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This bill clarifies that the term “conviction,” with respect to the standard required to file a petition for writ of actual innocence, means (1) a finding of guilty as a result of a trial; (2) a plea of guilty; (3) an Alford plea; or (4) a plea of *nolo contendere*. The bill also establishes standards that must be met by a person who seeks to file a petition for writ of actual innocence based on these dispositions. Finally, the bill requires that a petition for writ of actual innocence contain a sworn affirmation by the petitioner that the petitioner is innocent.

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Fiscal Summary

**State Effect:** The bill can be implemented with existing budgeted resources.

**Local Effect:** The bill can be implemented with existing local resources.

**Small Business Effect:** None.

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Analysis

**Bill Summary:** Under the bill, a person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that:

- if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; or
- if the conviction resulted from a guilty plea, an Alford plea, or a plea of *nolo contendere*, substantially or significantly undermines the facts set forth by the State as the basis of the plea agreement; and
- could not have been discovered in time to move for a new trial under Maryland Rule 4-331.

**Current Law:** A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that (1) creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined, and (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.

In ruling on a petition, the court may set aside the verdict, resentence, grant a new trial, or correct the sentence, as the court considers appropriate. The court must state the reasons for its ruling on the record. A petitioner in a writ of actual innocence proceeding has the burden of proof.

An Alford plea is a specialized type of guilty plea in which a defendant does not admit to guilt but acknowledges that sufficient evidence exists for the prosecution to convince a judge or jury beyond a reasonable doubt that the defendant committed the crime. Defendants typically enter Alford pleas to avoid the threat of greater punishment.

A plea of *nolo contendere*, commonly referred to as “no contest,” is a plea through which the defendant does not dispute the charges, but does not admit guilt either.

A petition for writ of actual innocence must (1) be in writing; (2) state in detail the grounds on which the petition is based; (3) describe the newly discovered evidence; (4) contain or be accompanied by a request for hearing if a hearing is sought; and (5) distinguish the newly discovered evidence claimed in the petition from any claims made in prior petitions.

**Background:** In *Yonga v. State*, 446 Md. 183 (2016), the Maryland Court of Appeals affirmed a holding by the Court of Special Appeals that a defendant as determined by a guilty plea is not eligible to file a petition for writ of actual innocence under § 8-301 of the Criminal Procedure Article. In its opinion, the court noted that “...only a conviction garnered after a bench or jury trial can provide the fodder against which the standard in Section 8-301(a)(1) can be measured.”

While acknowledging that the statute is silent on the issue, the court, in reaching its decision, analyzed the legislative history of the statute, relevant Rules, the court's understanding of the meaning of "actual innocence," and the fact that a motion for a new trial has never been granted under Maryland Rule 4-331(c)(1) for an individual convicted as a result of a guilty plea. The court also noted that because of the differences in the procedures and evidence presented during a trial compared to a conviction based on a guilty plea, a trial is the appropriate event against which to measure whether the newly discovered evidence "creates a substantial or significant possibility that the result may have been different" under § 8-301 of the Criminal Procedure Article.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 675 (Senator Kelley, *et al.*) - Judicial Proceedings.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Office of the Public Defender; Ballantine's Law Dictionary; Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2017  
fn/kdm Third Reader - March 22, 2017  
Revised - Amendment(s) - March 22, 2017

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