

# SENATE BILL 860

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0lr3072  
CF 0lr1820

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By: **Senator Sydnor**

Introduced and read first time: February 3, 2020

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Postconviction Review – Motion to Vacate**

3 FOR the purpose of altering the authority to file a certain motion to vacate a probation  
4 before judgment or judgment of conviction to include a certain defendant; expanding  
5 the grounds on which a certain motion to vacate may be based; requiring a certain  
6 defendant to notify the State of the filing of a certain motion in a certain manner;  
7 authorizing the State to file a response to a certain motion at a certain time; making  
8 conforming changes; and generally relating to postconviction review.

9 BY repealing and reenacting, with amendments,  
10 Article – Criminal Procedure  
11 Section 8–301.1  
12 Annotated Code of Maryland  
13 (2018 Replacement Volume and 2019 Supplement)

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

16 **Article – Criminal Procedure**

17 8–301.1.

18 (a) On a motion of the State **OR THE DEFENDANT**, at any time after the entry of  
19 a probation before judgment or judgment of conviction in a criminal case, the court with  
20 jurisdiction over the case may vacate the probation before judgment or conviction on the  
21 ground that:

22 (1) (i) there is newly discovered evidence that:

23 1. could not have been discovered by due diligence in time to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



move for a new trial under Maryland Rule 4–331(c); and

2. creates a substantial or significant probability that the result would have been different; [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;

**(III) THE ACT ON WHICH THE PROBATION BEFORE JUDGMENT OR CONVICTION WAS BASED IS NO LONGER A CRIME;**

**(IV) THE PROBATION BEFORE JUDGMENT OR CONVICTION WAS FOR POSSESSION OF MARIJUANA UNDER § 5–601 OF THE CRIMINAL LAW ARTICLE;**

**(V) THE PROBATION BEFORE JUDGMENT OR CONVICTION WAS FOR POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA UNDER § 5–602 OF THE CRIMINAL LAW ARTICLE; OR**

**(VI) THE PROBATION BEFORE JUDGMENT OR CONVICTION WAS FOR AN OFFENSE RELATING TO DRUG PARAPHERNALIA FOR MARIJUANA UNDER § 5–619 OF THE CRIMINAL LAW ARTICLE; and**

(2) 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.

(c) (1) **(I)** The State shall notify the defendant in writing of the filing of a motion **BY THE STATE** under this section.

**(II) THE DEFENDANT SHALL NOTIFY THE STATE IN WRITING OF THE FILING OF A MOTION BY THE DEFENDANT UNDER THIS SECTION.**

(2) **(I)** The defendant may file a response to [the] A motion **FILED BY THE STATE** within 30 days after receipt of the notice required under this subsection or within the period of time that the court orders.

1                   **(II) THE STATE MAY FILE A RESPONSE TO A MOTION FILED BY**  
2 **THE DEFENDANT WITHIN 30 DAYS AFTER RECEIPT OF THE NOTICE REQUIRED**  
3 **UNDER THIS SUBSECTION OR WITHIN THE PERIOD OF TIME THAT THE COURT**  
4 **ORDERS.**

5           (d)   (1)   Before a hearing on a motion filed under this section, the victim or  
6 victim's representative shall be notified, as provided under § 11-104 or § 11-503 of this  
7 article.

8                   (2)   A victim or victim's representative has the right to attend a hearing on  
9 a motion filed under this section, as provided under § 11-102 of this article.

10          (e)   (1)   Except as provided in paragraph (2) of this subsection, the court shall  
11 hold a hearing on a motion filed under this section if the motion satisfies the requirements  
12 of subsection (b) of this section.

13                   (2)   The court may dismiss a motion without a hearing if the court finds  
14 that the motion fails to assert grounds on which relief may be granted.

15          (f)   (1)   In ruling on a motion filed under this section, the court, as the court  
16 considers appropriate, may:

17                           (i)   vacate the conviction or probation before judgment and discharge  
18 the defendant; or

19                           (ii)   deny the motion.

20                   (2)   The court shall state the reasons for a ruling under this section on the  
21 record.

22          (g)   **(1)**   The State in a proceeding under this section **BASED ON A MOTION**  
23 **FILED BY THE STATE** has the burden of proof.

24                   **(2) THE DEFENDANT IN A PROCEEDING UNDER THIS SECTION BASED**  
25 **ON A MOTION FILED BY THE DEFENDANT HAS THE BURDEN OF PROOF.**

26          (h)   An appeal may be taken by either party from an order entered under this  
27 section.

28          SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2020.