

## ***Ensuring Certain Justice***

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Marvin Lamont Anderson spent 15 years in a Virginia prison for a rape that DNA evidence now proves he did not commit. Anderson received a full pardon from Governor Warner last month, and the assailant who confessed to the rape is on trial.

Our criminal justice system with its myriad of protections does a superb job of ensuring that one is innocent until proven guilty. Unfortunately in some very emotional and inflammatory cases when the pressure is on for a conviction, circumstantial evidence can result in the conviction of an innocent person.

New scientific discoveries are arming police and investigators with different methods to gather and evaluate evidence. Most notably, the use of DNA in forensics work has enabled prosecutors to gain evidence that previously was not available and to close cases. In previous cases, like Marvin Lamont Anderson's, DNA has been used to show that a person convicted in the past was actually innocent. Virginia was one of the first states to use DNA evidence in criminal trials, but Virginia has been one of the most difficult states in which to introduce new evidence after a conviction.

On Election Day, November 5, 2002, voters in Virginia will be asked to approve a constitutional amendment that will allow the Virginia Supreme Court to consider new evidence in certain cases. The ballot question will read:

"Shall the Constitution of Virginia be amended to permit the Supreme Court to consider, as part of its original jurisdiction, claims of actual innocence presented by convicted felons in the cases and manner provided by the General Assembly?"

This amendment concerns cases in which a person is convicted of a felony but is later able to prove his "actual innocence" because of new scientific or DNA evidence that is discovered after his conviction. The new evidence shows that the person did not commit the felony and was wrongly convicted.

The amendment provides that the General Assembly will provide by law for the details of what claims may be filed and the procedures that must be followed to file these claims. The General Assembly has enacted a law to implement this proposed amendment. That law will take effect November 15, 2002. [Code of Virginia, Title 19.2, Ch. 19.2, §§ 19.2-327.2 through 19.2-327.6. Issuance of Writ of Actual Innocence.]

In brief, as explained on the State Board of Elections website ([www.sbe.state.va.us](http://www.sbe.state.va.us)), that law spells out in detail when and how a convicted felon may petition the Supreme Court to issue a writ of actual innocence. The petition must claim that the petitioner is actually innocent of the crime for which he was convicted, set out an exact description of the human biological or DNA evidence and testing supporting his innocence, and explain that the evidence was not available when the petitioner was convicted. The Supreme Court may dismiss or grant the petition and may overturn or modify the conviction after it considers the petition and the Commonwealth's response, the previous records of the case, and other evidence it may require.

We need swift and certain justice. At the same time we need the safeguards to ensure that innocent persons are not wrongfully convicted of crimes. The Amendment is an important improvement to Virginia's criminal justice system. I hope you will join me in voting for it.