

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 677

(Senator Kelley, *et al.*)

Judicial Proceedings

DNA Testing - Postconviction Review

This bill clarifies that, for purposes of eligibility to file a petition for postconviction DNA testing or a database/log search, “conviction” means a verdict of guilty reached as a result of a trial, a plea of guilty, an Alford plea, or a plea of *nolo contendere*. For a petitioner who was convicted by means of a guilty verdict reached as a result of trial, the court must order a new trial if it finds that a substantial probability exists that the petitioner would not have been convicted if the DNA testing results had been known or introduced at trial. For a petitioner who was convicted by means of a guilty plea, an Alford plea, or a plea of *nolo contendere*, the court must order a new trial if it finds that a substantial possibility exists that the DNA evidence substantially or significantly undermines the facts set forth by the State as the basis of a plea agreement.

Fiscal Summary

State Effect: The bill is not expected to materially affect State finances.

Local Effect: The bill is not expected to materially affect local finances or circuit court caseloads.

Small Business Effect: None.

Analysis

Current Law: As part of a postconviction proceeding, a person convicted of a “crime of violence” under § 14-101 of the Criminal Law Article may petition for (1) DNA testing of scientific identification evidence that the State possesses that is related to the judgment of

conviction or (2) a search by a law enforcement agency of a database or log for the purpose of identifying the source of physical evidence used for DNA testing.

A petitioner is permitted to move for a new trial on the grounds that the conviction was based on unreliable scientific evidence and a substantial possibility exists that the petitioner would not have been convicted without the evidence. A court must order the search if it finds that a reasonable probability exists that such a search has the potential to produce exculpatory evidence relating to a postconviction claim. The court may order a new trial on a finding that such action is in the interest of justice and, on a finding that a substantial possibility exists that the petitioner would not have been convicted if the DNA testing results had been known or introduced at trial, must order a new trial. If the State is unable to produce scientific evidence as required, the court must hold a hearing to determine whether the failure to produce evidence was the result of intentional and willful destruction. The court must order a postconviction hearing to be conducted if specified determinations and findings are made.

The State must preserve scientific identification evidence that (1) the State has reason to know contains DNA material and (2) is secured in connection with specified criminal offenses. The State must preserve this scientific identification evidence for the time of the sentence, including any consecutive sentence imposed in connection with the offense.

Section 14-101 of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a handgun in the commission of a felony or other crime of violence; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) an attempt to commit crimes (1) through (14); (16) continuing course of conduct with a child; (17) assault in the first degree; or (18) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

An Alford plea is a specialized type of guilty plea in which a defendant does not admit to guilt, but acknowledges that sufficient evidence exists for the prosecution to convince a judge or jury beyond a reasonable doubt that the defendant committed the crime. Defendants typically enter Alford pleas to avoid the threat of greater punishment.

A plea of *nolo contendere*, commonly referred to as “no contest,” is a plea through which the defendant does not dispute the charges, but does not admit guilt either.

Additional Information

Prior Introductions: None.

Cross File: HB 1411 (Delegate Dumais, *et al.*) - Judiciary.

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

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mm/kdm

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