

**Department of Legislative Services**  
Maryland General Assembly  
2016 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 971

(Senator Cassilly)

Judicial Proceedings

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**Criminal Procedure - Petition for Writ of Actual Innocence - Appeal Right**

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This bill creates a specific statutory right of appeal from a court's order on a petition for writ of actual innocence.

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**Fiscal Summary**

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

**Local Effect:** The bill's requirements can be handled with existing local resources.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary:** A person aggrieved by a court's order on a petition for writ of actual innocence, including the Attorney General and a State's Attorney, may appeal the order to the Court of Special Appeals. The appeal must be filed within 30 days of the court's order and must be in the form set by 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.

**Current Law/Background:** A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, 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 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.

In ruling on a petition, the court may set aside the verdict, resentence, grant a new trial, or correct the sentence, as the court considers appropriate. The court must state the reasons for its ruling on the record. A petitioner in a writ of actual innocence proceeding has the burden of proof.

Under § 12-301 of the Courts and Judicial Proceedings Article, in general, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. In *Douglas v. State*, 423 Md. 156 (2011), the Maryland Court of Appeals held that an order *denying* a petition for a writ of actual innocence is appealable because it is a final judgment. However, in *Seward v. State*, No. 12, September Term 2015 (filed January 27, 2016), the Maryland Court of Appeals held that the State does not have the right to directly appeal an order *granting* a petition for writ of actual innocence because an order granting a petition for writ of actual innocence is not a final judgment under §12-301.

The court reiterated its reasoning in *Douglas* that an order denying a petition for writ of actual innocence is a final judgment because the petitioner can no longer pursue claims based on the newly discovered evidence cited in the petition. However, according to the court, an order granting such a petition does not preclude the State from “...further prosecuting and defending its rights and interests in the newly discovered evidence.”

**State Expenditures:** Since case law already establishes a right to appeal an order denying a petition for a writ of actual innocence, the bill establishes the State’s right to appeal an order granting a petition for writ of actual innocence. The Office of the Attorney General (OAG) did not respond to a request for information. However, the extent to which OAG pursues such claims is likely to be minimal and at the discretion of the office.

The Office of the Public Defender advises that the number of additional cases generated by the bill is likely to be so small as to make any impact negligible.

The Judiciary advises that the bill results in an increase in filings and court appearances, and that the precise fiscal and operational impact of the bill on the Judiciary is difficult to estimate at this time. However, based on the information above, it is likely that the bill’s requirements do not result in a significant fiscal or operational impact on the Judiciary.

**Local Expenditures:** This estimate assumes that for the reasons stated above, State’s Attorneys can handle the bill’s requirements with existing budgeted resources.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 1202 (Delegates McComas and Malone) - Judiciary.

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

**Fiscal Note History:** First Reader - February 25, 2016  
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