

# HOUSE BILL 919

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EMERGENCY BILL

0lr2715  
CF SB 839

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By: **Delegates Anderson and Dumais (By Request)**

Introduced and read first time: February 12, 2010

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Petition for Writ of Actual Innocence – Newly**  
3 **Discovered Evidence**

4 FOR the purpose of altering certain provisions relating to the filing of a petition for a  
5 writ of actual innocence; providing that a person may file a petition for a writ of  
6 actual innocence only if the person is convicted of a felony, an attempt to  
7 commit a felony, or a solicitation to commit a felony and the person entered a  
8 plea of not guilty to the charges; establishing that a person may file a petition if  
9 newly discovered evidence creates a substantial possibility that a certain result  
10 would have been different; requiring the court to allow the State to file a certain  
11 response in a certain period of time; establishing that the only relief that may  
12 be granted from a certain petition is a new trial; providing that a petitioner in a  
13 certain proceeding has the burden of proving certain grounds by a standard of  
14 clear and convincing evidence; authorizing a person to file only a certain  
15 number of petitions within a certain period of time; authorizing a person  
16 aggrieved by a certain order to appeal to the Court of Special Appeals within a  
17 certain time period; authorizing the court to stay an order and set bail under  
18 certain circumstances; authorizing the Court of Special Appeals to affirm,  
19 modify, or reverse an order or remand a case for further proceedings under  
20 certain circumstances; authorizing the Court of Special Appeals to direct a  
21 political subdivision to pay certain costs under certain circumstances; making  
22 this Act an emergency measure; and generally relating to petitions for writ of  
23 actual innocence and newly discovered evidence.

24 BY repealing and reenacting, with amendments,  
25 Article – Criminal Procedure  
26 Section 8–301  
27 Annotated Code of Maryland  
28 (2008 Replacement Volume and 2009 Supplement)

29 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Criminal Procedure  
Section 8–302 and 8–303  
Annotated Code of Maryland  
(2008 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
MARYLAND, That the Laws of Maryland read as follows:

**Article – Criminal Procedure**

8–301.

(a) [A convicted] **IF A person IS CONVICTED OF A FELONY, AN ATTEMPT TO COMMIT A FELONY, OR A SOLICITATION TO COMMIT A FELONY AND THE PERSON ENTERED A PLEA OF NOT GUILTY TO THE CHARGES, THE PERSON MAY,** at any time, [may] 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] **WOULD** 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.

(b) A petition filed under this section shall:

(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.

(c) **THE COURT SHALL ALLOW THE STATE TO FILE A RESPONSE TO THE PETITION WITHIN 60 DAYS.**

(D) (1) Except as provided in paragraph (2) of this subsection, the court shall hold a hearing on a petition filed under this section if the petition satisfies the requirements of subsection (b) of this section and a hearing was requested.

(2) The court may dismiss a petition without a hearing if the court finds that the petition fails to state a claim or assert grounds on which relief may be granted.

[(d)] (E) (1) In ruling on a petition filed under this section, the court may [set aside the verdict, resentence,] grant a new trial[, or correct the sentence, as the court considers appropriate].

(2) The court shall state the reasons for its ruling on the record.

[(e)] (F) A petitioner in a proceeding under this [section] SUBTITLE has the burden of [proof] PROVING THE GROUNDS ON WHICH RELIEF MAY BE GRANTED BY A STANDARD OF CLEAR AND CONVINCING EVIDENCE.

**8-302.**

(A) FOR EACH TRIAL OR SENTENCE IMPOSED, A PERSON MAY FILE ONLY ONE PETITION FOR RELIEF UNDER THIS SUBTITLE.

(B) A PETITION FOR RELIEF UNDER THIS SUBTITLE MAY BE FILED ONLY WITHIN 1 YEAR FROM THE DATE OF THE PETITIONER'S DISCOVERY OF THE NEWLY DISCOVERED EVIDENCE ALLEGED IN THE PETITION.

**8-303.**

(A) WITHIN 30 DAYS AFTER THE COURT PASSES AN ORDER IN ACCORDANCE WITH THIS SUBTITLE, A PERSON AGGRIEVED BY THE ORDER, INCLUDING THE ATTORNEY GENERAL AND A STATE'S ATTORNEY, MAY APPEAL TO THE COURT OF SPECIAL APPEALS.

(B) (1) THE APPEAL SHALL FOLLOW THE FORM AND PROCEDURE SET BY THE MARYLAND RULES.

(2) IF THE ATTORNEY GENERAL OR A STATE'S ATTORNEY FILES AN APPEAL UNDER THIS SECTION, THE COURT MAY:

(I) STAY THE ORDER; AND

(II) SET BAIL FOR THE PETITIONER.

(3) AFTER HEARING AN APPEAL UNDER THIS SECTION, THE COURT OF SPECIAL APPEALS MAY:

1                               **(I)     AFFIRM, MODIFY, OR REVERSE THE ORDER APPEALED**  
2 **FROM; OR**

3                               **(II)    REMAND THE CASE FOR FURTHER PROCEEDINGS.**

4               **(C)    THE COURT OF SPECIAL APPEALS SHALL DIRECT THE POLITICAL**  
5 **SUBDIVISION IN WHICH AN ORDER IS PASSED TO PAY THE NECESSARY COSTS**  
6 **AND EXPENSES ASSOCIATED WITH ANY REVIEW UNDER THIS SECTION,**  
7 **INCLUDING ALL COURT COSTS, STENOGRAPHIC SERVICES, AND PRINTING, IF:**

8                       **(1)    A PERSON SEEKS REVIEW UNDER THIS SECTION WITHIN 30**  
9 **DAYS AFTER JUDGMENT;**

10                       **(2)   THE COURT OF SPECIAL APPEALS HEARS THE APPEAL UNDER**  
11 **THIS SECTION; AND**

12                       **(3)   THE COURT OF SPECIAL APPEALS FINDS THAT THE PERSON**  
13 **IS UNABLE TO PAY THE COSTS OF THE REVIEW.**

14               SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency  
15 measure, is necessary for the immediate preservation of the public health or safety,  
16 has been passed by a yea and nay vote supported by three-fifths of all the members  
17 elected to each of the two Houses of the General Assembly, and shall take effect from  
18 the date it is enacted.