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SENATE BILL NO. 777

Offered January 10, 2018

Prefiled January 10, 2018

A BILL to amend the Code of Virginia by adding in Title 19.2 a chapter numbered 19.4, consisting of a section numbered 19.2-327.15, relating to post-conviction relief; previously admitted scientific evidence.

Patron—Stanley

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 in Title 19.2 a chapter numbered 19.4, consisting of a section numbered 19.2-327.15, as follows:

CHAPTER 19.4.

WRIT OF EVIDENTIARY INSUFFICIENCY.

§ 19.2-327.15. Previously admitted forensic scientific evidence undermined; vacation of conviction.

A. As used in this chapter, unless the context requires a different meaning:

"Forensic science" means the application of scientific or technical practices to the recognition, collection, analysis, and interpretation of evidence for criminal law.

"Forensic scientific evidence" includes scientific or technical knowledge; a testifying forensic analyst's or expert's scientific or technical knowledge or opinion; reports and testimony offered by experts or forensic analysts; scientific standards and guidelines; and a scientific method or technique upon which the relevant forensic scientific evidence is based.

"Scientific knowledge" includes the knowledge on which of the general scientific community relies and all fields of scientific knowledge on which those fields or disciplines rely.

B. Notwithstanding any other provision of law or rule of court, upon a petition of a person who was convicted of a felony upon a plea of not guilty, a plea of guilty nolo contendere, or an Alford plea, or who was adjudicated delinquent upon a plea of not guilty, a plea of guilty nolo contendere, or an Alford plea by a circuit court of an offense that would be a felony if committed by an adult, a circuit court that has received a petition in accordance with subsection C shall have the authority to vacate a conviction or adjudication of delinquency under this chapter.

C. The petitioner shall file the petition with the circuit court that entered the original judgment order of conviction or adjudication of delinquency complained of in the petition or, if the original judgment order was entered by a district court, the circuit court for the locality wherein the district court sits.

D. The petitioner shall allege in the petition categorically and with specificity, under oath, the following: (i) that the petitioner did not commit the offense for which the petitioner was convicted or adjudicated delinquent; (ii) an exact description of the forensic scientific evidence supporting the allegation that the petitioner did not commit the offense; (iii) specific facts indicating that relevant forensic scientific evidence was not available at the time of petitioner's conviction or adjudication of delinquency, or undermines forensic scientific evidence presented at the petitioner's conviction or adjudication of delinquency; (iv) that the forensic scientific evidence is material and, had it been presented at conviction or adjudication of delinquency, there is a reasonable likelihood that the petitioner would not have been convicted or adjudicated delinquent.

E. Such petition shall contain all relevant allegations of facts that are known to the petitioner at the time of filing; shall be accompanied by all relevant documents, affidavits, and test results; and shall enumerate and include all relevant previous records, applications, petitions, and appeals and their dispositions. The petition shall be filed on a form provided by the Supreme Court. If the petitioner fails to submit a completed form, the circuit court may dismiss the petition or return the petition to the petitioner pending the completion of such form. Any false statement in the petition, if such statement is knowingly or willfully made, shall be a ground for prosecution of perjury as provided for in § 18.2-434.

F. The petitioner shall serve a copy of the petition on the attorney for the Commonwealth for the jurisdiction where the conviction or adjudication of delinquency occurred. The attorney for the Commonwealth shall have 30 days after being served with a copy of the petition in which to file a response to the petition.

G. The court may hold a hearing on the petition or, if the allegations contained in the petition can be fully determined on the basis of the record of the case resulting in the petitioner's conviction or adjudication of delinquency, the court may make a determination on the basis of the record of the case without holding a hearing. However, the court shall hold a hearing upon request of the petitioner or the

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59 attorney for the Commonwealth.

60 In making a determination as to whether the relevant forensic scientific evidence was not
61 ascertainable through the exercise of reasonable diligence before the date of or during the conviction or
62 adjudication of delinquency, the court shall consider whether the relevant forensic scientific evidence
63 has changed since (i) the applicable trial or plea date or dates through the date of an initial petition or
64 (ii) the date on which the initial petition or a previously considered petition, as applicable, was filed
65 through the date of a subsequent petition.

66 H. Upon consideration of the petition, the response by the Commonwealth, previous records of the
67 case, and any evidence presented at the hearing, the court shall (i) dismiss the petition for failure to
68 establish allegations sufficient to justify vacating the petitioner's conviction or adjudication of
69 delinquency or (ii) upon a finding by a preponderance of the evidence that the petitioner has proven all
70 of the allegations contained subsection C, grant the writ and vacate the petitioner's conviction or
71 adjudication of delinquency, subject to retrial in the discretion of the Commonwealth. The burden of
72 proof in a proceeding brought pursuant to this section shall be upon the petitioner.

73 I. In any petition filed pursuant to this chapter that is not summarily dismissed, the petitioner is
74 entitled to representation by counsel subject to the provisions of Articles 3 (§ 19.2-157 et seq.) and 4
75 (§ 19.2-163.3 et seq.) of Chapter 10.

76 J. A petition filed pursuant to this chapter shall not constitute the sole grounds to delay setting an
77 execution date pursuant to § 53.1-232.1 or to grant a stay of execution that has been set pursuant to
78 clause (iii) or (iv) of § 53.1-232.1 or to delay or stay any other appeals following conviction or
79 adjudication of delinquency, or petitions to any court; however, any evidence or arguments raised in
80 such a petition may form the basis to issue a stay of execution.

81 K. Nothing in this chapter creates any liabilities for an expert who repudiates his original opinion
82 provided at a hearing or trial or whose opinion has been undermined by later scientific research or
83 technological advancements.