

**Department of Legislative Services**  
 Maryland General Assembly  
 2018 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Joint Resolution 10 (Senator Kelley)  
 Judicial Proceedings

**Postconviction Review – Convictions Resulting From Pleas**

This joint resolution states the intent of the General Assembly that a criminal defendant who seeks postconviction review under § 8-201 (postconviction review of DNA evidence) or § 8-301 (petition for writ of actual innocence) of the Criminal Procedure Article may not be precluded from seeking relief under those statutory provisions because the conviction from which relief is sought is the result of a plea of guilty, an Alford plea, or a plea of *nolo contendere*.

**Fiscal Summary**

**State Effect:** Compliance with this joint resolution increases general fund expenditures by at least \$141,400 in FY 2019 to handle additional petitions. Future years reflect annualization. Revenues are not affected.

(in dollars)	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	141,400	136,400	140,600	145,400	150,300
Net Effect	(\$141,400)	(\$136,400)	(\$140,600)	(\$145,400)	(\$150,300)

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease*

**Local Effect:** Compliance with this joint resolution may result in a minimal increase in expenditures for circuit courts and State’s Attorneys to handle additional petitions. Local revenues are not expected to be materially affected.

**Small Business Effect:** None.

## Analysis

### Current Law:

#### *DNA Postconviction Testing Petition*

As part of a postconviction proceeding, a person convicted of a “crime of violence” under § 14-101 of the Criminal Law Article may petition for (1) DNA testing of scientific identification evidence that the State possesses that is related to the judgment of conviction or (2) a search by a law enforcement agency of a database or log for the purpose of identifying the source of physical evidence used for DNA testing. A petitioner is required to pay for the cost of DNA testing ordered by the court unless the test results are favorable to the petitioner.

A petitioner is permitted to move for a new trial on the grounds that the conviction was based on unreliable scientific evidence and a substantial possibility exists that the petitioner would not have been convicted without the evidence. A court must order the search if it finds that a reasonable probability exists that such a search has the potential to produce exculpatory evidence relating to a postconviction claim. The court may order a new trial on a finding that such action is in the interest of justice and, on a finding that a substantial possibility exists that the petitioner would not have been convicted if the DNA testing results had been known or introduced at trial, must order a new trial. If the State is unable to produce scientific evidence as required, the court must hold a hearing to determine whether the failure to produce evidence was the result of intentional and willful destruction. The court must order a postconviction hearing to be conducted if specified determinations and findings are made.

The State must preserve scientific identification evidence that (1) the State has reason to know contains DNA material and (2) is secured in connection with specified criminal offenses. The State must preserve this scientific identification evidence for the time of the sentence, including any consecutive sentence imposed in connection with the offense.

#### *Petition for Writ of Actual Innocence*

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.

### *Alford Pleas and Nolo Contendere*

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.

**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 Maryland Rules, and the court’s understanding of the meaning of “actual innocence.” The court also considered 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.

**State Expenditures:** General fund expenditures increase by at least \$141,359 in fiscal 2019 for the Office of the Attorney General (OAG) and the Office of the Public Defender (OPD) to handle additional petitions filed as a result of compliance with the joint resolution. It is assumed that expenditures are not materially affected in fiscal 2018.

### *Office of the Attorney General*

General fund expenditures for OAG increase by \$136,359 in fiscal 2019, which assumes a July 1, 2018 implementation date. This estimate reflects the cost of hiring one assistant Attorney General to assist with handling cases related to additional petitions filed as a result

of the joint resolution. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$130,844
Operating Expenses	<u>5,515</u>
<b>Total FY 2019 OAG Expenditures</b>	<b>\$136,359</b>

Future year expenditures reflect annual increases in the salary and employee turnover and ongoing operating expenses.

OAG did not respond to repeated requests for information on current and projected caseloads. Regardless, the Department of Legislative Services advises that, given its statewide appellate review function in postconviction review cases and the expansion in eligibility for postconviction review resulting from compliance with the joint resolution, it is likely that an additional assistant Attorney General position is needed to handle additional petitions.

#### *Office of the Public Defender*

General fund expenditures for OPD increase by \$5,000 each year for DNA testing, assuming that the office cannot pay for this testing through federal grants. This estimate assumes that the joint resolution generates few additional cases for OPD and a relatively low need for nongrant funded DNA testing.

OPD advises that until very recently, it evaluated cases involving guilty pleas, Alford pleas, and pleas of *nolo contendere* for possible DNA testing and litigation on the basis of newly discovered evidence. Due to the difficulty in obtaining relief in these cases, OPD anticipates that it undertakes representation in few additional cases as a result of the joint resolution. According to OPD, claims of factual innocence are usually forwarded to the Innocence Project, which is a joint project of OPD and the University of Baltimore School of Law. Pursuant to a memorandum of understanding, an OPD attorney administers the project's legal clinic. OPD covers any DNA testing for the project that is not covered by the federal grant. *Pro se* petitions for relief are forwarded to OPD's Post-Conviction Defenders Division (PCD) and the Innocence Project's clinic for review and screening by the clinic's administrator, who utilizes law students and grant-funded staff attorneys to assess the claims. Depending on the outcome of the evaluation, OPD or the Innocence Project may provide representation. OPD advises that the number of additional meritorious *pro se* petitions it receives under the joint resolution is speculative.

Should the volume of additional petitions filed increase to the point that OPD cannot accommodate the increased workload with existing personnel, then general fund

expenditures for OPD increase further. *For illustrative purposes only*, assuming a compliance date of July 1, 2018, the cost associated with hiring one assistant public defender for PCD is \$91,190 in fiscal 2019.

**Local Expenditures:** Depending on actual caseloads, operating expenditures for circuit courts and State's Attorneys may increase minimally to handle additional petitions. The Judiciary advises that the joint resolution's effect on circuit court caseloads is unknown at this time. The Maryland State's Attorneys' Association advises that the joint resolution's effect on prosecutors is also unknown at this time.

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### **Additional Information**

**Prior Introductions:** The joint resolution is similar to a combination of SB 675 and SB 677 of 2017. The Senate Judicial Proceedings Committee referred both of these bills to interim study. HB 1393, the cross file to SB 675, passed the House with amendments and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken on the bill. HB 1411, the cross file to SB 677, passed the House and received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken on the bill.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General; Governor's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Legislative Services

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