

Warner Aims to Lift Limit on Felons' Appeals

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Virginia Gov. Mark R. Warner (D) asked the General Assembly on Thursday to accept a change in a bill it passed so that people convicted of felonies would have a greater opportunity to appeal their convictions based on new evidence that they are innocent.

Warner praised the legislators for passing the bill, which would remove Virginia's 21-day limit on the opportunity to present new evidence of innocence after conviction. But the governor asked legislators to remove a provision in the bill that gives felons only one chance to do that.

On his last day to deal with legislation passed during the 2004 General Assembly session, Warner also signed legislation to let lawmakers meet privately for political caucuses during the legislative session and made a minor change to a bill that would allow state-run liquor stores to remain open on Sundays in Northern Virginia and some other parts of the state.

Warner plans to announce his actions on other bills Friday. Those include a provision banning gay marriages and another prohibiting the killing of a fetus.

Lawmakers will get a chance to accept or reject Warner's actions at a special, one-day session of the legislature Wednesday. Meanwhile, the Senate and House of Delegates continue a special session to resolve their dispute over a new state budget.

The Democratic governor and a bipartisan group of lawmakers have pushed for an end to the state's 21-day limit on the introduction of new evidence following felony convictions.

A law passed in 2002 allowed convicts to present exculpatory DNA evidence that emerged after the three-week period.

A bill passed by the House and Senate this year would go further, ending the time limit for all new evidence. That would allow inmates to bring forward new information about fingerprints, witness statements or ballistics.

But the final bill included the provision that allows new evidence to be presented only once. Warner's proposed change returns the bill to the form endorsed by the state's Crime Commission.

"This bill represents an extraordinary, and long overdue, step forward for the commonwealth," Warner said in a statement. But, he added, "it makes no sense to eliminate one arbitrary deadline on justice -- a 21-day limit -- and impose yet another -- a limit of one petition per conviction."

The governor's proposed elimination of that provision was hailed by defense lawyers, who said that allowing felons only one opportunity to present new evidence could prevent some people from proving their innocence.

John Kiyonaga, a criminal defense lawyer in Alexandria, said there are many prisoners who might make an ill-informed claim of innocence without consulting an attorney. Under the current legislation, that would prohibit them from making another, more reasoned claim later.

"The vast majority of these petitions are done without the benefit of counsel," Kiyonaga said. "There is going to be a close to irresistible impulse on the part of inmates to file quickly."

James G. Connell III, a criminal defense lawyer from Fairfax, agreed. He called the removal of the one-time-only provision "important."

But Del. David B. Albo (R-Fairfax), who helped craft the legislation passed this year, said lawmakers are concerned about the possibility that courts will be flooded with claims of innocence if there is no limit.

"These guys don't have much to do," Albo said of prisoners. "If you allow them more than one bite at the apple, it's just going to be a series of petitions."

Albo, a lawyer, said he thought he and other Republicans will "muster the votes" to defeat Warner's proposed amendments.

"Remember, these guys have already had a preliminary hearing, a full trial. They most likely had lawyers. They have been afforded all the protections of the American judicial system, which bends over backwards to accommodate people," Albo said. "After all that, we are giving them another bite at the apple. Our point is, take your best shot."

Connell said he does not believe the court system would be flooded with frivolous claims by prisoners if the governor gets his way.

"The court system does have protections against litigating the same issue over and over again," Connell said. "It would have to be new evidence to qualify under the statute. Removal of that provision is important. "

But both Connell and Kiyonaga said they believe that even with the one-time restriction, the new law ending the 21-day time limit is crucial to making sure the state does not imprison innocent people.

Kiyonaga, who has a case in which videotaped evidence of innocence surfaced more than a year after the trial, said he is glad there appears to be consensus among Virginia's elected leaders to do something about the time limit.

"Clearly, the bill as it stands is a huge step forward," Kiyonaga said. "The proviso at issue is a concern. It should be a concern. But I'm just happy that [Warner] and the legislators have had the political courage to push the matter."

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