

In accordance with Article II, Section 17 of the Maryland Constitution, I have today vetoed House Bill 1476.

This bill amends the provisions for post-conviction review to enable any person convicted of a crime to institute review proceedings based on newly discovered evidence that was not, by due diligence, discoverable during the period of time specified in the Maryland Rules for motions for a new trial.

A careful review of this bill indicates clearly the serious impact which it may have on the judicial branch of government. During fiscal year 1979 alone, 441 post-conviction cases were filed in the circuit courts pursuant to the current post-conviction statute. House Bill 1476 will impact severely upon that trend.

The bill creates, based on newly discovered evidence, a substantive right of review in cases currently excluded under the post-conviction act. House Bill 1476 will involve a hearing to enable the introduction of new evidence and a determination of whether or not, by due diligence, the evidence was discoverable at an earlier time.

Although the effective date of the bill is July 1, 1978, Section 2 of the bill specifies a limited retroactive effect with respect to applications for review (i) that were based on newly discovered evidence and (ii) were denied after January 1, 1978, (iii) if a timely appeal of the denial was filed and, (iv) on the date of passage of the bill, the appeal is still pending. While the number of cases that will actually meet these four criteria is likely quite small, a cursory review of the Maryland Reports for the period of time immediately following adoption of the current Act demonstrates that a plethora of cases may be filed in order to determine if an additional review is available. It can be anticipated that every offender currently incarcerated, or on probationary status, will file an application for review, and if denied, will file an application for leave to appeal. The application may be filed years after the original conviction. This raises the spectre of relitigating cases in which the evidence or the witnesses are no longer available.

However, the burdens of House Bill 1476 do not impact solely on the judicial branch of government. Other elements of the criminal justice system will be affected. Representation by counsel in these cases may in large measure become the responsibility of the Public Defender's Office. And in instances where the petitioner is unable to pay costs, this responsibility must be met by the political subdivision where judgment was rendered. The Division of Correction also may be expected to incur additional expenses in the implementation of this measure, such as those incurred in transporting the petitioner to a hearing.