

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2678

BY DELEGATE STEELE

[Introduced February 23, 2021; Referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §53-4A-1 of the Code of West Virginia, 1931, as amended, relating
 2 to the use of scientific evidence in a trial; providing for a limitation on when a hearing or
 3 trial may be determined finally adjudicated when relevant forensic scientific evidence was
 4 not able to be presented at the time of trial; providing for a limitation on when a hearing or
 5 trial may be determined finally adjudicated when relevant forensic scientific evidence
 6 exists that undermines the evidence used by the state at trial; providing for a requirement
 7 that there must be a reasonable probability that the relevant forensic scientific evidence
 8 would have changed the outcome of the trial; providing for definitions; providing for a
 9 contention or contentions may not be considered to have been waived when relevant
 10 forensic scientific evidence exists that was not able to be presented at the time of trial;
 11 providing for a contention or contentions may not be considered to have been waived
 12 when relevant forensic scientific evidence exists that undermines the evidence relied upon
 13 by the State at trial; providing for a reasonable probability that the relevant forensic
 14 evidence would have changed the outcome of the trial; providing for no additional liabilities
 15 for an expert who repudiates his or her original opinion or whose opinion is later
 16 undermined by scientific or technological advancements; and providing for other technical
 17 changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.

§53-4A-1. Right to habeas corpus for post-conviction review; jurisdiction; when contention deemed finally adjudicated or waived; effect upon other remedies.

1 (a) Any person convicted of a crime and incarcerated under sentence of imprisonment
 2 therefor who contends that there was such a denial or infringement of his or her rights as to render
 3 the conviction or sentence void under the Constitution of the United States or the Constitution of
 4 this state, or both, or that the court was without jurisdiction to impose the sentence, or that the
 5 sentence exceeds the maximum authorized by law, or that the conviction or sentence is otherwise

6 subject to collateral attack upon any ground of alleged error heretofore available under the
7 common law or any statutory provision of this state, may, without paying a filing fee, file a petition
8 for a writ of habeas corpus ad subjiciendum, and prosecute ~~the same~~ it, seeking release from
9 such illegal imprisonment, correction of the sentence, the setting aside of the plea, conviction and
10 sentence, or other relief, if and only if ~~such~~ the contention or contentions and the grounds in fact
11 or law relied upon in support thereof have not been previously and finally adjudicated or waived
12 in the proceedings which resulted in the conviction and sentence, or in a proceeding or
13 proceedings on a prior petition or petitions filed under the provisions of this article, or in any other
14 proceeding or proceedings which the petitioner has instituted to secure relief from such conviction
15 or sentence. Any such petition shall be filed with the clerk of the Supreme Court of Appeals, or
16 the clerk of any circuit court, said Supreme Court of Appeals and all circuit courts of this state
17 having been granted original jurisdiction in habeas corpus cases by the Constitution of this state,
18 or with the clerk of any court of record of limited jurisdiction having criminal jurisdiction in this
19 state. Jurisdiction is hereby conferred upon ~~each and~~ every such court of record of limited
20 jurisdiction having criminal jurisdiction (hereinafter for convenience of reference referred to simply
21 as a "statutory court") to refuse or grant writs of habeas corpus ad subjiciendum in accordance
22 with the provisions of this article and to hear and determine any contention or contentions and to
23 pass upon all grounds in fact or law relied upon in support thereof in any proceeding on any such
24 writ made returnable thereto in accordance with the provisions of this article. All proceedings in
25 accordance with this article shall be civil in character and shall under no circumstances be
26 regarded as criminal proceedings or a criminal case.

27 (b)(1) For the purposes of this article, a contention or contentions and the grounds in fact
28 or law relied upon in support thereof shall be ~~deemed~~ determined to have been previously and
29 finally adjudicated only when at some point in the proceedings which resulted in the conviction
30 and sentence, or in a proceeding or proceedings on a prior petition or petitions filed under the
31 provisions of this article, or in any other proceeding or proceedings instituted by the petitioner to

32 secure relief from his or her conviction or sentence, there was a decision on the merits thereof
33 after a full and fair hearing thereon and the time for the taking of an appeal with respect to ~~such~~
34 the decision has not expired or has expired, as the case may be, or the right of appeal with respect
35 to such decision has been exhausted, unless said decision upon the merits is clearly wrong.

36 (2) For the purposes of this article, and notwithstanding any other provision of this article,
37 a contention or contentions may not be considered to be previously and finally adjudicated when
38 either relevant forensic scientific evidence exists (A) that was not available to be offered by a
39 petitioner at the time of the petitioner's conviction; or, (B) which undermines forensic scientific
40 evidence relied on by the state at trial; and there is a reasonable probability there would be a
41 different outcome at trial. "Forensic science" is the application of scientific or technical practices
42 to the recognition, collection, analysis, and interpretation of evidence for criminal and civil law or
43 regulatory issues. "Forensic scientific evidence" includes scientific or technical knowledge; a
44 testifying forensic analyst's or expert's scientific or technical knowledge or opinion; reports,
45 testimony, or both offered by experts or forensic analysts; scientific standards; or a scientific
46 method or technique upon which the relevant forensic scientific evidence is based. "Scientific
47 knowledge" includes the knowledge of the general scientific community and all field of scientific
48 knowledge on which those fields or disciplines rely and may not be limited to practitioners or
49 proponents of a particular scientific or technical field or discipline.

50 (c) For the purposes of this article, a contention or contentions and the grounds in fact or
51 law relied upon in support thereof shall be ~~deemed~~ considered to have been waived when the
52 petitioner could have advanced, but intelligently and knowingly failed to advance, such contention
53 or contentions and grounds before trial, at trial, or on direct appeal (whether or not ~~said~~ the
54 petitioner actually took an appeal), or in a proceeding or proceedings on a prior petition or petitions
55 filed under the provisions of this article, or in any other proceeding or proceedings instituted by
56 the petitioner to secure relief from his or her conviction or sentence, unless ~~such~~ the contention
57 or contentions and grounds are such that, under the Constitution of the United States or the

58 Constitution of this state, they cannot be waived under the circumstances giving rise to the alleged
59 waiver. When any such contention or contentions and grounds could have been advanced by the
60 petitioner before trial, at trial, or on direct appeal (whether or not ~~said~~ the petitioner actually took
61 an appeal), or in a proceeding or proceedings on a prior petition or petitions filed under the
62 provisions of this article, or in any other proceeding or proceedings instituted by the petitioner to
63 secure relief from his or her conviction or sentence, but were not in fact so advanced, there shall
64 be a rebuttable presumption that the petitioner intelligently and knowingly failed to advance ~~such~~
65 the contention or contentions and grounds. For the purposes of this article, and notwithstanding
66 any other provision of this article, a contention or contentions may not be considered to have been
67 waived when either relevant forensic scientific evidence exists that was not available to be offered
68 by a petitioner at the time of the petitioner's conviction or which undermines forensic scientific
69 evidence relied on by the state at trial; and there is a reasonable probability there would be a
70 different outcome at trial.

71 (d) This section does not create additional liabilities, beyond those already recognized, for
72 an expert who repudiates his or her original opinion provided at a hearing or trial or whose opinion
73 has been undermined by later scientific research or technological advancements.

74 ~~(d)~~(e) For the purposes of this article, and notwithstanding any other provisions of this
75 article, no such contention or contentions and grounds shall may be ~~deemed~~ considered to have
76 been previously and finally adjudicated or to have been waived where, subsequent to any decision
77 upon the merits thereof or subsequent to any proceeding or proceedings in which ~~said~~ the
78 question otherwise may have been waived, any court whose decisions are binding upon the
79 Supreme Court of Appeals of this state or any court whose decisions are binding upon the lower
80 courts of this state holds that the Constitution of the United States or the Constitution of West
81 Virginia, or both, impose upon state criminal proceedings a procedural or substantive standard
82 not theretofore recognized, if and only if ~~such~~ the standard is intended to be applied retroactively
83 and would thereby affect the validity of the petitioner's conviction or sentence.

84 ~~(e)~~(f) The writ of habeas corpus ad subjiciendum provided for in this article is not a
85 substitute for nor does it affect any remedies which are incident to the criminal proceedings in the
86 trial court or any remedy of direct review of the conviction or sentence, but ~~such~~ the writ
87 comprehends and takes the place of all other common law and statutory remedies, including, but
88 not limited to, the writ of habeas corpus ad subjiciendum provided for in §53-4-1 *et seq.* of this
89 code, which have heretofore been available for challenging the validity of a conviction or sentence
90 and shall be used exclusively in lieu thereof: *Provided*, That nothing contained in this article shall
91 may operate to bar any proceeding or proceedings in which a writ of habeas corpus ad
92 subjiciendum is sought for any purpose other than to challenge the legality of a criminal conviction
93 or sentence of imprisonment therefor. A petition for a writ of habeas corpus ad subjiciendum in
94 accordance with the provisions of this article may be filed at any time after the conviction and
95 sentence in the criminal proceedings have been rendered and imposed and the time for the taking
96 of an appeal with respect thereto has expired or the right of appeal with respect thereto has been
97 exhausted.

NOTE: The purpose of this bill is to provide for a limitation on when a hearing or trial may be determined finally adjudicated when relevant forensic scientific evidence was not able to be presented at the time of trial, and, providing for a limitation on when a hearing or trial may be considered finally adjudicated when relevant forensic scientific evidence exists that undermines the evidence used by the state at trial.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.