

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2689

BY DELEGATE HIGGINBOTHAM

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

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §53-4-14, relating to scientific evidence that was not available to be offered by
 3 a convicted person at the convicted person’s trial or contradicts scientific evidence relied
 4 on by the State at trial; authorizing a court to grant a convicted person relief on an
 5 application for a writ of habeas corpus if the methods used to convict are determined to
 6 be outdated or false, such as bad forensic methods; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. HABEAS CORPUS.

§53-4-14. Procedure Related to Certain Scientific Evidence; Effective Date.

1 This article applies to relevant scientific evidence that was not available to be offered by
 2 a convicted person at the convicted person’s trial or contradicts scientific evidence relied on by
 3 the state at trial. This article authorizes a court to grant a convicted person relief on an application
 4 for a writ of habeas corpus if the convicted person files an application containing specific facts
 5 indicating that:

6 (a) Relevant scientific evidence is currently available and was not available at the time of
 7 the convicted person’s trial because the evidence was not ascertainable through the exercise of
 8 reasonable diligence by the convicted person before the date of or during the convicted person’s
 9 trial; and

10 (b) The scientific evidence would be admissible under the West Virginia Rules of Evidence
 11 at a trial held on the date of the application; and

12 (c) The court makes the findings described by sections (a) and (b) above and also finds
 13 that, had the scientific evidence been presented at trial, on the preponderance of the evidence
 14 the person would not have been convicted.

15 This section shall apply when a claim or issue could not have been presented previously
 16 in an original application or in a previously considered application if the claim or issue is based on
 17 relevant scientific evidence that was not ascertainable through the exercise of reasonable

18 diligence by the convicted person on or before the date on which the original application or a
19 previously considered application, as applicable, was filed.

20 The court, in making a finding as to whether relevant scientific evidence was not
21 ascertainable through the exercise of reasonable diligence on or before a specific date, must
22 consider whether the scientific knowledge or method on which the relevant scientific evidence is
23 based has changed since:

24 (1) The applicable trial date or dates, for a determination made with respect to an original
25 application; or

26 (2) The date on which the original application or a previously considered application, as
27 applicable, was filed, for a determination made with respect to a subsequent application.

28 Further, this section provides that the change in law made by this act applies only to an
29 application for a writ of habeas corpus filed on or after the effective date of this act. An application
30 for a writ of habeas corpus filed before the effective date of this act is governed by the law in effect
31 at the time the application was filed, and the former law is continued in effect for that purpose.

32 The effective date for this article shall be September 1, 2021.

NOTE: The purpose of this bill is to grant convicted criminals the right to a retrial if the scientific methods used to convict them are later determined to be outdated or false, such as bad forensic methods.

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