

HOUSE BILL 304

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1999 Regular Session  
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CF 9lr1071

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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

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 9, 1999

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Victims' Rights - Notification and Attendance - ~~Postconviction~~ Posttrial**  
3 **Proceedings**

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

11 BY repealing and reenacting, with amendments,  
12 Article 27 - Crimes and Punishments  
13 Section 594, 645A, and 784  
14 Annotated Code of Maryland  
15 (1996 Replacement Volume and 1998 Supplement)

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

3 **Article 27 - Crimes and Punishments**

4 594.

5 (A) All motions for new trials in criminal cases shall be heard by the court in  
6 which said motion is pending within ten days after the filing of said motion, or, in the  
7 event of an agreed statement of the evidence, or a statement of the evidence certified  
8 by the judge before whom the case was tried, is filed, within ten days after the filing  
9 of said statement; provided, however, that the time for the hearing of any such motion  
10 may be extended either by an agreement in writing, signed by the State's Attorney of  
11 the county or the City of Baltimore, wherein such motion is pending, and by the  
12 defendant or his counsel, or by an order signed by the trial judge.

13 (B) BEFORE A HEARING UNDER THIS SECTION, THE VICTIM OR VICTIM'S  
14 REPRESENTATIVE SHALL BE NOTIFIED OF THE PROCEEDING AS PROVIDED UNDER §  
15 770 OR § 784 OF THIS ARTICLE.

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

19 645A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 1. Knowing, voluntary, and intelligent; and

30 2. In writing.

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

33 1. Filing a petition for postconviction relief under this  
34 subheading; or

35 2. Withdrawing the waiver in writing.

1 (iii) A waiver of the right to file a petition under this subheading  
2 prior to the expiration of the 210-day period established in paragraph (3) of this  
3 subsection shall conclude the State postconviction review process for the purposes of  
4 § 75 of this article.

5 (iv) The revocation of a waiver under subparagraph (ii)1 of this  
6 paragraph shall continue the State postconviction review process for the purposes of  
7 § 75 of this article.

8 (v) The revocation of a waiver under subparagraph (ii)2 of this  
9 paragraph shall continue the State postconviction review process for the purposes of  
10 § 75 of this article until the filing of a petition for postconviction relief or the  
11 expiration of the 210-day period established in paragraph (3) of this subsection,  
12 whichever occurs first.

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

20 (c) (1) For the purposes of this subtitle, an allegation of error shall be  
21 deemed to be waived when a petitioner could have made, but intelligently and  
22 knowingly failed to make, such allegation before trial, at trial, on direct appeal  
23 (whether or not the petitioner actually took such an appeal), in an application for  
24 leave to appeal a conviction based on a guilty plea, in any habeas corpus or coram  
25 nobis proceeding actually instituted by said petitioner, in a prior petition under this  
26 subtitle, or in any other proceeding actually instituted by said petitioner, unless the  
27 failure to make such allegation shall be excused because of special circumstances. The  
28 burden of proving the existence of such special circumstances shall be upon the  
29 petitioner.

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

38 (d) For the purposes of this subtitle and notwithstanding any other provision  
39 hereof, no allegation of error shall be deemed to have been finally litigated or waived  
40 where, subsequent to any decision upon the merits thereof or subsequent to any  
41 proceeding in which said allegation otherwise may have been waived, any court  
42 whose decisions are binding upon the lower courts of this State holds that the  
43 Constitution of the United States or of Maryland imposes upon State criminal

1 proceedings a procedural or substantive standard not theretofore recognized, which  
2 such standard is intended to be applied retrospectively and would thereby affect the  
3 validity of the petitioner's conviction or sentence.

4 (e) The remedy herein provided is not a substitute for, nor does it affect any  
5 remedies which are incident to the proceedings in the trial court or any remedy of  
6 direct review of the sentence or conviction. Except as provided in subsection (a)(3) of  
7 this section, a petition for relief under this subtitle may be filed at any time, except  
8 that where an appeal has been taken from the judgment of conviction to the Court of  
9 Special Appeals, it shall not be necessary to appoint counsel or conduct a hearing or  
10 take any action whatsoever on the petition, until the judgment of conviction becomes  
11 final in the Court of Special Appeals. No appeals to the Court of Appeals or the Court  
12 of Special Appeals in habeas corpus or coram nobis cases, or from other common-law  
13 or statutory remedies which have heretofore been available for challenging the  
14 validity of incarceration under sentence of death or imprisonment shall be permitted  
15 or entertained, except appeals in such cases pending in the Court of Appeals on June  
16 1, 1958, shall be processed in due course. Provided, however, that nothing in this  
17 subtitle shall operate to bar an appeal to the Court of Special Appeals (1) in a habeas  
18 corpus proceeding instituted under § 2-210 of Article 41 of this Code or (2) in any  
19 other proceeding in which a writ of habeas corpus is sought for any purpose other  
20 than to challenge the legality of a conviction of a crime or sentence of death or  
21 imprisonment therefor, including confinement as a result of a proceeding under  
22 Article 31B of this Code.

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

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

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

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

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

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

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

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

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

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

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

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

9 784.

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

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

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

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

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

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

18 (6) Any other postsentencing court proceeding.

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

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

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

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

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

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

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

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

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

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

10           (1)     The date and time of the subsequent proceeding;

11           (2)     The location of the subsequent proceeding; and

12           (3)     A brief description of the subsequent proceeding.

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