

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Revised

House Bill 128

(Delegate Rosenberg, *et al.*)

Judiciary

Judicial Proceedings

Criminal Procedure - Petition for Writ of Actual Innocence - Notice of Filing and Hearing

This emergency bill limits the availability of a petition for a writ of actual innocence to a person who was charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime. The bill also (1) requires a petitioner for a writ of actual innocence to notify the State in writing of the filing of the petition; (2) authorizes the State to file a response to a petition within 90 days of receiving notice or under a set time period ordered by the court; (3) specifies that a victim or the victim's representative (victim/representative) must be notified of and has a right to attend a hearing on the petition; and (4) clarifies that a court may dismiss the petition without a hearing if the court finds that the petition fails to assert grounds on which relief may be granted.

Fiscal Summary

State Effect: None. The bill is procedural in nature and does not directly affect governmental finances.

Local Effect: None. The bill is procedural in nature and does not directly affect local government finances.

Small Business Effect: None.

Analysis

Current Law: A convicted person may 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.

Writ Submission Process: 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.

Victim Notification: Upon first contact with a victim/representative, a law enforcement officer, District Court commissioner, or juvenile intake officer is required to give a victim/representative a pamphlet informing the victim/representative of the victim's rights under the State constitution. For circuit court cases and juvenile court cases (involving offenses that are heard in the circuit court if committed by an adult), a prosecuting attorney is required to deliver or mail the informational pamphlet and a victim notification form to the victim/representative within 10 days after the filing or the unsealing of an indictment or information in circuit court, whichever is later. The prosecuting attorney must also certify compliance with this requirement to the clerk of the circuit court or certify that the victim/representative cannot be identified. A victim/representative who files a victim notification form has complied with every section of Maryland law requiring a victim/representative to request notice to be notified prior to certain proceedings and/or address the court. In general, a victim/representative who has filed a notification request form has the right to attend any proceeding in which a right to appear has been granted to the defendant.

If a victim/representative fails to appear at a hearing on a motion for a revision, modification, or reduction of a sentence or disposition in circuit court or juvenile court, the prosecuting attorney must state on the record that proceeding without the appearance of the victim/representative is justified because: (1) the victim/representative was contacted by the prosecuting attorney and waived the right to attend the hearing; (2) efforts were made to contact the victim/representative and to the best knowledge and belief of the prosecuting attorney, the victim/representative cannot be located; or (3) the victim/representative has not filed a notification request form.

If the court is not satisfied by the statement that proceeding without the appearance of the victim/representative is justified, or if no statement is made, the court may postpone the hearing.

Additional Information

Prior Introductions: None.

Cross File: SB 135 (Senator Kelley) - Judicial Proceedings.

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

Fiscal Note History: First Reader - February 2, 2010
mpc/kdm Revised - House Third Reader - March 29, 2010
Revised - Enrolled Bill - May 25, 2010

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