

SENATE BILL 147

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1999 Regular Session
9r1071
CF 9r0807

By: **Senator Stone (Task Force to Examine Maryland's Crime Victims' Rights Laws)**

Introduced and read first time: January 27, 1999

Assigned to: Judicial Proceedings

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

26 (B) BEFORE A HEARING UNDER THIS SECTION, THE VICTIM OR VICTIM'S
27 REPRESENTATIVE SHALL BE NOTIFIED OF THE PROCEEDING AS PROVIDED UNDER §
28 770 OR § 784 OF THIS ARTICLE.

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

4 645A.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 1. Knowing, voluntary, and intelligent; and

15 2. In writing.

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

18 1. Filing a petition for postconviction relief under this
19 subheading; or

20 2. Withdrawing the waiver in writing.

21 (iii) A waiver of the right to file a petition under this subheading
22 prior to the expiration of the 210-day period established in paragraph (3) of this
23 subsection shall conclude the State postconviction review process for the purposes of
24 § 75 of this article.

25 (iv) The revocation of a waiver under subparagraph (ii)1 of this
26 paragraph shall continue the State postconviction review process for the purposes of
27 § 75 of this article.

28 (v) The revocation of a waiver under subparagraph (ii)2 of this
29 paragraph shall continue the State postconviction review process for the purposes of
30 § 75 of this article until the filing of a petition for postconviction relief or the
31 expiration of the 210-day period established in paragraph (3) of this subsection,
32 whichever occurs first.

33 (b) For the purposes of this subtitle, an allegation of error shall be deemed to
34 be finally litigated when an appellate court of the State has rendered a decision on
35 the merits thereof, either upon direct appeal or upon any consideration of an
36 application for leave to appeal filed pursuant to § 645-I of this subtitle; or when a
37 court of original jurisdiction, after a full and fair hearing, has rendered a decision on

1 the merits thereof upon a petition for a writ of habeas corpus or a writ of error coram
2 nobis, unless said decision upon the merits of such petition is clearly erroneous.

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

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

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

30 (e) The remedy herein provided is not a substitute for, nor does it affect any
31 remedies which are incident to the proceedings in the trial court or any remedy of
32 direct review of the sentence or conviction. Except as provided in subsection (a)(3) of
33 this section, a petition for relief under this subtitle may be filed at any time, except
34 that where an appeal has been taken from the judgment of conviction to the Court of
35 Special Appeals, it shall not be necessary to appoint counsel or conduct a hearing or
36 take any action whatsoever on the petition, until the judgment of conviction becomes
37 final in the Court of Special Appeals. No appeals to the Court of Appeals or the Court
38 of Special Appeals in habeas corpus or coram nobis cases, or from other common-law
39 or statutory remedies which have heretofore been available for challenging the
40 validity of incarceration under sentence of death or imprisonment shall be permitted
41 or entertained, except appeals in such cases pending in the Court of Appeals on June
42 1, 1958, shall be processed in due course. Provided, however, that nothing in this
43 subtitle shall operate to bar an appeal to the Court of Special Appeals (1) in a habeas
44 corpus proceeding instituted under § 2-210 of Article 41 of this Code or (2) in any
45 other proceeding in which a writ of habeas corpus is sought for any purpose other

1 than to challenge the legality of a conviction of a crime or sentence of death or
2 imprisonment therefor, including confinement as a result of a proceeding under
3 Article 31B of this Code.

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

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

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

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

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

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

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

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

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

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

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

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

29 784.

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

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

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

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

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

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

5 (6) Any other postsentencing court proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

