

SENATE BILL 135

E2

EMERGENCY BILL

0lr0500
CF 0lr0499

By: **Senator Kelley**

Introduced and read first time: January 18, 2010

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Petition for Writ of Actual Innocence – Notice of Filing**
3 **and Hearing**

4 FOR the purpose of requiring a person who files a petition for writ of actual innocence
5 to notify the State of the filing in a certain manner; authorizing the State to file
6 a response to a petition for writ of actual innocence within a certain period of
7 time; requiring that the victim or victim’s representative be notified of a hearing
8 on a petition for writ of actual innocence before the hearing is held; establishing
9 that a victim or victim’s representative has the right to attend a hearing on a
10 petition for writ of actual innocence; making this Act an emergency measure;
11 and generally relating to a petition for writ of actual innocence.

12 BY repealing and reenacting, with amendments,
13 Article – Criminal Procedure
14 Section 8–301
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2009 Supplement)

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

19 **Article – Criminal Procedure**

20 8–301.

21 (a) A convicted person, at any time, may file a petition for writ of actual
22 innocence in the circuit court for the county in which the conviction was imposed if the
23 person claims that there is newly discovered evidence that:

24 (1) creates a substantial or significant possibility that the result may
25 have been different, as that standard has been judicially determined; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) could not have been discovered in time to move for a new trial
2 under Maryland Rule 4–331.

3 (b) A petition filed under this section shall:

4 (1) be in writing;

5 (2) state in detail the grounds on which the petition is based;

6 (3) describe the newly discovered evidence;

7 (4) contain or be accompanied by a request for hearing if a hearing is
8 sought; and

9 (5) distinguish the newly discovered evidence claimed in the petition
10 from any claims made in prior petitions.

11 **(C) (1) A PETITIONER SHALL NOTIFY THE STATE IN WRITING OF THE**
12 **FILING OF A PETITION UNDER THIS SECTION.**

13 **(2) THE STATE MAY FILE A RESPONSE TO THE PETITION WITHIN**
14 **15 DAYS AFTER RECEIPT OF THE NOTICE REQUIRED UNDER THIS SUBSECTION**
15 **OR WITHIN THE PERIOD OF TIME THAT THE COURT ORDERS.**

16 **(D) (1) BEFORE A HEARING IS HELD ON A PETITION FILED UNDER**
17 **THIS SECTION, THE VICTIM OR VICTIM’S REPRESENTATIVE SHALL BE NOTIFIED**
18 **OF THE HEARING AS PROVIDED UNDER § 11–104 OR § 11–503 OF THIS ARTICLE.**

19 **(2) A VICTIM OR VICTIM’S REPRESENTATIVE HAS THE RIGHT TO**
20 **ATTEND A HEARING ON A PETITION FILED UNDER THIS SECTION AS PROVIDED**
21 **UNDER § 11–102 OF THIS ARTICLE.**

22 **[(c)] (E) (1) Except as provided in paragraph (2) of this subsection, the**
23 **court shall hold a hearing on a petition filed under this section if the petition satisfies**
24 **the requirements of subsection (b) of this section and a hearing was requested.**

25 (2) The court may dismiss a petition without a hearing if the court
26 finds that the petition fails to state a claim or assert grounds on which relief may be
27 granted.

28 **[(d)] (F) (1) In ruling on a petition filed under this section, the court may**
29 **set aside the verdict, resentence, grant a new trial, or correct the sentence, as the**
30 **court considers appropriate.**

31 (2) The court shall state the reasons for its ruling on the record.

1 **[(e)] (G)** A petitioner in a proceeding under this section has the burden of
2 proof.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
4 measure, is necessary for the immediate preservation of the public health or safety,
5 has been passed by a yea and nay vote supported by three-fifths of all the members
6 elected to each of the two Houses of the General Assembly, and shall take effect from
7 the date it is enacted.