

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: SB823

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Morrissey

3. Committee: Senate Committee on the Judiciary

4. Title: Writs of actual innocence.

5. Summary: The proposed bill provides that a person who was convicted of a felony or who was adjudicated delinquent by a circuit court of an offense that would be a felony if committed by an adult may petition for a writ of actual innocence based on biological evidence or non-biological evidence regardless of the type of plea he entered at trial.

Under current law, such person may petition for either writ if he entered a plea of not guilty, and any person, regardless of the type of plea he entered at trial, may petition for such writ based on biological evidence if he is sentenced to death or convicted or adjudicated delinquent of murder or a felony for which the maximum punishment is imprisonment for life.

The proposed bill eliminates the provision that limits a petitioner to only one writ of actual innocence based on non-biological evidence for any conviction. In addition, the bill clarifies that the Attorney General may join a petition for a writ of actual innocence filed in connection with an adjudication of delinquency.

Lastly, the bill provides that the circuit court that entered the felony conviction or adjudication of delinquency has original jurisdiction over the writ and that the petitioner may appeal any final order denying such writ to the Court of Appeals.

6. Budget Amendment Necessary: Yes, Items 36, 40 and 57

7. Fiscal Impact Estimates: Preliminary (see Item #8)

8. Fiscal Implications: The proposed bill amends Virginia Code § 17.1-513 to establish circuit courts as having original jurisdiction for all writs of innocence based on biological or non-biological evidence. The bill eliminates (i) the requirement that the convicted person must have pled not guilty in order to petition for a writ of actual innocence and (ii) the limitation that a petitioner may only request one writ of actual innocence based on non-biological evidence for each conviction or adjudication of delinquency.

According to the Office of the Executive Secretary of the Supreme Court (“OES”), it is not possible to accurately determine the number of convicted persons expected to file petitions

seeking the writ provided for in the proposed bill for there is no comparative court process to use as a basis. However, OES states that best available information shows that a majority of persons found guilty for felony violations pled guilty prior to trial. The proposed bill would allow for these individuals, who were once ineligible, to petition for the writ and it would also give convicted persons the ability to seek multiple writs for the same conviction. OES anticipates these amendments will significantly increase the number of petitions filed for writs of actual innocence beyond the quantity the Supreme Court and Court of Appeals receives currently.

In addition, OES also anticipates a workload increase for circuit court clerks and circuit courts. However, the impact of the workload increase cannot be quantified at this time

The Court of Appeals would receive all appeals from a circuit court's decision regarding writs of actual innocence. On average, the Court of Appeals receives about 23 non-biological petitions per year and the Supreme Court receives 6 biological petitions per year. Using the approximate annual average of sentencing events (24,922) calculated from data compiled between 2001 to 2018, OES estimates the bill will result in a total of approximately 358 appeal filings per year in the Court of Appeals.

Petitions appealed from a decision rendered by the Court of Appeals would be taken up for consideration by the Supreme Court of Virginia. OES projects the proposed bill will result in the Supreme Court receiving approximately 128 appeals for writs of actual innocence.

This proposed bill will require additional support staff in order to process the additional caseload in approximately the same time as the Court's current caseload and to ensure the same level of quality of the Court's work product. Based on the best available information from OES, the fiscal impact for additional staffing for the Supreme Court and the Court of Appeals is estimated at \$863,619. The staffing cost breakdown is as follows:

- One attorney for the Supreme Court's Office of the Chief Staff Attorney (\$125,531)
- One additional position for Supreme Court's Clerk's Office (\$102,064)
- Three staff attorneys for Court of Appeals' Office of Chief Staff Attorney (\$323,010)
- One support staff for Court of Appeals' Office of Chief Staff Attorney (\$88,056)
- Two additional deputy clerks for Court of Appeals' Clerk's Office (\$162,394)
- One additional assistant clerk for Court of Appeals' Clerk's Office (\$62,564)

Given the expanded eligibility, the lower burden of proof, and the increased need for hearings under the Supreme Court's opinion in *Dennis v. Commonwealth*, 297 Va. 104 (2019), it is expected that there also will be additional costs to the Criminal Fund. Although it is not possible to quantify the impact, the types of additional costs to the Criminal Fund could include the following:

- Appointment of counsel;
- Court reporter fees;
- Transcript fees;
- Witness fees, including expert witnesses and out-of-state witnesses;

- Transportation costs for incarcerated petitioners; and
- Increased security personnel for hearings involving incarcerated petitioners

This proposed bill also is expected to have a fiscal impact on the Office of the Attorney General (“OAG”). The amendments to the statutes covering biological writs would increase the number of petitions which would in turn increase the number of cases to which the OAG would need to respond in the Court of Appeals and/or in the Supreme Court of Virginia. According to the OAG, drafting responses in cases involving guilty pleas are more time-intensive because of the lack of a lower court record. Based on best available information, the fiscal impact on the OAG is estimated to be \$709,885 for five positions. This funding would cover the cost of three Assistant Attorney General II positions, one investigator, and one paralegal. The OAG also notes that there may be a need to retain expert witnesses (to the extent the Department of Forensic Science cannot assist); however, the cost for expert witness assistance cannot be quantified at this time.

9. Specific Agency or Political Subdivisions Affected: Courts and Office of the Attorney General, and Circuit Court Clerks

10. Technical Amendment Necessary: No

11. Other Comments: None