

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 486

(Senator Kelley, *et al.*)

Judicial Proceedings

Judiciary

Criminal Procedure - Petition for Writ of Actual Innocence - Newly Discovered Evidence

This bill authorizes a convicted person to file a petition for a writ of actual innocence in the circuit court in the county in which the conviction was imposed if the person claims that there is newly discovered evidence that creates a substantial or significant possibility that the outcome in the case may have been different and the evidence could not have been discovered in time to move for a new trial. The petition may be filed at any time. The bill also contains procedural requirements for the court and content requirements for the petition.

Fiscal Summary

State Effect: The bill's changes can be handled with existing budgeted resources.

Local Effect: The bill's changes can be handled with existing budgeted local resources.

Small Business Effect: None.

Analysis

Bill Summary: A petition for writ of actual innocence must be in writing, provide detailed information on the grounds for the petition, describe the newly discovered evidence, contain a request for a hearing if one is sought, and distinguish the newly discovered evidence claimed in the petition from any claims made in prior petitions. A court is required to hold a hearing on the petition if the petition meets the content requirements and contains a request for a hearing. A court may dismiss a petition without a hearing if the petitioner fails to state a claim or assert grounds on which relief may be

granted. The petitioner has the burden of proof in a proceeding on a writ of actual innocence, and courts have the option of setting aside the verdict, resentencing the petitioner, granting a new trial, or correcting the petitioner's sentence. The court must state the reasons for its ruling on the record.

Current Law: Under Maryland Rule 4-331, a defendant may file a motion for a new trial within 10 days after a verdict. A court may grant the motion if it is in the interest of justice. Rule 4-331 also authorizes a court to grant a new trial or other appropriate relief if newly discovered evidence exists that could not have been discovered by due diligence in time to move for a new trial within 10 days after the verdict. Motions must be filed within one year after the later of the date the court imposed a sentence or received a mandate from one of the State's appellate courts. If the defendant was sentenced to death, however, the defendant may move for a new trial at any time if the newly discovered evidence shows that the defendant is innocent of the capital crime or an aggravating circumstance or other condition of eligibility that was actually found by the court or jury in imposing the death sentence. The defendant may also make a motion at any time if the motion is based on DNA or related evidence that, if proven, exonerates the defendant.

A motion under Rule 4-331 based on newly discovered evidence must meet the same content requirements as the petition for a writ of actual innocence established by the bill. A court may hold a hearing on a motion for a new trial if the motion meets the content requirements and a hearing was requested. Generally, the court must hold a hearing within 10 days after the motion is filed. The court is required to state its reasons for setting aside a verdict and granting a new trial and may revise a judgment or set aside a verdict prior to entry of a judgment only on the record in open court.

Background: Virginia enacted similar legislation in 2004. In general, inmates in Virginia have 21 days after sentencing in which to present newly discovered evidence. Legislation in 2002 and 2004 carved out two exceptions to the 21-day rule. In 2001, Virginia enacted a law that gave inmates the right to request DNA tests at any time. Pursuant to a constitutional amendment approved by voters in 2002, felons in that state are allowed to present that scientific evidence to the Virginia Supreme Court. The legislature expanded the law in 2004 to allow felons to submit new evidence other than DNA tests. Petitioners are required to demonstrate in their writs that "no rational trier of fact could have found proof of guilt beyond a reasonable doubt." In August 2008, the Virginia Court of Appeals granted its first writ of actual innocence under the 2004 expansion when tests confirmed that a felon serving a sentence on a firearm charge was in possession of a gas gun, a device that is not in compliance with the statutory definition of a firearm, at the time of his arrest. At least 130 convicts have gone to court to pursue writs of actual innocence. As of August 2008, 5 of the cases were pending and 124 had been denied.

State Fiscal Effect: The Office of the Public Defender (OPD) advises that any increase in cases as a result of this bill can be handled with existing budgeted resources. OPD based its estimate on caseloads in states that have enacted similar legislation and that many of the cases affected by this bill are already being handled by OPD's Innocence Project.

Local Fiscal Effect: Given the low volume of cases expected to be generated by this bill, any increase in circuit court cases can be handled with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: HB 366 (Delegate Rosenberg, *et al.*) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Office of the Public Defender, State's Attorneys' Association, *The Washington Post* (August 13, 2008), *Virginia Lawyers Weekly* (August 18, 2008), Department of Legislative Services

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