

SENATE BILL 676

E2

9lr2515
CF HB 874

By: **Senator West**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 30, 2019

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~~ 8-301.1
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:

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 Article – Criminal Procedure

2 ~~§ 303.~~ § 301.1.

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

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

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

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

16 ~~(4)~~ (I) THERE IS NEWLY DISCOVERED EVIDENCE THAT:

17 ~~(H)~~ 1. COULD NOT HAVE BEEN DISCOVERED BY DUE
18 DILIGENCE IN TIME TO MOVE FOR A NEW TRIAL UNDER MARYLAND RULE 4-331(C);
19 AND

20 ~~(H)~~ 2. CREATES A SUBSTANTIAL OR SIGNIFICANT
21 ~~POSSIBILITY~~ PROBABILITY THAT THE RESULT WOULD HAVE BEEN DIFFERENT, ~~AS~~
22 ~~THAT STANDARD HAS BEEN JUDICIALLY DETERMINED; OR~~

23 ~~(5)~~ (II) THE STATE'S ATTORNEY RECEIVED NEW INFORMATION
24 AFTER THE ENTRY OF A PROBATION BEFORE JUDGMENT OR JUDGMENT OF
25 CONVICTION THAT CALLS INTO QUESTION THE INTEGRITY OF THE PROBATION
26 BEFORE JUDGMENT OR CONVICTION; AND

27 (2) THE INTEREST OF JUSTICE AND FAIRNESS JUSTIFIES VACATING
28 THE PROBATION BEFORE JUDGMENT OR CONVICTION.

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

30 (1) BE IN WRITING;

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

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

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

6 (c) (1) THE STATE SHALL NOTIFY THE DEFENDANT IN WRITING OF THE
7 FILING OF A MOTION UNDER THIS SECTION.

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

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

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

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

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

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

26 (i) VACATE THE CONVICTION OR PROBATION BEFORE
27 JUDGMENT AND DISCHARGE THE DEFENDANT; OR

28 (ii) DENY THE MOTION.

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.