

# SENATE BILL 135

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EMERGENCY BILL

0lr0500  
CF HB 128

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By: **Senator Kelley**

Introduced and read first time: January 18, 2010

Assigned to: Judicial Proceedings

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Committee Report: Favorable

Senate action: Adopted

Read second time: March 3, 2010

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

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.

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

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

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

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

9 (1) be in writing;

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

11 (3) describe the newly discovered evidence;

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

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

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

18 **(2) THE STATE MAY FILE A RESPONSE TO THE PETITION WITHIN**  
19 **15 DAYS AFTER RECEIPT OF THE NOTICE REQUIRED UNDER THIS SUBSECTION**  
20 **OR WITHIN THE PERIOD OF TIME THAT THE COURT ORDERS.**

21 **(D) (1) BEFORE A HEARING IS HELD ON A PETITION FILED UNDER**  
22 **THIS SECTION, THE VICTIM OR VICTIM'S REPRESENTATIVE SHALL BE NOTIFIED**  
23 **OF THE HEARING AS PROVIDED UNDER § 11-104 OR § 11-503 OF THIS ARTICLE.**

24 **(2) A VICTIM OR VICTIM'S REPRESENTATIVE HAS THE RIGHT TO**  
25 **ATTEND A HEARING ON A PETITION FILED UNDER THIS SECTION AS PROVIDED**  
26 **UNDER § 11-102 OF THIS ARTICLE.**

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

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

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

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

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

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

Approved:

\_\_\_\_\_ Governor.

\_\_\_\_\_ President of the Senate.

\_\_\_\_\_ Speaker of the House of Delegates.