

**Department of Legislative Services**  
Maryland General Assembly  
2010 Session

**FISCAL AND POLICY NOTE**

House Bill 919  
Judiciary

(Delegates Anderson and Dumais)(By Request)

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

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This emergency bill limits the scope and availability of a petition for a writ of actual innocence by: (1) eliminating the availability of the petition to a person convicted of a misdemeanor and authorizing a person convicted of a felony, an attempt to commit a felony, or a solicitation to commit a felony to file a petition so long as the person entered a plea of not guilty to the charges; (2) authorizing the filing of a petition if the petitioner claims that there is newly discovered evidence that creates a substantial possibility that the result would have been different; (3) limiting a court's remedy to granting a new trial by repealing authorization for a court to set aside the verdict, resentence, or correct the sentence at issue in response to a petition; (4) establishing that the burden of proof in these proceedings is a standard of clear and convincing evidence; (5) imposing a limit of one petition for each trial or sentence imposed; and (6) requiring a petition for a writ of actual innocence to be filed within one year from the date the petitioner discovered the newly discovered evidence alleged in the petition.

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**Fiscal Summary**

**State Effect:** Potential minimal decrease in expenditures for the Office of the Public Defender due to a reduction in the number of petitions for a writ of actual innocence filed as a result of the bill. The Office of the Attorney General can handle the bill's requirements with existing resources.

**Local Effect:** Potential minimal decrease in expenditures for the circuit courts due to a reduction in the number of petitions filed as a result of the bill. State's Attorneys can handle the bill's requirements with existing resources.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** The bill requires a court in which a petition is filed to allow the State to file a response to the petition within 60 days.

The bill establishes appellate procedures for petitions by authorizing a person aggrieved by a court's ruling regarding a petition, including the Attorney General and a State's Attorney, to appeal the ruling to the Court of Special Appeals. Appeals must follow the form and procedure established in the Maryland Rules. If the Attorney General or a State's Attorney files an appeal, the court may stay the order and set bail for the petitioner. After hearing an appeal, the Court of Special Appeals (1) may affirm, modify, or reverse the order on which the appeal is based; or (2) remand the case for further proceedings. The Court of Special Appeals must direct the political subdivision in which the order that is the basis of the appeal if the court finds that the person who filed the appeal is unable to pay the costs of the appeal.

**Current Law:** Chapter 744 of 2009 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.

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.

**Background:** Virginia enacted legislation authorizing petitions for writs of actual innocence 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 839 (Senator Raskin) - Judicial Proceedings. However, the bills are not identical.

**Information Source(s):** Garrett and Howard counties, Office of the Attorney General, Judiciary (Administrative Office of the Courts), State’s Attorneys’ Association, Office of the Public Defender, Commission on Criminal Sentencing Policy, *The Washington Post* (August 13, 2008), *Virginia Lawyers Weekly* (August 18, 2008), Department of Legislative Services

**Fiscal Note History:** First Reader - February 28, 2010  
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