

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**ENROLLED**

**House Bill 2888**

BY DELEGATE HIGGINBOTHAM

[Passed April 2, 2021; in effect ninety days from passage.]

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1 AN ACT to amend and reenact §53-4A-1 of the West Virginia Code, 1931, as amended, relating  
2 to clarifying when a contention is adjudicated; defining forensic scientific evidence; and  
3 providing that no additional liabilities are created.

*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, seeking release from such  
9 illegal imprisonment, correction of the sentence, the setting aside of the plea, conviction and  
10 sentence, or other relief, if and only if such contention or contentions and the grounds in fact or  
11 law relied upon in support thereof have not been previously and finally adjudicated or waived in  
12 the proceedings which resulted in the conviction and sentence, or in a proceeding or proceedings  
13 on a prior petition or petitions filed under the provisions of this article, or in any other proceeding  
14 or proceedings which the petitioner has instituted to secure relief from such conviction or  
15 sentence. Any such petition shall be filed with the clerk of the Supreme Court of Appeals, or the  
16 clerk of any circuit court, said Supreme Court of Appeals and all circuit courts of this state having  
17 been granted original jurisdiction in habeas corpus cases by the Constitution of this state, or with  
18 the clerk of any court of record of limited jurisdiction having criminal jurisdiction in this state.  
19 Jurisdiction is hereby conferred upon each and every such court of record of limited jurisdiction

20 having criminal jurisdiction (hereinafter for convenience of reference referred to simply as a  
21 “statutory court”) to refuse or grant writs of habeas corpus ad subjiciendum in accordance with  
22 the provisions of this article and to hear and determine any contention or contentions and to pass  
23 upon all grounds in fact or law relied upon in support thereof in any proceeding on any such writ  
24 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) For the purposes of this article, a contention or contentions and the grounds in fact or  
28 law relied upon in support thereof shall be deemed to have been previously and finally adjudicated  
29 only when at some point in the proceedings which resulted in the conviction and sentence, or in  
30 a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article,  
31 or in any other proceeding or proceedings instituted by the petitioner to secure relief from his or  
32 her conviction or sentence, there was a decision on the merits thereof after a full and fair hearing  
33 thereon and the time for the taking of an appeal with respect to such decision has not expired or  
34 has expired, as the case may be, or the right of appeal with respect to such decision has been  
35 exhausted, unless said decision upon the merits is clearly wrong.

36 (1) For purposes of this article, and notwithstanding any other provisions of this article, a  
37 contention or contentions shall not be deemed to be previously and finally adjudicated when either  
38 relevant forensic scientific evidence exists that was not available to be offered by a petitioner at  
39 the time of the petitioner’s conviction or which undermines forensic scientific evidence relied on  
40 by the state at trial; and there is a reasonable probability there would be a different outcome at  
41 trial.

42 (2) For purposes of this section:

43 (A) “Forensic science” is the application of scientific or technical practices to the  
44 recognition, collection, analysis, and interpretation of evidence for criminal and civil law or  
45 regulatory issues.

46 (B) "Forensic scientific evidence" shall include scientific or technical knowledge; a  
47 testifying forensic analyst's or expert's scientific or technical knowledge or opinion; reports and/or  
48 testimony offered by experts or forensic analysts; scientific standards; or a scientific method or  
49 technique upon which the relevant forensic scientific evidence is based.

50 (C) "Scientific knowledge" shall be defined broadly to include the knowledge of the general  
51 scientific community and all fields of scientific knowledge on which those fields or disciplines rely  
52 and shall not be limited to practitioners or proponents of a particular scientific or technical field or  
53 discipline.

54 (c) For the purposes of this article, a contention or contentions and the grounds in fact or  
55 law relied upon in support thereof shall be deemed to have been waived when the petitioner could  
56 have advanced, but intelligently and knowingly failed to advance, such contention or contentions  
57 and grounds before trial, at trial, or on direct appeal (whether or not said petitioner actually took  
58 an appeal), or in a proceeding or proceedings on a prior petition or petitions filed under the  
59 provisions of this article, or in any other proceeding or proceedings instituted by the petitioner to  
60 secure relief from his or her conviction or sentence, unless such contention or contentions and  
61 grounds are such that, under the Constitution of the United States or the Constitution of this state,  
62 they cannot be waived under the circumstances giving rise to the alleged waiver. When any such  
63 contention or contentions and grounds could have been advanced by the petitioner before trial,  
64 at trial, or on direct appeal (whether or not said petitioner actually took an appeal), or in a  
65 proceeding or proceedings on a prior petition or petitions filed under the provisions of this article,  
66 or in any other proceeding or proceedings instituted by the petitioner to secure relief from his or  
67 her conviction or sentence, but were not in fact so advanced, there shall be a rebuttable  
68 presumption that the petitioner intelligently and knowingly failed to advance such contention or  
69 contentions and grounds. For the purposes of this article, and notwithstanding any other  
70 provisions of this article, a contention or contentions shall not be deemed to have been waived  
71 when either relevant forensic scientific evidence exists that was not available to be offered by a

72 petitioner at the time of the petitioner's conviction or which undermines forensic scientific evidence  
73 relied on by the state at trial; and there is a reasonable probability there would be a different  
74 outcome at trial.

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

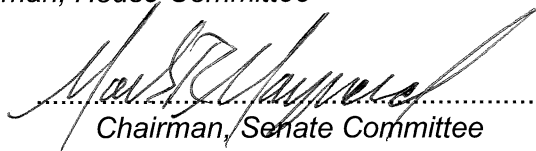
78 (e) For the purposes of this article, and notwithstanding any other provisions of this article,  
79 no such contention or contentions and grounds shall be deemed to have been previously and  
80 finally adjudicated or to have been waived where, subsequent to any decision upon the merits  
81 thereof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

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

98 of this article may be filed at any time after the conviction and sentence in the criminal proceedings  
99 have been rendered and imposed and the time for the taking of an appeal with respect thereto  
100 has expired or the right of appeal with respect thereto has been exhausted.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

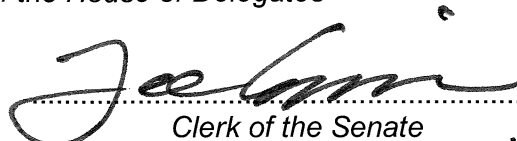
  
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Chairman, House Committee

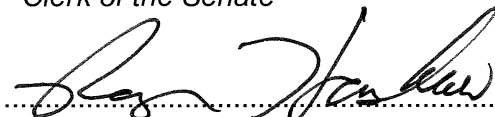
  
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Chairman, Senate Committee

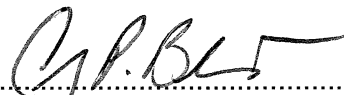
Originating in the House.

In effect ninety days from passage.

  
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Clerk of the House of Delegates

  
.....  
Clerk of the Senate

  
.....  
Speaker of the House of Delegates

  
.....  
President of the Senate

The within is approved this the 19th  
day of April, 2021.

  
.....  
Governor



PRESENTED TO THE GOVERNOR

APR 14 2021

Time 4:12pm