

Department of Legislative Services  
 Maryland General Assembly  
 2006 Session

FISCAL AND POLICY NOTE

House Bill 1168  
 Judiciary

(Delegate McComas, *et al.*)

Uniform Postconviction Procedure Act - Time of Filing of Petition for Relief

This bill alters the time limit for petitions for relief under the Uniform Postconviction Procedure Act (UPPA). In a case in which a sentence of death has not been imposed, unless extraordinary cause is shown, a petition for relief under UPPA may not be filed more than the later of two years after: (1) the imposition of the sentence; (2) the final mandate of an appellate court on direct appeal of the conviction; or (3) the petition for leave to appeal was denied.

The bill applies prospectively to persons filing a petition on or after the October 1, 2006 effective date.

Fiscal Summary

**State Effect:** General fund expenditures could increase by \$1.4 million in FY 2007 for the Office of the Public Defender (OPD) to handle postconviction cases within the proposed two-year timeline. Future year estimates reflect annualization and inflation.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,378,900	1,715,300	1,809,600	1,910,200	2,017,800
Net Effect	(\$1,378,900)	(\$1,715,300)	(\$1,809,600)	(\$1,910,200)	(\$2,017,800)

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

**Local Effect:** Potential increase or decrease in circuit court expenditures. The actual impact depends on whether the bill's changes result in increased volume of filings of postconviction petitions in circuit courts, or a decrease in filings due to missed deadlines.

**Small Business Effect:** None.

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## **Analysis**

**Current Law:** UPPA and Title 4, Chapter 400 of the Maryland Rules outline the procedure that must be followed by convicted persons seeking postconviction relief. UPPA applies to persons confined under sentence of death or imprisonment or on parole or probation. Petitions for relief under UPPA may not be filed more than 10 years after the imposition of the sentence for cases in which the death sentence has not been imposed. The Act contains an exception for extraordinary cause shown.

**Background:** Errors of fact or law can be raised on appeal. Collateral attacks on a conviction (*e.g.*, ineffective assistance of counsel or new evidence) cannot be raised on appeal. The postconviction process allows convicted individuals to present collateral attacks to their convictions. The types of claims that can be presented during the postconviction relief process vary by state.

According to OPD, convicted individuals contact OPD with potential UPPA claims they wish to raise. OPD then conducts an investigation and, based on the outcome of the investigation, decides whether or not to file a petition for postconviction relief under UPPA. Because the right to effective assistance of counsel extends to the postconviction process, these investigations can be extensive and extremely detailed. The investigation process includes reviews of transcripts, and witness interviews. Under current law, this petition must be filed within the 10-year time limit. This time limit includes any investigation prior to the filing of a petition. Failure to file a timely petition could be grounds for ineffective assistance of counsel.

In calendar 2004, OPD handled 1,195 postconviction cases.

**State Expenditures:** OPD advises that reducing the current time limit from 10 to 2 years would have a drastic effect on its workload. OPD attorneys would essentially have to compress their investigation so that petitions can be filed in a timely manner. Decreasing the time limit for the filing of a postconviction petition could also result in a significant increase in requests for petition filings in order to meet the compressed deadline. This would result in a decrease in the number of cases current postconviction attorneys can handle and a need for additional attorneys, investigators, and support staff.

OPD currently has 20 attorneys who work on postconviction cases. In order to conduct investigations and file timely petitions under the proposed time limits, OPD would need to hire additional attorneys and staff. General fund expenditures could increase by an

estimated \$1.4 million in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring 16 assistant public defenders, 8 investigators, and 1 support staff member. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	25
Salaries and Fringe Benefits	\$1,187,779
Operating Expenses	<u>191,143</u>
<b>FY 2007 State Expenditures</b>	<b>\$1,378,922</b>

Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

**Local Expenditures:** Local expenditures could increase if the new timeline for filing of a postconviction petition results in a larger volume of petitions being filed in circuit courts in an effort to meet the timeline requirements. Local expenditures could decrease if the bill's changes result in a reduction of petition filings due to missed deadlines.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** SB 269 (Senator Hooper, *et al.*) – Judicial Proceedings.

**Information Source(s):** State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - February 27, 2006  
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