

Chapter 702

(House Bill 874)

AN ACT concerning

Criminal Procedure – Postconviction Review – State’s Motion to Vacate

FOR the purpose of authorizing a court to vacate a certain probation before judgment or judgment of conviction under certain circumstances; establishing the requirements for a certain motion; requiring the State to notify a certain defendant of the filing of a certain motion in a certain manner; authorizing the defendant to file a response to a certain motion within a certain time period; requiring that a certain victim or victim’s representative be notified of a certain hearing; providing that a victim or victim’s representative has the right to attend a certain hearing; requiring the court to hold a hearing on a certain motion under certain circumstances; authorizing the court to dismiss a certain motion without a hearing under certain circumstances; authorizing the court to take certain actions in ruling on a certain motion; requiring the court to state the reasons for a certain ruling in a certain manner; establishing that the State has the burden of proof in a certain proceeding; authorizing certain parties to take an appeal from a certain order; and generally relating to postconviction review.

BY adding to

Article – Criminal Procedure
Section ~~8-303~~ 8-301.1
Annotated Code of Maryland
(2018 Replacement Volume)

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

Article – Criminal Procedure

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

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

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

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

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

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

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

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

(II) THE STATE’S ATTORNEY RECEIVED NEW INFORMATION AFTER THE ENTRY OF A PROBATION BEFORE JUDGMENT OR JUDGMENT OF CONVICTION THAT CALLS INTO QUESTION THE INTEGRITY OF THE PROBATION BEFORE JUDGMENT OR CONVICTION; AND

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

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

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

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

(B) A MOTION FILED UNDER THIS SECTION SHALL:

(1) BE IN WRITING;

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

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

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

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

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

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

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

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

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

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

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

(II) DENY THE MOTION.

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

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

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

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

Enacted under Article II, § 17(c) of the Maryland Constitution, May 25, 2019.