

10101706D

HOUSE BILL NO. 184

Offered January 13, 2010

Prefiled January 7, 2010

A *BILL to amend the Code of Virginia by adding a section numbered 19.2-9.2, relating to vacation of criminal conviction upon discovery of new evidence.*

Patron—Morrissey

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-9.2 as follows:

§ 19.2-9.2. Petition to vacate finding of guilt of convicted person.

Notwithstanding any rule of court or any other provision of law, any person convicted of a crime may, upon the discovery of previously unknown or unavailable evidence, petition jointly with the attorney for the Commonwealth in the district court or circuit court in which he was convicted to vacate the judgment of guilt.

The petitioners, in a complete and proper petition, shall allege the following: (i) the crime for which the petitioner was convicted; (ii) that the petitioner is actually innocent of the crime for which he was convicted; (iii) an exact description of the evidence supporting the allegation of innocence; (iv) that the evidence was not previously known or available to the petitioner or his trial attorney of record at the time the conviction became final in the trial court; (v) the date the new or unavailable evidence became known to the petitioners and the circumstances under which the new or unavailable evidence was discovered; (vi) that the new or unavailable evidence is such as could not by the exercise of due diligence have been discovered or obtained prior to entry of the final order of conviction by the court; and (vii) the reason or reasons the evidence will prove that no rational trier of fact could have found proof of guilt beyond a reasonable doubt.

When a complete and proper petition is filed, the court shall conduct an evidentiary hearing and, upon clear and convincing proof of all of the allegations in the petition and upon finding that no rational trier of fact could have found proof of guilt beyond a reasonable doubt, vacate the judgment of guilt and order the person's record expunged. However, if in the judgment of the court, the petition fails to state a claim, or if the assertions of previously unknown or unavailable evidence, even if true, would fail to qualify for relief under this section, the court may dismiss the petition summarily, without a hearing.

INTRODUCED

HB184