



Joint Motion for Writ of Actual Innocence

HB 1919

September 3, 2013

Overview



- Study Authorization
- Background
- Number of Petitions Filed
 - Biological
 - Nonbiological
- Policy Considerations

Study Authorization



- House Bill 1919, introduced by Delegate Charniele Herring during the 2013 Regular Session of the General Assembly, sought to allow a defendant and the Commonwealth's Attorney jointly to file a petition for a writ of actual innocence.
- HB 1919 was referred to the Crime Commission by the House Courts of Justice Committee for study.

Background



- Va. Code § 19.2-327.2 authorizes the Supreme Court of Virginia to issue a writ of actual innocence to a person who can prove, through biological evidence, that they are innocent of the crime for which they were convicted.
- Va. Code § 19.2-327.10 authorizes the Virginia Court of Appeals to issue a writ of actual innocence to a person who can prove, through nonbiological evidence, that they are innocent of the crime for which they were convicted.

Background



- HB 1919 would create two new Va. Code sections:
 - § 19.2-327.2:1
 - § 19.2-327.10:1
- Both would allow a Commonwealth's Attorney to join a petition for a writ of actual innocence.
- If a joint petition were filed, the prisoner could then apply to the circuit court to be released on bond, pending a ruling from the appellate court on the writ.
 - The change would apply to both biological and nonbiological writs of actual innocence.

Background



- The Commonwealth's Attorney would not be able to *initiate* a writ.
- The bond hearing would be heard by the circuit court where the conviction occurred.

Petitions Based on Biological Evidence



- Biological evidence cases originate in the Supreme Court.
- Since July 1, 2002:
 - Total petitions filed: 49
 - Total petitions refused: 39
 - Total petitions granted: 4
 - Other (dismissed, withdrawn): 6

Petitions Based on Nonbiological Evidence



- Nonbiological evidence cases originate in the Court of Appeals.
- Since July 1, 2004:
 - Total petitions filed: 243
 - Total petitions dismissed: 235
 - Total petitions granted: 3
 - Withdrawn: 1
 - Pending: 4

Policy Considerations



- Should Commonwealth's Attorneys be allowed to join in petitions for writs of actual innocence, thereby allowing incarcerated persons to receive a bond hearing, pending a decision on the writ?
- Should the bond hearing be held in circuit court, or the court where the petition was filed?
 - If circuit court, then Va. Code § 17.1-513 would need to be amended.



Discussion