

# HOUSE BILL 874

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9lr1669  
CF SB 676

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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

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 9, 2019

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## CHAPTER \_\_\_\_\_

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,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 That the Laws of Maryland read as follows:

2 **Article – Criminal Procedure**

3 **8–303.**

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

8 ~~(1) THE DEFENDANT RECEIVED A PROBATION BEFORE JUDGMENT~~  
9 ~~FOR OR WAS CONVICTED OF A CRIME AND THE ACT ON WHICH THE PROBATION~~  
10 ~~BEFORE JUDGMENT OR CONVICTION WAS BASED IS NO LONGER A CRIME;~~

11 ~~(2) THE DEFENDANT RECEIVED A PROBATION BEFORE JUDGMENT~~  
12 ~~FOR OR WAS CONVICTED OF POSSESSION OF MARIJUANA UNDER § 5-601 OF THE~~  
13 ~~CRIMINAL LAW ARTICLE;~~

14 ~~(3) THE DEFENDANT RECEIVED A PROBATION BEFORE JUDGMENT~~  
15 ~~FOR OR WAS CONVICTED OF AN OFFENSE RELATING TO DRUG PARAPHERNALIA FOR~~  
16 ~~MARIJUANA UNDER § 5-619 OF THE CRIMINAL LAW ARTICLE;~~

17 ~~(4)~~(1) THERE IS NEWLY DISCOVERED EVIDENCE THAT:

18 (I) COULD NOT HAVE BEEN DISCOVERED BY DUE DILIGENCE IN  
19 TIME TO MOVE FOR A NEW TRIAL UNDER MARYLAND RULE 4–331(C); AND

20 (II) CREATES A SUBSTANTIAL OR SIGNIFICANT POSSIBILITY  
21 THAT THE RESULT WOULD HAVE BEEN DIFFERENT, AS THAT STANDARD HAS BEEN  
22 JUDICIALLY DETERMINED; OR

23 ~~(5) THE INTEREST OF JUSTICE AND FAIRNESS JUSTIFIES VACATING~~  
24 ~~THE PROBATION BEFORE JUDGMENT OR CONVICTION.~~

25 (2) THE STATE PRESENTS INFORMATION THAT:

26 (I) JUSTIFIES VACATING THE CONVICTION OR PROBATION  
27 BEFORE JUDGMENT IN THE INTEREST OF JUSTICE AND FAIRNESS; OR

28 (II) CALLS INTO QUESTION THE INTEGRITY OF THE CONVICTION  
29 OR PROBATION BEFORE JUDGMENT.

30 (B) A MOTION FILED UNDER THIS SECTION SHALL:

1           **(1) BE IN WRITING;**

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

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

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

7           **(C) (1) THE STATE SHALL NOTIFY THE DEFENDANT IN WRITING OF THE**  
8 **FILING OF A MOTION UNDER THIS SECTION.**

9           **(2) THE DEFENDANT MAY FILE A RESPONSE TO THE MOTION WITHIN**  
10 **30 DAYS AFTER RECEIPT OF THE NOTICE REQUIRED UNDER THIS SUBSECTION OR**  
11 **WITHIN THE PERIOD OF TIME THAT THE COURT ORDERS.**

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

15           **(2) A VICTIM OR VICTIM'S REPRESENTATIVE HAS THE RIGHT TO**  
16 **ATTEND A HEARING ON A MOTION FILED UNDER THIS SECTION, AS PROVIDED UNDER**  
17 **§ 11-102 OF THIS ARTICLE.**

18           **(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**  
19 **THE COURT SHALL HOLD A HEARING ON A MOTION FILED UNDER THIS SECTION IF**  
20 **THE MOTION SATISFIES THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION**  
21 **AND A HEARING WAS REQUESTED.**

22           **(2) THE COURT MAY DISMISS A MOTION WITHOUT A HEARING IF THE**  
23 **COURT FINDS THAT THE MOTION FAILS TO ASSERT GROUNDS ON WHICH RELIEF MAY**  
24 **BE GRANTED.**

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

27                   **(I) VACATE THE CONVICTION OR PROBATION BEFORE**  
28 **JUDGMENT AND DISCHARGE THE DEFENDANT; OR**

29                   **(II) DENY THE MOTION.**

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

3                   **(G) THE STATE IN A PROCEEDING UNDER THIS SECTION HAS THE BURDEN**  
4 **OF PROOF.**

5                   **(H) AN APPEAL MAY BE TAKEN BY EITHER PARTY FROM AN ORDER ENTERED**  
6 **UNDER THIS SECTION.**

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

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.