

HOUSE BILL 874

E2

9lr1669
CF SB 676

By: **Delegates Barron, Sydnor, Branch, Brooks, Cardin, Fennell, Hettleman, Jackson, Moon, Sample–Hughes, and Valentino–Smith**

Introduced and read first time: February 8, 2019

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Postconviction Review – State’s Motion to Vacate**

3 FOR the purpose of authorizing a court to vacate a certain probation before judgment or
4 judgment of conviction under certain circumstances; establishing the requirements
5 for a certain motion; requiring the State to notify a certain defendant of the filing of
6 a certain motion in a certain manner; authorizing the defendant to file a response to
7 a certain motion within a certain time period; requiring that a certain victim or
8 victim’s representative be notified of a certain hearing; providing that a victim or
9 victim’s representative has the right to attend a certain hearing; requiring the court
10 to hold a hearing on a certain motion under certain circumstances; authorizing the
11 court to dismiss a certain motion without a hearing under certain circumstances;
12 authorizing the court to take certain actions in ruling on a certain motion; requiring
13 the court to state the reasons for a certain ruling in a certain manner; establishing
14 that the State has the burden of proof in a certain proceeding; authorizing certain
15 parties to take an appeal from a certain order; and generally relating to
16 postconviction review.

17 BY adding to
18 Article – Criminal Procedure
19 Section 8–303
20 Annotated Code of Maryland
21 (2018 Replacement Volume)

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

24 **Article – Criminal Procedure**

25 **8–303.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(A) ON A MOTION OF THE STATE, AT ANY TIME AFTER THE ENTRY OF A**
2 **PROBATION BEFORE JUDGMENT OR JUDGMENT OF CONVICTION IN A CRIMINAL**
3 **CASE, THE COURT WITH JURISDICTION OVER THE CASE MAY VACATE THE**
4 **PROBATION BEFORE JUDGMENT OR CONVICTION ON THE GROUND THAT:**

5 **(1) THE DEFENDANT RECEIVED A PROBATION BEFORE JUDGMENT**
6 **FOR OR WAS CONVICTED OF A CRIME AND THE ACT ON WHICH THE PROBATION**
7 **BEFORE JUDGMENT OR CONVICTION WAS BASED IS NO LONGER A CRIME;**

8 **(2) THE DEFENDANT RECEIVED A PROBATION BEFORE JUDGMENT**
9 **FOR OR WAS CONVICTED OF POSSESSION OF MARIJUANA UNDER § 5-601 OF THE**
10 **CRIMINAL LAW ARTICLE;**

11 **(3) THE DEFENDANT RECEIVED A PROBATION BEFORE JUDGMENT**
12 **FOR OR WAS CONVICTED OF AN OFFENSE RELATING TO DRUG PARAPHERNALIA FOR**
13 **MARIJUANA UNDER § 5-619 OF THE CRIMINAL LAW ARTICLE;**

14 **(4) THERE IS NEWLY DISCOVERED EVIDENCE THAT:**

15 **(I) COULD NOT HAVE BEEN DISCOVERED BY DUE DILIGENCE IN**
16 **TIME TO MOVE FOR A NEW TRIAL UNDER MARYLAND RULE 4-331(C); AND**

17 **(II) CREATES A SUBSTANTIAL OR SIGNIFICANT POSSIBILITY**
18 **THAT THE RESULT WOULD HAVE BEEN DIFFERENT, AS THAT STANDARD HAS BEEN**
19 **JUDICIALLY DETERMINED; OR**

20 **(5) THE INTEREST OF JUSTICE AND FAIRNESS JUSTIFIES VACATING**
21 **THE PROBATION BEFORE JUDGMENT OR CONVICTION.**

22 **(B) A MOTION FILED UNDER THIS SECTION SHALL:**

23 **(1) BE IN WRITING;**

24 **(2) STATE IN DETAIL THE GROUNDS ON WHICH THE MOTION IS BASED;**

25 **(3) WHERE APPLICABLE, DESCRIBE THE NEWLY DISCOVERED**
26 **EVIDENCE; AND**

27 **(4) CONTAIN OR BE ACCOMPANIED BY A REQUEST FOR A HEARING IF**
28 **A HEARING IS SOUGHT.**

29 **(C) (1) THE STATE SHALL NOTIFY THE DEFENDANT IN WRITING OF THE**

1 FILING OF A MOTION UNDER THIS SECTION.

2 (2) THE DEFENDANT MAY FILE A RESPONSE TO THE MOTION WITHIN
3 30 DAYS AFTER RECEIPT OF THE NOTICE REQUIRED UNDER THIS SUBSECTION OR
4 WITHIN THE PERIOD OF TIME THAT THE COURT ORDERS.

5 (D) (1) BEFORE A HEARING ON A MOTION FILED UNDER THIS SECTION,
6 THE VICTIM OR VICTIM'S REPRESENTATIVE SHALL BE NOTIFIED, AS PROVIDED
7 UNDER § 11-104 OR § 11-503 OF THIS ARTICLE.

8 (2) A VICTIM OR VICTIM'S REPRESENTATIVE HAS THE RIGHT TO
9 ATTEND A HEARING ON A MOTION FILED UNDER THIS SECTION, AS PROVIDED UNDER
10 § 11-102 OF THIS ARTICLE.

11 (E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
12 THE COURT SHALL HOLD A HEARING ON A MOTION FILED UNDER THIS SECTION IF
13 THE MOTION SATISFIES THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION
14 AND A HEARING WAS REQUESTED.

15 (2) THE COURT MAY DISMISS A MOTION WITHOUT A HEARING IF THE
16 COURT FINDS THAT THE MOTION FAILS TO ASSERT GROUNDS ON WHICH RELIEF MAY
17 BE GRANTED.

18 (F) (1) IN RULING ON A MOTION FILED UNDER THIS SECTION, THE
19 COURT, AS THE COURT CONSIDERS APPROPRIATE, MAY:

20 (I) VACATE THE CONVICTION OR PROBATION BEFORE
21 JUDGMENT AND DISCHARGE THE DEFENDANT; OR

22 (II) DENY THE MOTION.

23 (2) THE COURT SHALL STATE THE REASONS FOR A RULING UNDER
24 THIS SECTION ON THE RECORD.

25 (G) THE STATE IN A PROCEEDING UNDER THIS SECTION HAS THE BURDEN
26 OF PROOF.

27 (H) AN APPEAL MAY BE TAKEN BY EITHER PARTY FROM AN ORDER ENTERED
28 UNDER THIS SECTION.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2019.