

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 860
Criminal Procedure – Postconviction Review – Motion to Vacate
DATE: February 26, 2020
(3/5)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 860. The offered legislation amends Criminal Procedure Article §8-301.1, which was enacted in the 2019 Legislative Session, which provided a limited remedy to permit the state to move to vacate a probation before judgment or conviction where information received after a criminal case disposition calls into question the integrity of that disposition. The offered legislation would permit the defendant to also make the motion to vacate. The proposed legislation also expands the scope to include offenses that are no longer a crime and certain violations of the marijuana and drug paraphernalia laws.

Last year’s legislation (Chapter 702) provided the State’s Attorney an avenue to seek to vacate a probation before judgement or conviction where newly discovered evidence creates a substantial or significant probability that the result would have been different, or where the State’s Attorney receives information that calls into question the integrity of the conviction or probation before judgment. The Fiscal and Policy Note that accompanied that legislation noted the multiple avenues for relief already available to a defendant seeking to challenge a criminal case disposition, to include (1) an appeal; (2) a motion for new trial; (3) a petition for writ of actual innocence; (4) a postconviction petition; or (5) a petition for writ of error coram nobis. Thus, the original legislation was drafted to enable the State to seek to set aside a criminal case disposition under limited circumstances where public integrity warranted extraordinary relief.

The current legislation is unnecessary as numerous avenues already exist to permit a defendant to challenge a criminal case disposition. Each of those remedies has a timeline and safeguards in place. The proposed legislation has no limitations. The bill also states on page four that the defendant has the burden of proof on a motion filed by the defendant but does not state what he or she has the burden of proving and on what grounds.

cc. Hon. Charles Sydnor
Judicial Council
Legislative Committee
Kelley O'Connor