

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

Senate Bill 61

(Chair, Judicial Proceedings Committee)(By Request -
Maryland Judicial Conference)

Judicial Proceedings

**Court of Special Appeals - Writs of Actual Innocence, Illegal Sentences, and
Coram Nobis Petitions - Review by Application for Leave to Appeal**

This bill specifies that the general right to a direct appeal to the Court of Special Appeals from a final judgment entered in a criminal case in the circuit court does not apply to an appeal from a final judgment dismissing, denying, or granting (1) a petition for a writ of actual innocence; (2) a petition for a writ of error *coram nobis*; or (3) a motion to correct an illegal sentence. Review of a final judgment by a circuit court in these cases must be sought by application for leave to appeal filed by the aggrieved party, including the Attorney General or a State's Attorney.

The bill applies prospectively to a petition for a writ of actual innocence, petition for a writ of error *coram nobis*, or motion to correct an illegal sentence filed in a circuit court before the bill's October 1, 2014 effective date.

Fiscal Summary

State Effect: Potential minimal decrease in expenditures for the Judiciary, the Office of the Public Defender, and the Office of the Attorney General. The Judiciary may also experience operational efficiencies as a result of the bill.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law:

Right to Appeal: In general, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, or statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law. In a criminal case, the defendant may appeal even though imposition or execution of sentence has been suspended. However, several exceptions exist. Under these exceptions, the right to an appeal is discretionary, and an individual must seek permission to have the court hear his/her appeal through an application for leave to appeal. In general, this application must be filed within 30 days after entry of the judgment or order being appealed. Upon receipt of an application, the court reviews the application and determines whether to grant or deny the application.

Writ of Error Coram Nobis: Under the English common law, a writ of error *coram nobis* was a remedy allowing a court to correct an error in fact. The writ was used "...to bring before the court facts which were not brought into issue at the trial of the case, and which were material to the validity and regularity of the proceedings, and which if known by the court, would have prevented the judgment." *Skok v. State*, 361 Md. 52, 68 (2000) (quoting *Madison v. State*, 205 Md. 425, 432 (1954)). In *Skok v. State*, the Court of Appeals extended the writ of error *coram nobis* to apply to errors in law. See *Skok* at 78.

A petition for a writ of error *coram nobis* "...provides a remedy for a person who is not incarcerated and not on parole or probation, who is faced with a significant collateral consequence of his or her conviction, and who can legitimately challenge the conviction on constitutional grounds." *Parker v. State*, 160 M. 672, 677 (2005) (citing *Skok* at 78). The petitioner bears the burden of proof "...to show that the grounds for challenging the criminal conviction are of a constitutional, jurisdictional, or fundamental character; that the petitioner is suffering or facing significant collateral consequences from the conviction; and that there is no other statutory or common law remedy available." See *Parker* at 678 (citing *Skok* at 78-80).

Writ of Actual Innocence: A person who was charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may file a petition for a writ of actual innocence in the circuit court in the county in which the conviction was imposed if the person claims that there is newly discovered evidence that creates a substantial or significant possibility that the outcome in the case may have been different and the evidence could not have been discovered in time to move for a new trial.

Though a petition may be filed at any time, the petitioner is required to notify the State in writing of the filing of the petition. The State may file a response to the petition within 90 days of receiving notice or under a set time period ordered by the court. A court is required to hold a hearing on the petition if the petition meets the content requirements and contains a request for a hearing. However, a court may dismiss the petition without a hearing if the court finds that the petition fails to assert grounds on which relief may be granted.

Motion to Correct an Illegal Sentence: A defendant who has been sentenced may file a motion to correct an illegal sentence at any time. Maryland courts have held that a motion to correct an illegal sentence under Maryland Rule 4-345(a) "...ordinarily can be granted only where there is some illegality in the sentence itself or where no sentence should have been imposed." *Evans v. State*, 382 Md. 248, 278-279 (2004). However, in general, the motion is not appropriate if the sentence's illegality "...did not inhere in [the defendant's] sentence." *Evans* at 278, quoting *State v. Kanaras*, 357 Md. 170, 185 (1999).

The sentencing judge has the discretion to grant or deny a hearing on the motion. While a judge is not required to hold a hearing, a motion may not be granted unless a hearing is held.

State Expenditures: Although the bill is not expected to have a material effect on State expenditures, the bill may result in operational efficiencies for the Judiciary, since the procedures for direct appeals are more involved than the truncated process involved in applications for leave to appeal, including the mandatory filing of briefs and other processes. Because of this truncated process and scheduling, applications for leave to appeal take significantly less time from filing to decision than direct appeals. With an application for leave to appeal, a brief is not required and the application is initially reviewed by staff attorneys and presented to a panel of judges for a decision. With a direct appeal, a judicial panel reviews the record and the briefs and hears oral arguments (if applicable) before making a decision. Thus, while the bill shifts some work from one office in the Court of Special Appeals to another, the Judiciary experiences efficiencies from the streamlined process involved with applications for leave to appeal.

The Judiciary advises that the Court of Special Appeals typically handles 130 to 150 of the types of appeals affected by the bill each year. There were 1,916 appeals filed in the Court of Special Appeals during fiscal 2012.

General fund expenditures for the Office of the Public Defender may decrease minimally due to the truncated process involved with applications for leave to appeal. The Office of the Public Defender advises that it handles approximately 15 of these types of appeals each year.

General fund expenditures may decrease minimally for the Office of the Attorney General since the State is not required to respond to an application for leave to appeal, but is required to file a brief in a direct appeal.

Additional Information

Prior Introductions: None.

Cross File: HB 38 (Chair, Judiciary Committee)(By Request - Maryland Judicial Conference) - Judiciary.

Information Source(s): Office of the Attorney General, Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Office of the Public Defender, Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510