

HOUSE BILL 874

E2

(9lr1669)

ENROLLED BILL

— Judiciary/Judicial Proceedings —

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

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

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

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.

Italics indicate opposite chamber/conference committee amendments.



1 parties to take an appeal from a certain order; and generally relating to
2 postconviction review.

3 BY adding to

4 Article – Criminal Procedure

5 Section ~~8-303~~ 8-301.1

6 Annotated Code of Maryland

7 (2018 Replacement Volume)

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

10 **Article – Criminal Procedure**

11 ~~8-303.~~ 8-301.1.

12 (A) ON A MOTION OF THE STATE, AT ANY TIME AFTER THE ENTRY OF A
13 PROBATION BEFORE JUDGMENT OR JUDGMENT OF CONVICTION IN A CRIMINAL
14 CASE, THE COURT WITH JURISDICTION OVER THE CASE MAY VACATE THE
15 PROBATION BEFORE JUDGMENT OR CONVICTION ON THE GROUND THAT:

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

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

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

25 ~~(4)~~ (1) (I) THERE IS NEWLY DISCOVERED EVIDENCE THAT:

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

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

32 (II) THE STATE'S ATTORNEY RECEIVED NEW INFORMATION
33 AFTER THE ENTRY OF A PROBATION BEFORE JUDGMENT OR JUDGMENT OF

1 CONVICTION THAT CALLS INTO QUESTION THE INTEGRITY OF THE PROBATION
2 BEFORE JUDGMENT OR CONVICTION; AND

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

5 (2) ~~THE STATE PRESENTS INFORMATION THAT:~~

6 ~~(I) JUSTIFIES VACATING THE CONVICTION OR PROBATION~~
7 ~~BEFORE JUDGMENT IN THE INTEREST OF JUSTICE AND FAIRNESS; OR~~

8 ~~(II) CALLS INTO QUESTION THE INTEGRITY OF THE CONVICTION~~
9 ~~OR PROBATION BEFORE JUDGMENT THE INTEREST OF JUSTICE AND FAIRNESS~~
10 ~~JUSTIFIES VACATING THE PROBATION BEFORE JUDGMENT OR CONVICTION.~~

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

12 (1) BE IN WRITING;

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

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

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

18 (C) (1) THE STATE SHALL NOTIFY THE DEFENDANT IN WRITING OF THE
19 FILING OF A MOTION UNDER THIS SECTION.

20 (2) THE DEFENDANT MAY FILE A RESPONSE TO THE MOTION WITHIN
21 30 DAYS AFTER RECEIPT OF THE NOTICE REQUIRED UNDER THIS SUBSECTION OR
22 WITHIN THE PERIOD OF TIME THAT THE COURT ORDERS.

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

26 (2) A VICTIM OR VICTIM'S REPRESENTATIVE HAS THE RIGHT TO
27 ATTEND A HEARING ON A MOTION FILED UNDER THIS SECTION, AS PROVIDED UNDER
28 § 11-102 OF THIS ARTICLE.

29 (E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
30 THE COURT SHALL HOLD A HEARING ON A MOTION FILED UNDER THIS SECTION IF

1 THE MOTION SATISFIES THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION
 2 ~~AND A HEARING WAS REQUESTED.~~

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

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

8 (I) VACATE THE CONVICTION OR PROBATION BEFORE
 9 JUDGMENT AND DISCHARGE THE DEFENDANT; OR

10 (II) DENY THE MOTION.

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

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

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.