

Bill would extend deadline to appeal

Pa. measure would give defendants more time to present new evidence of their innocence.

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Decrying the unfairness of stringent timetables that prevent convicted defendants from presenting new evidence of their innocence, the chairman of the Pennsylvania Senate Judiciary Committee has introduced legislation to allow appeals at any time in cases where credible evidence has

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been discovered.

State Sen. Stewart J. Greenleaf, a Montgomery County Republican whose party dominates both

houses of the legislature, said his bill would also extend from 60 days to one year the deadline for a defendant to file an appeal after unearthing new evidence of innocence.

The current state law, known as the 60-day rule — which Greenleaf helped formulate — is one of the toughest in the nation and makes an exception only for new evidence based on DNA testing.

In a memo to fellow senators, Greenleaf cited the case of Milton Scarborough, described in detail in an Inquirer story in April. For 33 years, Scarborough has been imprisoned for a triple murder.

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der committed near Williamsport — even though all four prosecution witnesses recanted their testimony in affidavits and two others identified another person whom they said confessed to the crime.

The Inquirer story drew on an investigation by Centurion Ministries in Princeton.

Greenleaf said that in cases such as Scarborough's, where credible evidence of factual innocence surfaces, "our law must give the courts an opportunity to at least review the evidence... and not be forced to dismiss what may be a very valid claim simply because of the expiration of a time limit."

"This is about justice," said Greenleaf, who was a prosecutor in Montgomery County for seven years. "The key is in crafting language that would provide the right amount of latitude to allow for serious appeals and screen out frivolous appeals."

Greenleaf said that he expected his committee to consider the amendments when the legislature reconvenes in the fall.

Despite the meticulous case assembled by Centurion, Scarborough's most recent appeal was rejected by Common Pleas Court Judge Robert E. Dalton Jr., who invoked the 60-day rule as the basis for his decision.

Even before his conviction in November 1977, Scarborough, now 71, insisted that he

had nothing to do with the murders of Claire Kepner and her two children. Before his trial, Scarborough rejected an offer from the Lycoming County prosecutor to testify against the other defendants in exchange for a promise that he would not have to serve any time in prison.

The reaction to Greenleaf's proposals ranged from thoughtful skepticism among prosecutors to cautious optimism from defense lawyers.

Centurion's founder, James C. McCloskey, said the revisions were "breathtaking. That's as fair and clean and clear as you can get. It really opens the door for people who are factually innocent to get their convictions reversed."

John T. Rago, a law professor at Duquesne University who chairs the state's Commission to Study Wrongful Convictions, endorsed both proposals.

Wrongful convictions, Rago said, are a reality of the criminal justice system, and while relatively rare, "we'd be foolish to think that these errors don't happen — even when a case has been perfectly tried."

The key, Rago said, is striking a balance among the competing interests of the victims and their families, the societal interest in the integrity of the courts, and the rights of the defendants.

"If there's a basis for someone to assert an actual inno-

cence claim," Rago said, "we have to place a value on that."

Greenleaf, he said, "stands for doing the right thing. He's been on all sides of these issues, and if anyone understands the importance of guaranteeing integrity in our criminal justice system, he does."

Prosecutors around the state, who in the early 1990s — before the 60-day rule was adopted — were deluged with frivolous post-conviction appeals, expressed reservations about Greenleaf's proposals but also said there was ample opportunity for discussions.

Dauphin County prosecutor Edward M. Marsico Jr., president of the state district attorney's association, said he was concerned that extending the 60-day rule by 10 months would again cause an avalanche of nuisance appeals. The result, he said, would exacerbate the pain of crime victims and their families, and delay any sense of "closure."

In the case of credible claims of wrongful convictions, he said, prosecutors around the state could waive the 60-day rule and have the case heard by a judge. Marsico said he had done that in two cases in his county.

Otherwise, he said, ending the time limits "opens the floodgates as to who decides

whether there's 'credible evidence.' If one witness recants after 15 years, as often happens, is that really credible evidence?"

Despite his reservations, Marsico said he believed there was "room to discuss the 60-day requirement." Greenleaf said that he had worked with Marsico in the past and that Marsico "understands that fairness is good law enforcement and good justice."

He said he planned over the summer to discuss the amendments with Marsico and other prosecutors in an effort to get their input to produce the best possible legislation.

Lawyer David Rudovsky, who, together with Leonard N. Sosnov, represents Scarborough in his ongoing appeal efforts, said that if the amendments pass, "it will help cure a substantial defect in Pennsylvania criminal justice law."

Scarborough's case, he said, is a "very good example of that unfairness." With the time bars removed, Rudovsky said, "he would have his day in court and present the evidence that shows he is innocent."

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