

**Department of Legislative Services**  
Maryland General Assembly  
2020 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 860

(Senator Sydnor)

Judicial Proceedings

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**Criminal Procedure - Postconviction Review - Motion to Vacate**

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This bill alters the provisions to vacate a conviction or probation before judgment (PBJ) under § 8-301.1 of the Criminal Procedure Article by (1) authorizing a defendant to file a motion to vacate and (2) extending application of § 8-301.1 to a PBJ or conviction based on an act that is no longer a crime, a PBJ or conviction for possession of or possession with intent to distribute marijuana, and a PBJ or conviction related to drug paraphernalia for marijuana. The bill makes corresponding changes to procedures and notice for these motions and clarifies that a defendant who files a motion has the burden of proof in a proceeding on the motion.

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**Fiscal Summary**

**State Effect:** General fund expenditures for the Judiciary and the Office of the Public Defender (OPD) increase at least minimally to handle additional motions filed under the bill. The bill is not anticipated to materially affect State revenues.

**Local Effect:** Potential increase in expenditures for State's Attorneys' offices. The bill is not anticipated to materially affect local revenues.

**Small Business Effect:** None.

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## Analysis

### Current Law:

#### *§ 8-301.1 of the Criminal Procedure Article*

Section 8-301.1 of the Criminal Procedure Article authorizes a court with jurisdiction over the case, *on motion of the State*, to vacate a PBJ or conviction when (1) there is newly discovered evidence that could not have been discovered by due diligence in time for a new trial and creates a substantial or significant probability that the result would have been different or (2) the State received new information after the entry of a PBJ or conviction that calls into question the integrity of the PBJ or conviction. The interest of justice and fairness must also justify vacating the PBJ or conviction.

Filed motions must meet specified requirements, and the State may make a motion at any time after the entry of the PBJ or conviction in the case. The State must notify the defendant of the filing of the motion, and a defendant may file a response. A victim/victim's representative must be notified of the required hearing on the motion and has the right to attend the hearing.

The court must hold a hearing on a motion if the motion meets specified requirements. The State has the burden of proof in a proceeding on the motion. 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. In ruling on a motion, the court, as it considers appropriate, may vacate the conviction or PBJ and discharge the defendant or deny the motion. Either party may take an appeal from an order entered on the motion.

#### *Opportunities for a Defendant to Seek Review of a Conviction*

A person convicted of a crime has a number of alternatives for seeking review of a conviction. The options include (1) an appeal; (2) review at the trial court level (motion for new trial and a petition for writ of actual innocence); (3) petition under the Uniform Postconviction Procedure Act; and (4) *coram nobis*. In general, a defendant is not limited to any particular option for judicial review and may pursue multiple avenues for review in connection with a single conviction.

**Background:** The Gun Trace Task Force (GTTF) was created in 2007 as an elite unit within the Baltimore City Police Department intended to pursue violent criminals and persons illegally possessing and using guns. In 2017, eight of the nine members of the task force were charged with crimes including racketeering, robbery, extortion, overtime pay fraud, and filing false paperwork. The officers allegedly pocketed hundreds of thousands of dollars discovered while searching the homes and cars of criminals and some innocent

civilians. All eight members who were indicted either pled guilty or were convicted of several federal charges.

Chapter 702 of 2019, which took effect October 1, 2019, established § 8-301.1 of the Criminal Procedure Article. Part of the reasoning behind § 8-301.1 was to provide a mechanism for the State's Attorney for Baltimore City to address cases handled by GTTF. In September 2019, the State's Attorney for Baltimore City asked courts to vacate convictions in approximately 800 compromised cases tied to the task force under motions filed pursuant to Chapter 702 of 2019 (§ 8-301.1).

In January 2019, the State's Attorney for Baltimore City announced that the office would cease prosecutions for possession of marijuana. She also filed motions to vacate convictions (using other types of motions) in approximately 5,000 marijuana possession cases. She cited the social and economic collateral consequences of these convictions and the disproportionate enforcement of marijuana possession laws on minorities as reasons behind her decision.

**State Expenditures:** General fund expenditures for the Judiciary and OPD increase to handle additional motions filed under the bill. The magnitude of this increase cannot be reliably determined at this time and will depend on the number of motions filed and the timing of those motions.

The Judiciary advises that the total number of cases eligible to be vacated is unknown due to a lack of Criminal Justice Information System codes for all of the applicable charges relating to marijuana. However, for reference, based on information from the Judiciary, there were approximately 572,500 charges in the trial courts for possession of marijuana from fiscal 1970 through 2019. Information is not readily available as to how many of those charges resulted in a PBJ or a conviction.

A motion filed by a State's Attorney is likely to be filed only if it meets the statutory eligibility criteria and will vary by jurisdiction based on prosecutorial discretion. However, it is likely that a significant number of defendants statewide (especially *pro se* defendants) will file motions under the bill regardless of eligibility.

The Judiciary advises that the bill has the potential to create a significant increase in court filings, hearings, and clerk time, but the precise impact cannot be determined at this time.

OPD advises that the bill increase cases and workloads for the agency. OPD further advises that the impact of the bill is likely to be minimal as the agency will strive to develop a streamlined process to incorporate the bill into its post conviction processes. However, according to OPD's 2019 annual report, the agency's Post Conviction Defenders Division (PCD) is already operating above caseload standards. Despite the PCD caseload standard

of 67 cases per attorney, in 2018 PCD attorneys had an actual caseload of 100 cases. Thus, it is reasonable to assume that expenditures increase at least minimally to allow OPD to handle additional cases without further negatively impacting caseload standards.

**Local Expenditures:** Expenditures for State’s Attorneys’ offices may increase to litigate motions filed under the bill. The impact of the bill on prosecutors will vary by jurisdiction, based on existing and additional workloads and available resources.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** HB 1315 (Delegate Mosby, *et al.*) - Judiciary.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Office of the Public Defender; *The Baltimore Sun*; CBS Baltimore; *Chicago Tribune*; *Washington Post*; *The Daily Record*; Department of Legislative Services

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