

HOUSE BILL 304

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1999 Regular Session
9lr0807
CF 9lr1071

By: **Delegate Vallario (Task Force to Examine Maryland's Crime Victims' Rights Laws) and Delegates Amedori, Barkley, Bartlett, Boschert, Boutin, Bozman, Bronrott, Brown, Burns, Cadden, Clagett, Conway, Cryor, DeCarlo, D. Davis, Dembrow, Dewberry, Doory, Dypski, Edwards, Frush, Fulton, Giannetti, Glassman, Goldwater, Greenip, Healey, Hecht, Heller, Hixson, Howard, Hubbard, Hubers, Hurson, Hutchins, A. Jones, Kach, Klima, Kopp, La Vay, Linton, Love, Mandel, McHale, McKee, McClenahan, Menes, Minnick, Moe, Mohorovic, Morhaim, O'Donnell, Owings, Palumbo, Parrott, Patterson, Petzold, Pitkin, Proctor, Rawlings, Redmer, Riley, Rosso, Rudolph, Rzepkowski, Sher, Sophocleus, Swain, Turner, and Valderrama**

Introduced and read first time: February 4, 1999

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Victims' Rights - Notification and Attendance - Postconviction Proceedings**

3 FOR the purpose of requiring the notification of certain victims and victims'
4 representatives about certain postconviction proceedings; authorizing certain
5 victims and victims' representatives to attend certain postconviction
6 proceedings; requiring the State's Attorney to notify a victim or designated
7 family member of any appeals filed in the Court of Special Appeals and the
8 Court of Appeals; and generally relating to victims' notification procedures.

9 BY repealing and reenacting, with amendments,
10 Article 27 - Crimes and Punishments
11 Section 594, 645A, and 784
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 1998 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article 27 - Crimes and Punishments**

17 594.

18 (A) All motions for new trials in criminal cases shall be heard by the court in
19 which said motion is pending within ten days after the filing of said motion, or, in the
20 event of an agreed statement of the evidence, or a statement of the evidence certified

1 by the judge before whom the case was tried, is filed, within ten days after the filing
2 of said statement; provided, however, that the time for the hearing of any such motion
3 may be extended either by an agreement in writing, signed by the State's Attorney of
4 the county or the City of Baltimore, wherein such motion is pending, and by the
5 defendant or his counsel, or by an order signed by the trial judge.

6 (B) BEFORE A HEARING UNDER THIS SECTION, THE VICTIM OR VICTIM'S
7 REPRESENTATIVE SHALL BE NOTIFIED OF THE PROCEEDING AS PROVIDED UNDER §
8 770 OR § 784 OF THIS ARTICLE.

9 (C) A VICTIM OR VICTIM'S REPRESENTATIVE SHALL HAVE THE RIGHT TO
10 ATTEND A HEARING UNDER THIS SECTION AS PROVIDED UNDER § 857 OF THIS
11 ARTICLE.

12 645A.

13 (a) (1) Subject to the provisions of paragraphs (2) and (3) of this subsection,
14 any person convicted of a crime and either incarcerated under sentence of death or
15 imprisonment or on parole or probation, including any person confined or on parole or
16 probation as a result of a proceeding before the District Court who claims that the
17 sentence or judgment was imposed in violation of the Constitution of the United
18 States or the Constitution or laws of this State, or that the court was without
19 jurisdiction to impose the sentence, or that the sentence exceeds the maximum
20 authorized by law, or that the sentence is otherwise subject to collateral attack upon
21 any ground of alleged error which would otherwise be available under a writ of
22 habeas corpus, writ of coram nobis, or other common-law or statutory remedy, may
23 institute a proceeding under this subtitle in the circuit court for the county to set
24 aside or correct the sentence, provided the alleged error has not been previously and
25 finally litigated or waived in the proceedings resulting in the conviction, or in any
26 other proceeding that the petitioner has taken to secure relief from his conviction.

27 (2) (i) A person may file only one petition, arising out of each trial, for
28 relief under this subtitle.

29 (ii) Unless extraordinary cause is shown, in a case in which a
30 sentence of death has not been imposed, a petition under this subtitle may not be filed
31 later than 10 years from the imposition of sentence.

32 (iii) The court may in its discretion reopen a postconviction
33 proceeding that was previously concluded if the court determines that such action is
34 in the interests of justice.

35 (3) (i) Subject to the provisions of subparagraph (ii) of this paragraph,
36 in a case in which a sentence of death has been imposed, the circuit court may not
37 exercise jurisdiction over a proceeding under this subheading unless the petition is
38 filed within 210 days after the date of:

39 1. An order denying a petition for a writ of certiorari by the
40 Supreme Court of the United States;

1 2. A decision affirming the death sentence by the Supreme
 2 Court of the United States; or

3 3. The expiration of the time for seeking review by the
 4 Supreme Court of the United States if no review is sought.

5 (ii) The circuit court may extend the period within which the
 6 petition shall be filed if good cause for the extension is shown.

7 (4) Notwithstanding any other provision of law and subject to paragraph
 8 (5) of this subsection, a warrant of execution shall be stayed for 210 days after the
 9 date of:

10 (i) An order denying any petition for a writ of certiorari by the
 11 Supreme Court of the United States;

12 (ii) A decision affirming the death sentence by the Supreme Court
 13 of the United States; or

14 (iii) The expiration of the time for seeking review by the Supreme
 15 Court of the United States if no review is sought.

16 (5) (i) A defendant in a case in which a sentence of death has been
 17 imposed may waive the right to file a petition under this subheading prior to the
 18 expiration of the 210-day period established in paragraph (3) of this subsection
 19 provided that the waiver is:

20 1. Knowing, voluntary, and intelligent; and

21 2. In writing.

22 (ii) A waiver under subparagraph (i) of this paragraph may be
 23 revoked no later than 15 days before the scheduled date of execution by:

24 1. Filing a petition for postconviction relief under this
 25 subheading; or

26 2. Withdrawing the waiver in writing.

27 (iii) A waiver of the right to file a petition under this subheading
 28 prior to the expiration of the 210-day period established in paragraph (3) of this
 29 subsection shall conclude the State postconviction review process for the purposes of
 30 § 75 of this article.

31 (iv) The revocation of a waiver under subparagraph (ii)1 of this
 32 paragraph shall continue the State postconviction review process for the purposes of
 33 § 75 of this article.

34 (v) The revocation of a waiver under subparagraph (ii)2 of this
 35 paragraph shall continue the State postconviction review process for the purposes of
 36 § 75 of this article until the filing of a petition for postconviction relief or the

1 expiration of the 210-day period established in paragraph (3) of this subsection,
2 whichever occurs first.

3 (b) For the purposes of this subtitle, an allegation of error shall be deemed to
4 be finally litigated when an appellate court of the State has rendered a decision on
5 the merits thereof, either upon direct appeal or upon any consideration of an
6 application for leave to appeal filed pursuant to § 645-I of this subtitle; or when a
7 court of original jurisdiction, after a full and fair hearing, has rendered a decision on
8 the merits thereof upon a petition for a writ of habeas corpus or a writ of error coram
9 nobis, unless said decision upon the merits of such petition is clearly erroneous.

10 (c) (1) For the purposes of this subtitle, an allegation of error shall be
11 deemed to be waived when a petitioner could have made, but intelligently and
12 knowingly failed to make, such allegation before trial, at trial, on direct appeal
13 (whether or not the petitioner actually took such an appeal), in an application for
14 leave to appeal a conviction based on a guilty plea, in any habeas corpus or coram
15 nobis proceeding actually instituted by said petitioner, in a prior petition under this
16 subtitle, or in any other proceeding actually instituted by said petitioner, unless the
17 failure to make such allegation shall be excused because of special circumstances. The
18 burden of proving the existence of such special circumstances shall be upon the
19 petitioner.

20 (2) When an allegation of error could have been made by a petitioner
21 before trial, at trial, on direct appeal (whether or not said petitioner actually took
22 such an appeal), in an application for leave to appeal a conviction based on a guilty
23 plea, in any habeas corpus or coram nobis proceeding actually instituted by said
24 petitioner, in a prior petition under this subtitle, or in any other proceeding actually
25 instituted by said petitioner, but was not in fact so made, there shall be a rebuttable
26 presumption that said petitioner intelligently and knowingly failed to make such
27 allegation.

28 (d) For the purposes of this subtitle and notwithstanding any other provision
29 hereof, no allegation of error shall be deemed to have been finally litigated or waived
30 where, subsequent to any decision upon the merits thereof or subsequent to any
31 proceeding in which said allegation otherwise may have been waived, any court
32 whose decisions are binding upon the lower courts of this State holds that the
33 Constitution of the United States or of Maryland imposes upon State criminal
34 proceedings a procedural or substantive standard not theretofore recognized, which
35 such standard is intended to be applied retrospectively and would thereby affect the
36 validity of the petitioner's conviction or sentence.

37 (e) The remedy herein provided is not a substitute for, nor does it affect any
38 remedies which are incident to the proceedings in the trial court or any remedy of
39 direct review of the sentence or conviction. Except as provided in subsection (a)(3) of
40 this section, a petition for relief under this subtitle may be filed at any time, except
41 that where an appeal has been taken from the judgment of conviction to the Court of
42 Special Appeals, it shall not be necessary to appoint counsel or conduct a hearing or
43 take any action whatsoever on the petition, until the judgment of conviction becomes
44 final in the Court of Special Appeals. No appeals to the Court of Appeals or the Court

1 of Special Appeals in habeas corpus or coram nobis cases, or from other common-law
2 or statutory remedies which have heretofore been available for challenging the
3 validity of incarceration under sentence of death or imprisonment shall be permitted
4 or entertained, except appeals in such cases pending in the Court of Appeals on June
5 1, 1958, shall be processed in due course. Provided, however, that nothing in this
6 subtitle shall operate to bar an appeal to the Court of Special Appeals (1) in a habeas
7 corpus proceeding instituted under § 2-210 of Article 41 of this Code or (2) in any
8 other proceeding in which a writ of habeas corpus is sought for any purpose other
9 than to challenge the legality of a conviction of a crime or sentence of death or
10 imprisonment therefor, including confinement as a result of a proceeding under
11 Article 31B of this Code.

12 (f) (1) Subject to paragraph (2) of this subsection, a petitioner is entitled to
13 the assistance of counsel and a hearing on a petition filed under this section.

14 (2) If a defendant seeks to reopen a postconviction proceeding under
15 subsection (a)(2)(iii) of this section, the court shall determine whether assistance of
16 counsel or a hearing should be granted.

17 (g) (1) The date for a hearing on a petition filed in a case in which a sentence
18 of death has been imposed shall:

19 (i) Be set within 30 days after the day on which the petition is
20 filed; and

21 (ii) Be no later than 90 days after the day on which the petition is
22 filed.

23 (2) After the hearing date is set under paragraph (1) of this subsection,
24 the court may not change the date unless:

25 (i) A party files a motion requesting the change; and

26 (ii) Good cause for the change is shown.

27 (3) The court shall issue a decision on a petition filed in a case in which
28 a sentence of death has been imposed within 90 days after the hearing on the petition.

29 (4) This subsection may be enforced by either party through the filing of
30 a petition for writ of mandamus in the Court of Appeals.

31 (H) (1) BEFORE A HEARING ON A PETITION FILED UNDER THIS SUBTITLE,
32 THE VICTIM OR VICTIM'S REPRESENTATIVE SHALL BE NOTIFIED OF THE
33 PROCEEDING AS PROVIDED UNDER § 770 OR § 784 OF THIS ARTICLE.

34 (2) A VICTIM OR VICTIM'S REPRESENTATIVE SHALL HAVE THE RIGHT TO
35 ATTEND ANY HEARING UNDER THIS SUBTITLE AS PROVIDED UNDER § 857 OF THIS
36 ARTICLE.

1 784.

2 (a) In this section, "subsequent proceeding" includes:

3 (1) A review of sentence under § 645JA of this article;

4 (2) A hearing on a request to have a sentence modified or vacated under
5 the Maryland Rules;

6 (3) In a juvenile delinquency case, a review of a commitment order or
7 other disposition under the Maryland Rules;

8 (4) An appeal to the Court of Special Appeals;

9 (5) An appeal to the Court of Appeals; or

10 (6) Any other postsentencing court proceeding.

11 (b) Following conviction or adjudication and sentencing or disposition of a
12 defendant for a felony or delinquent act that would be a felony if committed by an
13 adult, the victim, or in the case of a homicide, a designated family member, shall be
14 notified of a subsequent proceeding in accordance with § 770(e) of this article if:

15 (1) Prior to the distribution by the State's Attorney of notification
16 request forms under § 770(c) of this article, the victim submitted to the State's
17 Attorney a written request to be notified of subsequent proceedings; or

18 (2) After the distribution by the State's Attorney of notification request
19 forms under § 770(c) of this article, the victim filed a notification request form in
20 accordance with § 770(d) of this article.

21 (c) (1) The State's Attorney's office shall:

22 (i) Notify the victim or designated family member of all appeals to
23 the Court of Special Appeals and the Court of Appeals [filed by the defendant]; and

24 (ii) Send an information copy of the victim's notification to the
25 office of the Attorney General.

26 (2) Following the initial notification to the victim or receipt of a
27 notification request form, as defined under § 770 of this article, the office of the
28 Attorney General shall:

29 (i) Notify the victim or designated family member of all subsequent
30 dates pertinent to the appeal, including hearings, postponements, and the decisions of
31 the appellate courts; and

32 (ii) Send an information copy of the victim's notification to the
33 State's Attorney's office.

34 (d) A notice sent under this section shall contain, at a minimum:

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- 1 (1) The date and time of the subsequent proceeding;
- 2 (2) The location of the subsequent proceeding; and
- 3 (3) A brief description of the subsequent proceeding.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 1999.