WEST VIRGINIA CODE CHAPTER 53

WV Legislature

§53-1-1. When writ of prohibition lies as matter of right.

The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has not jurisdiction of the subject matter in controversy, or, having such jurisdiction, exceeds its legitimate powers.

WV Legislature

§53-1-2. Jurisdiction of writs of mandamus and prohibition; by whom rule to show cause or peremptory writ issued.

Jurisdiction of writs of mandamus and prohibition (except cases whereof cognizance has been taken by the Supreme Court of Appeals or a judge thereof in vacation), shall be in the circuit court of the county in which the record or proceeding is to which the writ relates. A rule to show cause as hereinafter provided for may be issued by a judge of a circuit court or of the Supreme Court of Appeals in vacation. A writ peremptory may be awarded by a circuit court or a judge thereof in vacation, or by the Supreme Court of Appeals in term.

WV Legislature

§53-1-3. Application for mandamus or prohibition.

Application for a writ of mandamus or a writ of prohibition shall be on verified petition.

WV Legislature

§53-1-4. Contents of petition.

The petition shall state plainly and concisely the grounds of the application, concluding with a prayer for the writ.

WV Legislature

§53-1-5. When rule to show cause issued; copy of petition to accompany service of rule; when rule returnable.

The court or judge to whom the petition in mandamus or prohibition is presented shall, if the petition makes a prima facie case, issue a rule against the defendant to show cause why the writ prayed for should not be awarded. A copy of the petition shall accompany service of the rule. Such rule shall be returnable at a time to be fixed by the court or judge.

WV Legislature

§53-1-6. How defense made; reply; amendments.

If the defendant appear and make defense, such defense may be by demurrer, or answer on oath, to the petition, or both, such answer to be subject to demurrer by the petitioner or relator. Reply may be made when proper. The court or judge may permit amendments as in other cases.

WV Legislature

§53-1-7. Adjournment.

When the case is before the judge of a circuit court in vacation, he may adjourn it from day to day, or from time to time, until finally disposed of.

WV Legislature

§53-1-8. Award or denial of writ; costs.

The writ peremptory shall be awarded or denied according to the law and facts of the case, and with or without costs, as the court or judge may determine.

WV Legislature

§53-1-9. Suspension of proceedings where prohibition applied for.

On petition for a writ of prohibition, the circuit court, or judge in vacation, or the Supreme Court of Appeals, or a judge thereof in vacation, may, at any time before or after the application for the writ is made, if deemed proper, make an order, a copy of which shall be served on the defendant, suspending the proceedings sought to be prohibited until the final decision of the cause.

WV Legislature

§53-1-10. Certification of proceedings in vacation; entry in order book.

When the proceedings on the petition are had before the judge of the circuit court in vacation, he shall certify the same, and any judgment or order made by him in the case, to the clerk of the court, and they shall be entered by the clerk in the order book on the law side of the court, and have the same force and effect as if had or made and entered in term.

WV Legislature

§53-1-11. Service of writ; how obedience to writ enforced.

Service of a copy of the order awarding the writ shall be equivalent to service of the writ, and obedience to the writ or order may be enforced by process of contempt in vacation in like manner as in term.

WV Legislature

§53-1-12. Distribution of levy under mandamus to satisfy judgment against a political subdivision.

Wherever a writ of mandamus, issued to enforce the laying of a levy to satisfy a judgment against a political subdivision of the state, would produce a disturbance in the administration of the financial affairs of the political subdivision not necessary to the protection and enforcement of the right of the creditor, the court may order that the levy be distributed equally over a period of years not to exceed ten, and shall allow the creditor interest, not in excess of the legal rate, upon the installments.

WV Legislature

§53-2-1. In what cases quo warranto awarded.

A writ of quo warranto may be awarded and prosecuted in the name of the State of West Virginia, at the instance of the Attorney General, or prosecuting attorney of any county, in any of the following cases: (a) Against a corporation for a misuse or nonuse of its corporate privileges and franchises, or for the exercise of a privilege or franchise not conferred upon it by law, or where a certificate of incorporation has been obtained by it for a fraudulent purpose, or for a purpose not authorized by law; (b) against a person for the misuse or nonuse of a privilege and franchise conferred upon him by or in pursuance of law; (c) against any person or persons acting as a corporation without authority of law; (d) against any person who shall intrude into or usurp any public office.

WV Legislature

§53-2-2. Application for writ.

Whenever the Attorney General or prosecuting attorney of any county is satisfied that a cause exists therefor he may, at his own instance, or at the relation of any person interested, apply by petition to the circuit court, or the judge thereof in vacation, of the county wherein the seat of government is, or of the county wherein the cause, or any part thereof, for the issuing of such writ arose, to have such writ issued, and shall state therein the reason therefor. Whenever such writ is issued at the relation of any person, the petition shall be to the circuit court, or the judge thereof in vacation, of the county wherein the seat of government is, or of the county wherein the cause, or any part thereof, for the issuing of such writ arose, as the relator may elect. Any such writ may be awarded either by the circuit court or by the judge thereof in vacation.

WV Legislature

§53-2-3. Award of writ; signing and attestation; bond.

If, in the opinion of the court, or the judge thereof in vacation, the reasons so stated in the petition are sufficient in law, the court, or judge thereof in vacation, shall award such writ and the same shall be signed by the judge of such court and attested by the clerk thereof. But if such writ be awarded at the relation of any person, it shall not be issued until the relator shall give bond with good security, to be approved by the court or judge, in such penalty as the court or judge shall prescribe, with condition that the relator will pay all such costs and expenses as may be incurred by the state in the prosecution of such writ, in case the same shall not be recovered from and paid by the defendant therein.

WV Legislature

§53-2-4. Information in the nature of writ of quo warranto.

In any case in which a writ of quo warranto would lie, the Attorney General or prosecuting attorney of any county, at his own instance or at the relation of any person interested, or any person interested, may, in the name of the State of West Virginia, apply to any such court or judge thereof in vacation as is mentioned in the second section of this article for leave to file an information in the nature of a writ of quo warranto for any of the causes and against any of the corporations, officers, or persons mentioned in the first section of this article, and he shall, at the time of his application, present to the court or judge the information he proposes to file. If, in the opinion of such court or judge, the matters stated in such information are sufficient in law to authorize the same to be filed, an order shall be made filing the same and awarding a summons against the defendant named therein to answer such information. But if the leave to file such information be asked on the relation of any person, or by any person at his own instance, the summons thereon shall not be issued by the clerk until such relator or person shall give the bond and security required by the next preceding section. A copy of every such information, if not made out and filed therewith, shall be made out by the clerk, and such copy shall be delivered to the officer to whom the summons is delivered to be served, and shall be served on the defendant or one of the defendants named in the summons.

WV Legislature

§53-2-5. Service of writ or summons.

Every such writ or summons shall be served as provided in article two, chapter fifty-six of this code, and if it be against a corporation, it shall be served on some of the persons mentioned in sections thirteen and fourteen of article three, chapter fifty-six of this code; and if service thereof cannot otherwise be made upon any defendant named in such writ or summons, it may be made by publication as prescribed in said last-named article.

WV Legislature

§53-2-6. Judgment when defendant fails to appear; defendant may have judgment set aside and make defenses where service by publication; pleading where defendant appears.

If the defendant named in such writ or information fail to appear after the service thereof as aforesaid, the court may hear proof of the allegations of the petition or information, and if such allegations be sustained, the court shall give judgment accordingly. But if the service be made by publication, the defendant against whom such judgment is rendered, upon giving bond and security as provided in section three of this article, may, at the next term of the court or within such additional time as the court may allow, on petition filed for the purpose, have the judgment against him set aside, and make such defense as he or it may have thereto. If the defendant appear before the end of the term next after the service of the writ or summons, or thereafter before judgment is rendered against him he may demur or plead not guilty, or both, to such writ, or demur or answer in writing, or both, to such information, and every allegation contained in such information which is not denied by such answer shall be taken as true and no proof thereof shall be required.

WV Legislature

§53-2-7. Verdict; judgment; costs; attorney's fee.

If upon the trial of such writ or information the defendant be found guilty, or not guilty, of any of the charges therein, the verdict shall be "guilty," or "not guilty," as the case may be; but if he be found guilty as to a part of such charges only, the verdict shall be guilty as to such charges and shall particularly specify the same, and as to the residue of such charges the verdict shall be "not guilty." Against a defendant so found guilty, the court shall give such judgment as is appropriate and authorized by law, and for the costs incurred in the prosecution of such writ or information, including an attorney's fee of not less than $10 nor more than $50, to be fixed by the court.

WV Legislature

§53-2-8. Receivership for property of dissolved corporation.

If, by the judgment of the court rendered as aforesaid, a corporation, or pretended corporation, be dissolved, the court may appoint a receiver of the property of such corporation or pretended corporation, as provided in sections one and two, article six of this chapter, and may make all such other orders in relation thereto as may be necessary for the preservation and safekeeping of such property.

WV Legislature

§53-3-1. Jurisdiction.

Jurisdiction of writs of certiorari (except such as may be issued from the Supreme Court of Appeals, or a judge thereof in vacation) shall be in the circuit court of the county in which the record or proceeding is, to which the writ relates. Any such writ may be awarded either by the circuit court or by the judge thereof in vacation.

WV Legislature

§53-3-2. When certiorari lies.

In every case, matter or proceeding, in which a certiorari might be issued as the law heretofore has been, and in every case, matter or proceeding before a county court, council of a city, town or village, justice or other inferior tribunal, the record or proceeding may, after a judgment or final order therein, or after any judgment or order therein abridging the freedom of a person, be removed by a writ of certiorari to the circuit court of the county in which such judgment was rendered, or order made; except in cases where authority is or may be given by law to the circuit court, or the judge thereof in vacation, to review such judgment or order on motion, or on appeal, writ of error or supersedeas, or in some manner other than upon certiorari; but no certiorari shall be issued in civil cases before justices where the amount in controversy, exclusive of interest and costs, does not exceed $15.

WV Legislature

§53-3-3. Contents of record; removal of record to circuit court; review.

In every case, matter or proceeding before a county court, council, justice or inferior tribunal, in which a writ of certiorari would lie according to the provisions of the preceding section, the majority of the commissioners composing a court, or the justice or the officer or officers presiding over such council or other inferior tribunal, shall, upon request of either party in a civil case, matter or proceeding, or the defendant in a criminal case, matter or proceeding, certify the evidence, if any, which may have been heard, and sign bills of exceptions, or certificates as provided in section thirty-six, article six, chapter fifty-six of this code, setting forth any rulings or orders which may not otherwise appear of record. Such certificate of evidence and bills of exceptions or certificates shall be part of the record and as such be removed and returned to the circuit court. The clerk upon receiving such record shall file the same and docket the case, in the same manner that other cases are docketed. Upon the hearing, such circuit court shall, in addition to determining such questions as might have been determined upon a certiorari as the law heretofore was, review such judgment, order or proceeding, of the county court, council, justice or other inferior tribunal upon the merits, determine all questions arising on the law and evidence, and render such judgment or make such order upon the whole matter as law and justice may require. But all such cases removed as aforesaid from before a justice to the circuit court, wherein the amount in controversy is more than $15, and in which the judgment of the justice is set aside, shall be retained in such court and disposed of as if originally brought therein.

WV Legislature

§53-3-4. Award of certiorari in vacation; habeas corpus in aid thereof.

Such writs may be awarded by the judge of such circuit court in vacation; and, in case of an order abridging the freedom of a person, may be returned and heard and determined by the judge of such circuit court in vacation, if reasonable notice of such hearing shall have been given the other party; and such court or judge may grant a writ of habeas corpus in aid of such certiorari.

WV Legislature

§53-3-5. Stay of proceedings on judgment or order removed by certiorari -- Bond.

A writ of certiorari shall not operate to suspend the judgment or order removed thereby, or proceedings on such judgment or order, except in a criminal case, until the party applying therefor, or someone for him shall file in the office of the clerk of the circuit court a bond payable to the State of West Virginia, with security approved by such clerk, in a penalty to be prescribed by the court or judge awarding the writ, conditioned to perform and satisfy such judgment or order as may be rendered or made by the circuit court, and to pay all such damages and costs as may be awarded to any party by such court or judge, and with any further condition which such court or judge may prescribe.

WV Legislature

§53-3-6. Same -- Duration.

When such bond as is mentioned in the next preceding section is filed, the writ of certiorari shall operate to stay all proceedings upon the judgment or order removed by the writ, and all further proceedings before the county court, justice or other inferior tribunal in the case, matter or proceeding in which it was awarded, until the final determination of the matter by the circuit court, except as to any order or sentence abridging the freedom of a person; but the court or judge may let such party to bail, as in other cases.

WV Legislature

§53-4-1. When and by whom writ granted.

The writ of habeas corpus ad subjiciendum shall be granted forthwith by the Supreme Court of Appeals, or any circuit court, or any other court given power by any particular statute to grant the same, or any judge of either court in vacation, to any person who shall, by himself or by someone in his behalf, apply for the same by petition, showing by affidavit or other evidence probable cause to believe that he is detained without lawful authority.

WV Legislature

§53-4-2. To whom writ directed; return of writ.

The writ shall be directed to the person in whose custody the petitioner is detained and made returnable as soon as may be. If the writ be ordered by any court or judge other than the Supreme Court of Appeals or a judge thereof, it shall be returnable before the court or judge ordering it, if such court or judge be of the county wherein the petitioner is detained; otherwise, before a proper court or judge of the county wherein the petitioner is detained. If the writ be ordered by the Supreme Court of Appeals or a judge thereof, it may be made returnable either before such court or before a proper court or judge of the county wherein the petitioner is detained.

WV Legislature

§53-4-3. Bond may be required of petitioner.

The court or judge granting the writ may previously require bond with security in a reasonable penalty, payable to the person to whom the writ is directed, with condition that the petitioner will not escape by the way, and for the payment of such costs and charges as may be awarded against him It shall be filed with the other proceedings on the writ and may be sued on for the benefit of any person injured by the breach of its condition.

WV Legislature

§53-4-4. Service of writ.

The writ shall be served on the person to whom it is directed, or, in his absence from the place where the petitioner is confined, on the person having the immediate custody of him

WV Legislature

§53-4-5. Penalty for disobeying writ.

If any person on whom such writ is served shall, in disobedience to such writ, fail to bring the body of the petitioner, with a return of the cause of his detention, before the court or judge before whom the writ is returnable, for three days after such service, he shall forfeit to the petitioner $300.

WV Legislature

§53-4-6. When affidavits may be read as evidence.

At the direction of the court or judge, the affidavits of witnesses taken by either party, on reasonable notice to the other, may be read as evidence.

WV Legislature

§53-4-7. Judgment.

The court or judge before whom the petitioner is brought, after hearing the matter both upon the return and any other evidence, shall either discharge or remand him or admit him to bail, as may be proper, and adjudge the costs of the proceedings, including the charge for transporting the prisoner, to be paid as shall seem to be right.

WV Legislature

§53-4-8. Facts proved may be made part of record.

All the material facts proved shall, when it is required by either party, be made a part of the proceedings, which, when they are had in vacation, shall be signed by the judge and certified to the clerk of the court in which the judgment is rendered, and be entered by him among the records of that court.

WV Legislature

§53-4-9. Powers of judge in vacation.

The judge issuing any such writ in vacation, or the judge before whom it is tried, shall have the same power to enforce obedience to the writ, to compel the attendance of witnesses, or to punish contempt of his authority, as a court has; and his judgment on the trial of the writ, when entered of record as aforesaid, shall be considered and be enforced as if it were a judgment of the court among whose records it is entered.

WV Legislature

§53-4-10. Judgment conclusive; exception.

Any such judgment entered of record shall be conclusive, unless the same be reversed, except that the petitioner shall not be precluded from bringing the same matter in question in an action for false imprisonment.

WV Legislature

§53-4-11. Revision of judgment by Supreme Court of Appeals.

If, during the recess of the Supreme Court of Appeals, the Governor or the president of the said court should think the immediate revision of any such judgment to be proper, he may summon the court for that purpose to meet on any day to be fixed by him

WV Legislature

§53-4-12. Disposition of prisoner and proceedings pending writ of error.

When the prisoner is remanded, the execution of the judgment shall not be suspended by the writ of error, or suspended for the purpose of applying for one; but where he is ordered to be discharged, and the execution of the judgment to be suspended for the purpose of applying for a writ of error, the court or judge making such suspending order may, in its or his discretion, admit the prisoner to bail until the expiration of the time allowed for applying for the writ of error, or, in case the writ of error be allowed, until the decision of the Supreme Court of Appeals thereon is duly certified.

WV Legislature

§53-4-13. Writs of habeas corpus ad testificandum.

Writs of habeas corpus ad testificandum may be granted by any circuit court, or any court of record of limited jurisdiction other than a county court, or any judge thereof in vacation, in the same manner and under the same conditions and provisions as are prescribed by this article as to granting the writ of habeas corpus ad subjiciendum, as far as the same are applicable.

WV Legislature

§53-4A-1. Right to habeas corpus for post-conviction review; jurisdiction; when contention deemed finally adjudicated or waived; effect upon other remedies.

(a) Any person convicted of a crime and incarcerated under sentence of imprisonment therefor who contends that there was such a denial or infringement of his or her rights as to render the conviction or sentence void under the Constitution of the United States or the Constitution of this state, or both, or that the court was without jurisdiction to impose the sentence, or that the sentence exceeds the maximum authorized by law, or that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under the common law or any statutory provision of this state, may, without paying a filing fee, file a petition for a writ of habeas corpus ad subjiciendum, and prosecute the same, seeking release from such illegal imprisonment, correction of the sentence, the setting aside of the plea, conviction and sentence, or other relief, if and only if such contention or contentions and the grounds in fact or law relied upon in support thereof have not been previously and finally adjudicated or waived in the proceedings which resulted in the conviction and sentence, or in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or in any other proceeding or proceedings which the petitioner has instituted to secure relief from such conviction or sentence. Any such petition shall be filed with the clerk of the Supreme Court of Appeals, or the clerk of any circuit court, said Supreme Court of Appeals and all circuit courts of this state having been granted original jurisdiction in habeas corpus cases by the Constitution of this state, or with the clerk of any court of record of limited jurisdiction having criminal jurisdiction in this state. Jurisdiction is hereby conferred upon each and every such court of record of limited jurisdiction having criminal jurisdiction (hereinafter for convenience of reference referred to simply as a "statutory court") to refuse or grant writs of habeas corpus ad subjiciendum in accordance with the provisions of this article and to hear and determine any contention or contentions and to pass upon all grounds in fact or law relied upon in support thereof in any proceeding on any such writ made returnable thereto in accordance with the provisions of this article. All proceedings in accordance with this article shall be civil in character and shall under no circumstances be regarded as criminal proceedings or a criminal case.

(b) For the purposes of this article, a contention or contentions and the grounds in fact or law relied upon in support thereof shall be deemed to have been previously and finally adjudicated only when at some point in the proceedings which resulted in the conviction and sentence, or in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or in any other proceeding or proceedings instituted by the petitioner to secure relief from his or her conviction or sentence, there was a decision on the merits thereof after a full and fair hearing thereon and the time for the taking of an appeal with respect to such decision has not expired or has expired, as the case may be, or the right of appeal with respect to such decision has been exhausted, unless said decision upon the merits is clearly wrong.

(1) For purposes of this article, and notwithstanding any other provisions of this article, a contention or contentions shall not be deemed to be previously and finally adjudicated when

either relevant forensic scientific evidence exists that was not available to be offered by a petitioner at the time of the petitioner's conviction or which undermines forensic scientific evidence relied on by the state at trial; and there is a reasonable probability there would be a different outcome at trial.

(2) For purposes of this section:

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

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

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

(c) For the purposes of this article, a contention or contentions and the grounds in fact or law relied upon in support thereof shall be deemed to have been waived when the petitioner could have advanced, but intelligently and knowingly failed to advance, such contention or contentions and grounds before trial, at trial, or on direct appeal (whether or not said petitioner actually took an appeal), or in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or in any other proceeding or proceedings instituted by the petitioner to secure relief from his or her conviction or sentence, unless such contention or contentions and grounds are such that, under the Constitution of the United States or the Constitution of this state, they cannot be waived under the circumstances giving rise to the alleged waiver. When any such contention or contentions and grounds could have been advanced by the petitioner before trial, at trial, or on direct appeal (whether or not said petitioner actually took an appeal), or in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or in any other proceeding or proceedings instituted by the petitioner to secure relief from his or her conviction or sentence, but were not in fact so advanced, there shall be a rebuttable presumption that the petitioner intelligently and knowingly failed to advance such contention or contentions and grounds. For the purposes of this article, and notwithstanding any other provisions of this article, a contention or contentions shall not be deemed to have been waived when either relevant forensic scientific evidence exists that was not available to be offered by a petitioner at the time of the petitioner's conviction or which undermines forensic scientific evidence relied on by the state at trial; and there is a reasonable probability there would be a different outcome at trial.

(d) This section does not create additional liabilities, beyond those already recognized, for an

WV Legislature

expert who repudiates his or her original opinion provided at a hearing or trial or whose opinion has been undermined by later scientific research or technological advancements.

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

(f) The writ of habeas corpus ad subjiciendum provided for in this article is not a substitute for nor does it affect any remedies which are incident to the criminal proceedings in the trial court or any remedy of direct review of the conviction or sentence, but such writ comprehends and takes the place of all other common law and statutory remedies, including, but not limited to, the writ of habeas corpus ad subjiciendum provided for in §53-4-1 of this code, which have heretofore been available for challenging the validity of a conviction or sentence and shall be used exclusively in lieu thereof: *Provided*, That nothing contained in this article shall operate to bar any proceeding or proceedings in which a writ of habeas corpus ad subjiciendum is sought for any purpose other than to challenge the legality of a criminal conviction or sentence of imprisonment therefor. A petition for a writ of habeas corpus ad subjiciendum in accordance with the provisions of this article may be filed at any time after the conviction and sentence in the criminal proceedings have been rendered and imposed and the time for the taking of an appeal with respect thereto has expired or the right of appeal with respect thereto has been exhausted.

www.legislature

§53-4A-2. Petition; contents thereof; supreme court may prescribe form of petition, verification and writ; duties of clerk.

A petition seeking a writ of habeas corpus ad subjiciendum in accordance with the provisions of this article shall identify the proceedings in which the petitioner was convicted and sentenced, give the date of the entry of the judgment and sentence complained of, specifically set forth the contention or contentions and grounds in fact or law in support thereof upon which the petition is based, and clearly state the relief desired. Affidavits, exhibits, records or other documentary evidence supporting the allegations of the petition shall be attached to the petition unless there is a recital therein as to why they are not attached. All facts within the personal knowledge of the petitioner shall be set forth separately from other allegations, and such facts and the authenticity of all affidavits, exhibits, records or other documentary evidence attached to the petition must be sworn to affirmatively as true and correct. The petition must also identify any previous proceeding or proceedings on a petition or petitions filed under the provisions of this article, or any other previous proceeding or proceedings which the petitioner instituted to secure relief from his conviction or sentence and must set forth the type or types of such previous proceeding or proceedings, the contention or contentions there advanced, the grounds in fact or law assigned therein for the relief there sought, the date thereof, the forum in which instituted and the result thereof. Argument, citations and discussion of authorities shall be omitted from the petition, but may be filed as a separate document or documents. The Supreme Court of Appeals may by rule prescribe the form of the petition, verification and the writ itself. The clerk of the court in which the petition is filed shall docket the petition upon its receipt, and shall bring the petition and any affidavits, exhibits, records and other documentary evidence attached thereto to the attention of the court.

WV Legislature

§53-4A-3. Refusal of writ; granting of writ; direction of writ; how writ made returnable; duties of clerk, Attorney General and prosecuting attorney.

(a) If the petition, affidavits, exhibits, records and other documentary evidence attached thereto, or the record in the proceedings which resulted in the conviction and sentence, or the record or records in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or the record or records in any other proceeding or proceedings instituted by the petitioner to secure relief from his conviction or sentence (if any such record or records are part of the official court files of the court with whose clerk the petition is filed or are part of the official court files of any other court within the same judicial circuit as the court with whose clerk such petition is filed and are thus available for examination and review by such court) show to the satisfaction of the court that the petitioner is entitled to no relief, or that the contention or contentions and grounds (in fact or law) advanced have been previously and finally adjudicated or waived, the court shall by order entered of record refuse to grant a writ, and such refusal shall constitute a final judgment. If it appears to such court from said petition, affidavits, exhibits, records and other documentary evidence, or any such available record or records referred to above, that there is probable cause to believe that the petitioner may be entitled to some relief, and that the contention or contentions and grounds (in fact or law) advanced have not been previously and finally adjudicated or waived, the court shall forthwith grant a writ, directed to and returnable as provided in subsection (b) hereof. If any such record or records referred to above are not a part of the official court files of the court with whose clerk the petition is filed or are not part of the official court files of any other court within the same judicial circuit as the court with whose clerk such petition is filed and are thus not available for examination and review by such court, the determination as to whether to refuse or grant the writ shall be made on the basis of the petition, affidavits, exhibits, records and other documentary evidence attached thereto.

(b) Any writ granted in accordance with the provisions of this article shall be directed to the person under whose supervision the petitioner is incarcerated. Whether the writ is granted by the Supreme Court of Appeals, a circuit court, or any statutory court in this state, it shall, in the discretion of the court, be returnable before (i) the court granting it, (ii) the circuit court, or a statutory court, of the county wherein the petitioner is incarcerated, or (iii) the circuit court, or the statutory court, in which, as the case may be, the petitioner was convicted and sentenced.

(c) The clerk of the court to which a writ granted in accordance with the provisions of this article is made returnable shall promptly bring the petition and any affidavits, exhibits, records and other documentary evidence attached thereto, and the writ to the attention of the court if the writ was granted by some other court, and in every case deliver a copy of such petition and any affidavits, exhibits, records and other documentary evidence attached thereto and the writ to the prosecuting attorney of the county, or the Attorney General if the writ is returnable before the Supreme Court of Appeals. The prosecuting attorney or the Attorney General, as the case may be, shall represent the state in all cases arising under the

WV Legislature

provisions of this article.

WV Legislature

§53-4A-4. Inability to pay costs, etc.; appointment of counsel; obtaining copies of record or records in criminal proceedings or in a previous proceeding or proceedings to secure relief; payment of all costs and expenses; adjudging of costs.

(a) A petition filed under the provisions of this article may allege facts to show that the petitioner is unable to pay the costs of the proceeding or to employ counsel, may request permission to proceed in forma pauperis and may request the appointment of counsel. If the court to which the writ is returnable (hereinafter for convenience of reference referred to simply as "the court," unless the context in which used clearly indicates that some other court is intended) is satisfied that the facts alleged in this regard are true, and that the petition was filed in good faith, and has merit or is not frivolous, the court shall order that the petitioner proceed in forma pauperis, and the court shall appoint counsel for the petitioner. If it shall appear to the court that the record in the proceedings which resulted in the conviction and sentence, including, but not limited to, a transcript of the testimony therein, or the record or records in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or the record or records in any other proceeding or proceedings instituted by the petitioner to secure relief from his conviction or sentence, or all of such records, or any part or parts thereof, are necessary for a proper determination of the contention or contentions and grounds (in fact or law) advanced in the petition, the court shall, by order entered of record, direct the state to make arrangements for copies of any such record or records, or all of such records, or such part or parts thereof as may be sufficient, to be obtained for examination and review by the court, the state and the petitioner. The state may on its own initiative obtain copies of any record or records, or all of the records, or such part or parts thereof as may be sufficient, as aforesaid, for its use and for examination and review by the court and the petitioner. If, after judgment is entered under the provisions of this article, an appeal or writ of error is sought by the petitioner in accordance with the provisions of section nine of this article, and the court which rendered the judgment is of opinion that the review is being sought in good faith and the grounds assigned therefor have merit or are not frivolous, and such court finds that the petitioner is unable to pay the costs incident thereto or to employ counsel, the court shall, upon the petitioner's request, order that the petitioner proceed in forma pauperis and shall appoint counsel for the petitioner. If an appeal or writ of error is allowed, whether upon application of the petitioner or the state, the reviewing court shall, upon the requisite showing the request as aforesaid, order that the petitioner proceed in forma pauperis and shall appoint counsel for the petitioner. If it is determined that the petitioner has the financial means with which to pay the costs incident to any proceedings hereunder and to employ counsel, or that the petition was filed in bad faith or is without merit or is frivolous, or that review is being sought or prosecuted in bad faith or the grounds assigned therefor are without merit or are frivolous, the request to proceed in forma pauperis and for the appointment of counsel shall be denied and the court making such determination shall enter an order setting forth the findings pertaining thereto and such order shall be final.

(b) Whenever it is determined that a petitioner shall proceed in forma pauperis, all necessary costs and expenses incident to proceedings hereunder, originally, or on appeal pursuant to

section nine of this article, or both, including, but not limited to, all court costs, and the cost of furnishing transcripts, shall, upon certification by the court to the State Auditor, be paid out of the treasury of the state from the appropriation for criminal charges. Any attorney appointed in accordance with the provisions of this section shall be paid for his services and expenses in accordance with the provisions of article twenty-one, chapter twenty- nine of the code. All costs and expenses incurred incident to obtaining copies of any record or records, or all of the records, or such part or parts thereof as may be sufficient, as aforesaid, for examination and review by the court, the state and the petitioner, shall, where the petitioner is proceeding in forma pauperis, and the court orders the state to make arrangements for the obtaining of same or the state obtains the same on its own initiative, be paid out of the treasury of the state, upon certification by the court to the State Auditor, from the appropriation for criminal charges. All such costs, expenses and fees shall be paid as provided in this subsection (b) notwithstanding the fact that all proceedings under the provisions of this article are civil and not criminal in character. In the event a petitioner who is proceeding in forma pauperis does not substantially prevail, all such costs, expenses and fees shall be and constitute a judgment of the court against the petitioner to be recovered as any other judgment for costs.

(c) In the event a petitioner who is not proceeding in forma pauperis does not substantially prevail, all costs and expenses incurred incident to obtaining copies of any record or records, or all of the records, or such part or parts thereof as may be sufficient, as aforesaid, for examination and review by the court, the state and the petitioner, shall, where the court orders the state to make arrangements for the obtaining of same or the state obtains the same on its own initiative, be and constitute a judgment of the court against the petitioner to be recovered as any other judgment for costs. In any case where the petitioner does not proceed in forma pauperis, the court shall adjudge all costs and expenses to be paid as shall seem to the court to be right, consistent with the immediately preceding sentence of this subsection (c) and with the provisions of chapter fifty-nine of this code, as amended.

WV Legislature

§53-4A-5. Service of writ.

Any writ granted in accordance with the provisions of this article shall be served upon the person to whom it is directed, or, in his absence from the place where the petitioner is incarcerated, upon the person having the immediate custody of the petitioner.

WV Legislature

§53-4A-6. Return; pleadings; amendments.

Within such time as may be specified in the writ or as the court may fix, the state shall make its return. No other or further pleadings shall be filed except as the court may order. At any time prior to entry of judgment on the writ in accordance with the provisions of this article, the court may permit the petitioner to withdraw his petition. The court may make such orders as to amendment of the petition or return or other pleading, as to pleading over, or filing other or further pleadings, or extending the time for the making of the return or the filing of other pleadings, as shall seem to the court to be appropriate, meet and reasonable. In considering the petition, the return or other pleading, or any amendment thereof, substance and not form shall control.

WV Legislature

§53-4A-7. Denial of relief; hearings; evidence; record; judgment.

(a) If the petition, affidavits, exhibits, records and other documentary evidence attached thereto, or the return or other pleadings, or the record in the proceedings which resulted in the conviction and sentence, or the record or records in a proceeding or proceedings on a prior petition or petitions filed under the provisions of this article, or the record or records in any other proceeding or proceedings instituted by the petitioner to secure relief from his conviction or sentence, show to the satisfaction of the court that the petitioner is entitled to no relief, or that the contention or contentions and grounds (in fact or law) advanced have been previously and finally adjudicated or waived, the court shall enter an order denying the relief sought. If it appears to the court from said petition, affidavits, exhibits, records and other documentary evidence attached thereto, or the return or other pleadings, or any such record or records referred to above, that there is probable cause to believe that the petitioner may be entitled to some relief and that the contention or contentions and grounds (in fact or law) advanced have not been previously and finally adjudicated or waived, the court shall promptly hold a hearing and/or take evidence on the contention or contentions and grounds (in fact or law) advanced, and the court shall pass upon all issues of fact without a jury. The court may also provide for one or more hearings to be held and/or evidence to be taken in any other county or counties in the state.

(b) A record of all proceedings under this article and all hearings and evidence shall be made and kept. The evidentiary depositions of witnesses taken by either the petitioner or the state, on reasonable notice to the other, may be read as evidence. The court may receive proof by proper oral testimony or other proper evidence. All of the evidence shall be made a part of the record. When a hearing is held and/or evidence is taken by a judge of a circuit court or statutory court in vacation, a transcript of the proceedings shall be signed by the judge and certified to the clerk of the court in which the judgment is to be rendered, and be entered by him among the records of that court. A record of all proceedings in the Supreme Court of Appeals shall be entered among the records of such court.

(c) When the court determines to deny or grant relief, as the case may be, the court shall enter an appropriate order with respect to the conviction or sentence in the former criminal proceedings and such supplementary matters as are deemed necessary and proper to the findings in the case, including, but not limited to, remand, the vacating or setting aside of the plea, conviction and sentence, rearraignment, retrial, custody, bail, discharge, correction of sentence and resentencing, or other matters which may be necessary and proper. In any order entered in accordance with the provisions of this section, the court shall make specific findings of fact and conclusions of law relating to each contention or contentions and grounds (in fact or law) advanced, shall clearly state the grounds upon which the matter was determined, and shall state whether a federal and/or state right was presented and decided. Any order entered in accordance with the provisions of this section shall constitute a final judgment, and, unless reversed, shall be conclusive.

(d) Notwithstanding any provision of law to the contrary, whenever a conviction from a crime of violence is reversed or a sentence of incarceration for such an offence is vacated

WV Legislature

pursuant to the provisions of this article, the prosecuting attorney of the county of prosecution shall, prior to a retrial or entering into any plea negotiations or sentence negotiations to resolve the matter, notify the victim or if the offence was a homicide, the next of kin of the victim, by United States mail sent to the last known address of said person, if his or her name and address has previously been provided to the prosecuting attorney.

WV Legislature

§53-4A-8. Powers of judges or judge in vacation.

A writ may be granted or refused in accordance with the provisions of this article by any three concurring judges of the Supreme Court of Appeals, or a judge of any circuit court or any statutory court, in vacation as well as by any such court in term, and any such writ may be made returnable, consistent with the provisions of subsection (b) of section three of this article, to the Supreme Court of Appeals in term, or to a judge of a circuit court or any statutory court in vacation as well as to such court in term. Although a writ granted in accordance with the provisions of this article is returnable to a circuit court in term or a statutory court in term, the contention or contentions and grounds (in fact or law) advanced, and any incidental matters related thereto, may be heard and/or determined or passed upon by a judge of the court in vacation. Any judge of the Supreme Court of Appeals (where at least three judges of such court concur therein), or of a circuit court or a statutory court, in vacation shall have the same power to enforce obedience to the writ, to compel the attendance of witnesses, or to punish contempt of their or his authority, as a court has; and the judgment of a judge of a circuit court or a statutory court in vacation when entered of record shall be considered and be enforced as if it were a judgment of the court among whose records it is entered.

WV Legislature

§53-4A-9. Judicial review; disposition of petitioner pending appeal.

(a) A final judgment entered under the provisions of this article by a statutory court may be appealed by the petitioner or the state to the circuit court of the county upon application for an appeal or writ of error in the manner and within the time provided in article four, chapter fifty-eight of this code, as amended. A final judgment entered under the provisions of this article by a circuit court or a final judgment entered by the circuit court after an appeal or writ of error was granted by such circuit court with respect to the judgment of a statutory court entered under the provisions of this article, as well as an order by a circuit court rejecting an appeal from or writ of error to the judgment of a statutory court entered under the provisions of this article, may be appealed by the petitioner or the state to the Supreme Court of Appeals upon application for an appeal or writ of error in the manner and within the time provided by law for civil appeals generally. When an application for an appeal or writ of error is rejected by the circuit court (and the order of rejection is not appealed to the Supreme Court of Appeals), or the Supreme Court of Appeals, as the case may be, or both, the order sought to be reviewed shall thereby become final to the same extent and with like effect as if said order had been affirmed on appeal.

(b) When the petitioner is remanded, execution of the judgment entered under the provisions of this article shall not be suspended by the granting of an appeal or writ of error, or suspended while the petitioner is applying for an appeal or writ of error. When the petitioner is ordered to be discharged, and execution of the judgment entered under the provisions of this article is ordered suspended to permit the state to apply for an appeal or writ of error, the court making such suspending order may, in its discretion, admit the petitioner to bail until expiration of the time allowed for making application for an appeal or writ of error, or, in case the appeal or writ of error is allowed, until the decision of the appellate court thereon is duly certified.

WV Legislature

§53-4A-10. Construction; repeal.

All other pertinent provisions of this code shall be construed so as to conform to and be consistent with the provisions of this article. In the event that there are pertinent provisions in this code so inconsistent with the provisions of this article as to preclude such construction, such other provisions shall be considered as having been repealed to the extent of such inconsistency by the enactment of this article. The provisions of this article shall be liberally construed so as to effectuate its purposes.

WV Legislature

§53-4A-11. Severability.

If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are hereby declared to be severable. The Legislature does hereby further declare that it would have enacted this article even if it had known at the time of enactment that such provision or application thereof would be held to be invalid.

WV Legislature

§53-5-1. Injunction for protection of property.

An injunction may be awarded to enjoin the sale of property set apart as exempt in the case of a husband or parent, under articles eight and nine, chapter thirty-eight of this code, or to protect any plaintiff in a suit for specific property, pending either at law or in equity, against injury from the sale, removal, or concealment of such property.

WV Legislature

§53-5-2. Forthcoming bond may be required where removal of property from state enjoined.

A court or judge awarding an injunction to restrain the removal of property out of the state may require bond to be given before such officer and in such penalty as it may direct, conditioned to have the property forthcoming to abide the future order or decree of the court, and, unless such bond be given, may order the officer serving its process to take possession of the property and keep it until the bond be given, or until the further order of the court.

WV Legislature

§53-5-3. In what courts bill brought.

Jurisdiction of a bill for an injunction to any judgment, act or proceeding shall, unless it be otherwise specially provided, be in the circuit court of the county in which the judgment is rendered, or the act or proceeding is to be done, or is doing, or is apprehended, and the same may be granted to a judgment of a justice in like manner and with like effect as to other judgments.

WV Legislature

§53-5-4. General jurisdiction of judge to award injunction.

Every judge of a circuit court shall have general jurisdiction in awarding injunctions, whether the judgment or proceeding enjoined be in or out of his circuit, or the party against whose proceeding the injunction be asked reside in or out of the same.

WV Legislature

§53-5-5. Injunction by judge of Supreme Court of Appeals.

When a circuit court, or a judge thereof, shall refuse to award an injunction, a copy of the orders entered in the proceedings in court, and the original papers presented to the court or to the judge in vacation with his order of refusal, may be presented to the Supreme Court of Appeals, or a judge thereof in vacation, who may thereupon award the injunction.

WV Legislature

§53-5-6. Injunction by circuit court or judge where award thereof refused by court of limited jurisdiction.

When a court of limited jurisdiction authorized to grant injunctions, or a judge thereof, shall refuse to award an injunction, a copy of the orders entered in the proceedings in court, and the original papers presented to the court or to the judge in vacation, with his order of refusal, may be presented to the circuit court of the county in which such court of limited jurisdiction is, or to the judge of such circuit court in vacation, who may thereupon award the injunction.

WV Legislature

§53-5-7. To what clerk order for injunction directed.

Every order awarding an injunction by a court or judge other than the court or judge in which or before whom it is to be heard shall be directed to the clerk of the court in which it is to be heard.

WV Legislature

§53-5-8. Equity of plaintiff to be shown by affidavit or otherwise; notice to adverse party; hearing after injunction awarded or denied; certification of questions; appeals.

No injunction shall be awarded in vacation nor in court, in a case not ready for hearing, unless the court or judge be satisfied by affidavit or otherwise of the plaintiff's equity; and any court or judge may require that reasonable notice shall be given to the adverse party, or his attorney at law, or in fact, of the time and place of moving for it, before the injunction is awarded, if in the opinion of the court or judge it be proper that such notice should be given.

After an injunction is awarded or denied in any such case, at any time prior to final adjudication, any party to the proceedings, after reasonable notice to all other parties of record, which notice shall not in any case exceed five days, may move for a hearing on any particular issues or phases of the case which may properly be heard interlocutorily. Such hearing may, in the discretion of the court or judge, be had at the time the motion is made but shall be commenced within the ten days next thereafter, unless by consent of all parties appearing the hearing is continued until a later date. At any such hearing, in term time or in vacation, any party to the proceedings may be present in person or by counsel and may present such witnesses, cross-examine witnesses and offer such testimony and evidence as may be pertinent to the issues then before the court or judge, as the case may be. The court or judge, upon such hearing and the record in the case, shall render a decision without delay, and may continue or dismiss the injunction or may enlarge or modify the same, as may be warranted.

Questions may be certified and appeals may be taken in injunction proceedings as in any other cases in equity.

WV Legislature

§53-5-9. Injunction bond.

An injunction (except in the case of any personal representative, or other person from whom, in the opinion of the court or judge awarding the same, it may be improper to require bond) shall not take effect until bond be given in such penalty as the court or judge awarding it may direct, with condition to pay the judgment or decree (proceedings on which are enjoined) and all such costs as may be awarded against the party obtaining the injunction, and also such damages as shall be incurred or sustained by the person enjoined, in case the injunction be dissolved, and with a further condition, if a forthcoming bond has been given under such judgment or decree, to indemnify and save harmless the sureties in such forthcoming bond and their representatives against all loss or damages in consequence of such suretyship; or, if the injunction be not to proceedings on a judgment or decree, with such condition as such court or judge may prescribe. The bond shall be given before the clerk of the court in which such judgment or decree is, and in other cases before the clerk of the court in which the suit is wherein the injunction is awarded. If the bond be not given before the summons is issued, the clerk shall indorse thereon that the injunction is not to take effect until the bond is given, and the clerk who afterwards takes the bond shall indorse on the summons that it is given.

WV Legislature

§53-5-10. How surety in forthcoming bond may obtain additional security.

Any surety in such forthcoming bond, or his personal representative, may move for and obtain an order for other or additional security, in like manner as a defendant in the injunction may do.

WV Legislature

§53-5-11. Dissolution of injunction in vacation.

The judge of any court in which a case is pending wherein an injunction is awarded may, in vacation, dissolve such injunction, after reasonable notice to the adverse party. His order for dissolution shall be directed to the clerk of such court, who shall record the same in the order book.

WV Legislature

§53-5-12. Damages on dissolution; liability of sureties on forthcoming bond.

When an injunction to stay proceedings on a judgment or decree for money is dissolved, wholly or in part, there shall be decreed to the party having such judgment or decree damages, in lieu of interest, at the rate of ten percent per annum, from the time the injunction took effect until such dissolution thereof, on the amount of principal, interest, and costs due on the judgment or decree, proceedings on which are enjoined, and, if a forthcoming bond has been taken in the case, the amount on which such damages shall be paid shall be the sum due on such bond. And in all cases the court or judge dissolving the injunction shall ascertain and enter in the decree of dissolution the amount of principal, interest, damages and costs, including officer's fees and commissions due on the judgment or decree, at the date of the dissolution of the injunction, and shall award execution therefor against the defendant in the judgment or decree, proceedings on which were enjoined, or their personal representatives, with interest thereon from that day till paid, and the costs incurred by the defendant in the injunction in defending the same. And if a forthcoming bond has been given in the case, and the same has been or shall be forfeited, the sureties therein shall be liable for the costs incurred by the defendant in the injunction, as aforesaid, and, to the extent of their liability on such forthcoming bond, for whatever sum remains unpaid on the execution so awarded.

WV Legislature

§53-5-13. Dismissal of bill for injunction.

Where an injunction is wholly dissolved, the bill shall be dismissed with costs, unless sufficient cause be shown against such dismission.

WV Legislature

§53-6-1. Special receiver -- Appointment generally; bond; notice of application for appointment.

A court of equity may, in any proper case pending therein, in which funds or property of a corporation, firm or person is involved, and there is danger of the loss or misappropriation of the same or a material part thereof, appoint a special receiver of such funds or property, or of the rents, issues and profits thereof, or both, who shall give bond with good security to be approved by the court, or by the clerk thereof, for the faithful performance of his trust, and for paying over and accounting for, according to law, all such moneys that may come into his hands by virtue of his appointment. But no such receiver shall be appointed of any real estate, or of the rents, issues and profits thereof, until reasonable notice of the application therefor has been given to the owner or tenant thereof. A judge of such court in vacation may appoint such receiver of any such property, except real estate, and the rents, issues and profits thereof.

WV Legislature

§53-6-2. Same -- Appointment by order of Supreme Court of Appeals or judge thereof in vacation.

When a circuit court, or judge thereof, shall refuse the appointment of a receiver as aforesaid, a copy of the orders entered in the proceedings in court, and the original papers presented to it, or the judge in vacation, with the order of refusal, may be presented to the Supreme Court of Appeals, or a judge thereof in vacation, who may thereupon order the appointment to be made, and cause such order to be certified to the clerk of such circuit court, who shall record the same in his chancery order book, whereupon it shall be the duty of such circuit court or judge to appoint such receiver, and require the bond as hereinbefore provided.

WV Legislature

§53-6-3. Same -- Accounting.

Any special receiver shall render an account of the funds or property of which he is receiver when ordered to do so by the court wherein the cause in which he is receiver is pending, or by the judge thereof in vacation. Such accounting shall be before such court or judge, or before any commissioner in chancery of such court directed by such court or judge to take and state such account, and shall constitute a part of the proceedings in such cause.

WV Legislature

§53-7-1. Order for arrest -- Affidavit; grounds for arrest.

An order for the arrest of a defendant in any action or proceeding at law or suit in equity may be made by the court in which the action, proceeding or suit is pending, or by the judge or clerk thereof in vacation, upon the affidavit of the plaintiff or any credible person showing to the satisfaction of the court, or judge or clerk thereof in vacation, the nature and justice of the plaintiff's claim, the amount which the affiant believes the plaintiff is justly entitled to recover in the action, proceeding or suit, and the existence of some one or more of the following grounds for the arrest of the defendant: (a) That the defendant has removed, or is about to remove, any of his property out of the state with intent to defraud his creditors; or (b) that he has converted or is about to convert his property or any part thereof into money or securities with like intent; or (c) that he has assigned, disposed of or removed his property or any part thereof, or is about to do so, with like intent; or (d) that he has property or rights in action which he fraudulently conceals; or (e) that he fraudulently contracted the debt or incurred the liability for which the action or suit is brought; or (f) that he is about to leave the state and reside permanently in another state or country, without paying the debt or liability for which the action or suit is brought.

WV Legislature

§53-7-2. Same -- By whom made; plaintiff to give bond.

When sufficient cause shall be shown for the arrest of a defendant as aforesaid such court, judge or clerk shall make an order directing the defendant to be arrested and held to bail for such sum as the said court, judge or clerk shall think fit, and the plaintiff shall thereupon deliver to the clerk of the court in which the action is pending a bond in a penalty double the amount sworn to, executed by himself or some person for him with one or more sufficient securities, approved by the clerk, to the effect that the plaintiff will pay the defendant all damages he may sustain by reason of the arrest, should it thereafter appear that the order was wrongfully obtained.

WV Legislature

§53-7-3. Same -- Issuance; form.

Upon the delivery of the bond mentioned in the preceding section, the clerk shall issue an order for the arrest of the defendant in form or in substance as follows:

A..... B....., Plaintiff,

vs .Order of arrest.

C..... D....., Defendant,

To the sheriff of the county of .....: You are hereby required, in the name of the State of West Virginia, to arrest the defendant, C..... D....., and commit him to the jail of the said county of ....., to be there safely kept, unless or until he shall give a bond, with good security, in the penalty of ..... dollars, conditioned according to law, and that you return your proceedings under this order to the next term of the ..... court (naming the court in which the action, proceeding or suit is pending) of said county.

Witness E..... F....., clerk of the said court, this ..... day of .....

E..... F....., Clerk.

WV Legislature

§53-7-4. Arrest and commitment unless bond given by defendant.

Under such order, the defendant against whom it issues shall be arrested and committed to jail, unless bond be given in the sum specified therein, with sufficient security, conditioned that, in case there shall in the action, proceeding or suit be any judgment, decree or order on which a writ of fieri facias may issue, and within four months after such judgment, decree or order is rendered or made, interrogatories be filed under sections one, two and three, article five, chapter thirty-eight of this code, with a commissioner of the court wherein such judgment, decree or order is, the defendant will, at the time the commissioner issues a summons to answer such interrogatories, be in the county in which such commissioner resides, and will, within the time prescribed in such summons, file proper answers upon oath to such interrogatories, and make such conveyance and delivery as is required by the said article, or in case of failure to file such answer and make such conveyance and delivery, that the said defendant will perform and satisfy the said judgment, decree or order.

WV Legislature

§53-7-5. To whom bond of defendant may be given; return and filing thereof.

The defendant arrested under such order may, at any time pending the case, give bond to the officer making the arrest. Such bond shall be taken by such officer and returned by him to the clerk of the court from which the order issued, and the same shall be filed in such clerk's office.

WV Legislature

§53-7-6. Discharge of defendant or bond.

If the defendant give such bond, or be committed to jail for want of it, the court in which the case is pending, or the judge thereof in vacation, may, after reasonable notice to the plaintiff, or his attorney, quash the order and discharge the defendant from custody, or discharge the bond, on being satisfied that the order was wrongfully obtained; and, whether the order was so obtained or not, may discharge him from custody when the plaintiff is cast in the action, proceeding or suit.

WV Legislature

§53-7-7. Interrogatories to defendant in custody; discharge of defendant.

While a defendant is in custody, the plaintiff, without having a judgment or decree against the defendant, may file interrogatories to him in like manner as might be done under sections one, two and three, article five, chapter thirty-eight of this code, if such judgment or decree had been obtained and a fieri facias thereon had been delivered to an officer. And the court wherein the case is pending, or a judge or a commissioner thereof, after reasonable notice to the plaintiff, or his attorney may discharge the defendant from custody, unless interrogatories be filed within such time as such court, judge or commissioner may deem reasonable; or, though interrogatories be filed, may discharge him when proper answers thereto are filed and proper conveyance and delivery made.

WV Legislature

§53-7-8. Conveyance or other disposition of property.

The officer making the arrest shall be the officer to whom the conveyance shall be made: Provided, That if for any reason it cannot or should not be made to him it shall be made to such other officer as the court or judge may direct. The interrogatories, answers and report of the commissioner shall be returned to the court in which the case is pending and filed in the papers of such case. And such court may make such order as it may deem right as to the sale and proper application of the estate conveyed and delivered under the preceding section.

WV Legislature

§53-8-1. Definitions.

In this article, the following words have the meanings indicated.

"Final personal safety order" means a personal safety order issued by a magistrate under section seven of this article.

"Incapacitated adult" means any person who by reason of physical, mental or other infirmity is unable to physically carry on the daily activities of life necessary to sustaining life and reasonable health.

"Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public personal safety and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances.

"Military protective order" means a protective order issued by a commanding officer in the United States Armed Forces, the West Virginia National Guard, or the National Guard of any other state against a person under such officer's command.

“Petitioner" means an individual who files a petition under section four of this article.

"Place of employment" includes the grounds, parking areas, outbuildings and common or public areas in or surrounding the place of employment.

"Residence" includes the yard, grounds, outbuildings and common or public areas in or surrounding the residence.

"Respondent" means an individual alleged in a petition to have committed an act specified in §53-8-4(a) of this code against a petitioner.

"School" means an educational facility comprised of one or more buildings, including school grounds, a school bus or any school-sponsored function or extracurricular activities. For the purpose of this subdivision, "school grounds" includes the land on which a school is built together with such other land used by students for play, recreation or athletic events while attending school. "Extracurricular activities" means voluntary activities sponsored by a school, a county board or an organization sanctioned by a county board or the State Board of Education and include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, organizations and clubs.

"Sexual offense" means the commission of the offenses set out in any of the following sections:

(A) §61-8-9 of this code;

WV Legislature

(B) §61-8-12 of this code;

(C) §61-8A-2 of this code;

(D) §61-8A-4 of this code;

(E) §61-8A-5 of this code;

(F) §61-8B-3 of this code;

(G) §61-8B-4 of this code;

(H) §61-8B-5 of this code;

(I) §61-8B-7 of this code;

(J) §61-8B-8 of this code;

(K) §61-8B-9 of this code;

(L) §61-8C-2 of this code;

(M) §61-8C-3 of this code;

(N) §61-8D-3a of this code;

(O) §61-8D-5 of this code; and

(P) §61-8D-6 of this code.

"Temporary personal safety order" means a personal safety order issued by a magistrate under section five of this article.

WV Legislature

§53-8-2. Confidentially of proceedings.

(a) General Provisions. -- All orders, findings, pleadings, recordings, exhibits, transcripts or other documents contained in a court file are confidential and are not available for public inspection: Provided, That unless the file is sealed pursuant to section seventeen of this article or access is otherwise prohibited by order, any document in the file shall be available for inspection and copying by the parties, attorneys of record, guardians ad litem, designees authorized by a party in writing and law enforcement. A magistrate or circuit judge may open and inspect the entire contents of the court file in any case pending before the magistrate's or judge's court. When sensitive information has been disclosed in a hearing, pleading or document filing, the court may order such information sealed in the court file. Sealed court files shall be opened only pursuant to section seventeen of this article.

(b) (1) Proceedings are not open to the public. -- Hearings conducted pursuant to this article are closed to the general public except that persons whom the court determines have a legitimate interest in the proceedings may attend.

(2) A person accompanying the petitioner may not be excluded from being present if his or her presence is desired by the person seeking a petition unless the person's behavior is disruptive to the proceeding.

(c) Orders permitting examination or copying of file contents. –- Upon written motion, for good cause shown, the court may enter an order permitting a person who is not permitted access to a court file under subsection (a) to examine and/or copy documents in a file. Such orders shall set forth specific findings which demonstrate why the interests of justice necessitate the examination, copying, or both, and shall specify the particular documents to be examined and/or copied and the arrangements under which such examination, copying, or both, may take place.

(d) Obtaining confidential records. -- Unless both the petitioner and the respondent waive confidentiality in writing, records contained in the court file may not be obtained by subpoena but only by court order and upon full compliance with statutory and case law requirements.

WV Legislature

§53-8-3. Who may file; exclusivity; applicability of article.

(a) Who may file a petition. -- A petition for relief under this article may be filed by:

(1) A person seeking relief under this article for herself or himself; or

(2) A parent, guardian or custodian on the behalf of a minor child or an incapacitated adult.

(b) Other remedies generally not precluded. -- By proceeding under this article, a petitioner is not limited to or precluded from pursuing any other legal remedy.

(c) Circumstances where article is inapplicable. -- This article does not apply to a petitioner who is a person eligible for relief under article twenty-seven, chapter forty-eight of this code.

(d) Right to file. –- No person may be refused the right to file a petition under the provisions of this article. No person may be denied relief under the provisions of this article if she or he presents facts sufficient under the provisions of this article for the relief sought.

WV Legislature

§53-8-4. Petition seeking relief.

(a) Underlying acts. – A petitioner may seek relief under this article by filing with a magistrate court a petition that alleges the commission of any of the following acts against the petitioner by the respondent:

(1) A sexual offense or attempted sexual offense as defined in section one of this article;

(2) A violation of subsection (a), section nine-a, article two, chapter sixty-one of this code; or

(3) repeated credible threats of bodily injury when the person making the threats knows or has reason to know that the threats cause another person to reasonably fear for his or her safety.

(b) Contents. –

The petition shall:

(1) Be verified and provide notice to the petitioner that an individual who knowingly provides false information in the petition is guilty of a misdemeanor and, on conviction, is subject to the penalties specified in subsection (d) of this section;

(2) Subject to the provisions of subsection (c) of this section, contain the address of the petitioner; and

(3) Include all information known to the petitioner of:

(A) The nature and extent of the act specified in subsection (a) of this section for which the relief is being sought, including information known to the petitioner concerning previous harm or injury resulting from an act specified in subsection (a) of this section by the respondent;

(B) Each previous and pending action between the parties in any court; and

(C) The whereabouts of the respondent.

(c) Address may be stricken. – If, in a proceeding under this article, a petitioner alleges, and the court finds, that the disclosure of the address of the petitioner would risk further harm to the petitioner or a member of the petitioner's household, that address may be stricken from the petition and omitted from all other documents filed with, or transferred to, a court.

(d) Providing false information. – An individual who knowingly provides false information in a petition filed under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $1,000 or confined in jail not more than ninety days, or both.

WV Legislature

(e) Withdrawal or dismissal of a petition prior to adjudication operates as a dismissal without prejudice. – No action for a personal safety order may be dismissed because the respondent is being prosecuted for a crime against the petitioner. For any action commenced under this article, dismissal of a case or a finding of not guilty, does not require dismissal of the action for a civil protection order.

(f) Venue. – The action may be heard in the county in which any underlying act occurred for which relief is sought in the petition, in the county in which the respondent is living, or in the county in which the petitioner is living, either temporarily or permanently.

WV Legislature

§53-8-5. Temporary personal safety orders.

(a) Authorized; forms of relief available. —

(1) If after a hearing on a petition, whether ex parte or otherwise, a magistrate finds that there is reasonable cause to believe that the respondent has committed an act specified in §53-8-4(a) of this code, against the petitioner, the magistrate shall issue a temporary personal safety order to protect the petitioner.

(2) The temporary personal safety order may include any or all of the following relief:

(A) Order the respondent to refrain from committing or threatening to commit an act specified in §53-8-4(a) of this code against the petitioner;

(B) Order the respondent to refrain from contacting, attempting to contact or harassing the petitioner directly, indirectly or through third parties regardless of whether those third parties know of the order;

(C) Order the respondent to refrain from entering the residence of the petitioner;

(D) Order the respondent to remain away from the place of employment, school or residence of the petitioner: *Provided*, That when the respondent is alleged to have committed an act specified in §53-8-4(a)(2) of this code, the magistrate may not prohibit the respondent from entering the respondent's place of employment;

(E) Order the respondent not to visit, assault, molest or otherwise interfere with the petitioner and, if the petitioner is a child, the petitioner's siblings and minors residing in the household of the petitioner;

(F) The court, in its discretion, may prohibit a respondent from possessing a firearm as defined in §61-7-7 of this code if:

(i) A weapon was used or threatened to be used in the commission of the offense predicating the petitioning for the personal safety order;

(ii) The respondent has violated any prior order as specified under this article; or

(iii) The respondent has been convicted of an offense involving the use of a firearm;

(G) Order either party to pay filing fees and costs of a proceeding pursuant to section thirteen of this article.

(3) If the magistrate issues an order under this section, the order shall contain only the relief necessary to protect the petitioner.

(4) For purposes of issuing a temporary personal safety order under this section, a

WV Legislature

magistrate may treat a military protective order as reasonable cause to believe that the respondent has committed an act specified in §53-8-4(a) of this code against the petitioner if the military protective order:

(A) Is still in effect and has not been terminated; and

(B) Was issued against the respondent because the respondent committed an act specified in §53-8-4(a) of this code against the petitioner.

(b) Immediate. -– The temporary personal safety order shall be immediately served on the respondent by law enforcement, or at the option of the petitioner, pursuant to rules promulgated pursuant to section fifteen of this article.

(c) Length of effectiveness. —

(1) The temporary personal safety order shall be effective for not more than 10 days after service of the order.

(2) The magistrate may extend the temporary personal safety order to effectuate service of the order or for other good cause. The failure to obtain service upon the respondent does not constitute a basis to dismiss the petition.

(d) Final personal safety order hearing. — The magistrate may proceed with a final personal safety order hearing instead of a temporary personal safety order hearing if:

(1) (A) The respondent appears at the hearing; or

(B) The court otherwise has personal jurisdiction over the respondent; and

(2) The petitioner and the respondent expressly consent to waive the temporary personal safety order hearing.

WV Legislature

§53-8-6. Respondent's opportunity to be heard; notice to respondent.

(a) Respondent's opportunity to be heard. -- A respondent shall have an opportunity to be heard on the question of whether the magistrate should issue a final personal safety order subject to the provisions of this section.

(b) Personal safety order hearing. -- Date and time; notice.

(1) (A) The temporary personal safety order shall state the date and time of the final personal safety order hearing.

(B) Unless continued for good cause, the final personal safety order hearing shall be held no later than ten days after the temporary personal safety order is served on the respondent.

(2) The temporary personal safety order shall include notice to the respondent:

(A) In at least ten-point bold type, that if the respondent fails to appear at the final personal safety order hearing, the respondent may be served by first-class mail at the respondent's last known address with the final personal safety order and all other notices concerning the final personal safety order;

(B) Specifying all the possible forms of relief under subsection (d) of section seven, that the final personal safety order may contain;

(C) That the final personal safety order shall be effective for the period stated in the order, not to exceed two years; and

(D) In at least ten-point bold type, that the respondent must notify the court in writing of any change of address.

WV Legislature

§53-8-7. Personal safety hearing; forms of relief.

(a) Final personal safety order hearing. --

Proceeding; issuance of order. –- If the respondent appears for the final personal safety order hearing, has been served with a temporary personal safety order or the respondent waives personal service, the magistrate:

(1) May proceed with the final personal safety order hearing; and

(2) May issue a final personal safety order to protect the petitioner if the court finds by a preponderance of the evidence that:

(A) (I) The respondent has committed an act specified in subsection (a), section four of this article against the petitioner; and

(ii) The petitioner has a reasonable apprehension of continued unwanted or unwelcome contacts by the respondent; or

(B) The respondent consents to the entry of a personal safety order.

(b) A final personal safety order may be issued only to an individual who has filed a petition or on whose behalf a petition was filed under section three of this article.

(c) In cases where both parties file a petition under section four of this article, the court may issue mutual personal safety orders if the court finds by a preponderance of the evidence that:

(1) Each party has committed an act specified in subsection (a), section four of this article against the other party; and

(2) Each party has a reasonable apprehension of continued unwanted or unwelcome contacts by the other party.

(d) Personal safety order - Forms of relief. --

(1) The final personal safety order may include any or all of the following relief:

(A) Order the respondent to refrain from committing or threatening to commit an act specified in subsection (a), section four of this article against the petitioner;

(B) Order the respondent to refrain from contacting, attempting to contact or harassing the petitioner directly, indirectly, or through third parties regardless of whether those third parties know of the order;

(C) Order the respondent to refrain from entering the residence of the petitioner;

WV Legislature

(D) Order the respondent to remain away from the place of employment, school or residence of the petitioner;

(E) Order the respondent not to visit, assault, molest or otherwise interfere with the petitioner and, if the petitioner is a child, the petitioner's siblings and minors residing in the household of the petitioner;

(F) The court, in its discretion, may prohibit a respondent from possessing a firearm as defined in section seven, article seven, chapter sixty-one of this code if:

(I) A weapon was used or threatened to be used in the commission of the offense predicating the petitioning for the personal safety order;

(ii) The respondent has violated any prior order as specified under this article; or

(iii)The respondent has been convicted of an offense involving the use of a firearm; and

(G) Order either party to pay filing fees and costs of a proceeding pursuant to section thirteen of this article.

(2) If the magistrate issues an order under this section, the order shall contain only the relief necessary to protect the petitioner.

(e) Personal safety order - Service. --

(1) A copy of the final personal safety order shall be served on the petitioner, the respondent, the appropriate law-enforcement agency and any other person the court determines is appropriate, including a county board of education, in open court or, if the person is not present at the final personal safety order hearing, by first-class mail to the person's last known address or by other means in the discretion of the court.

(2) (A) A copy of the final personal safety order served on the respondent in accordance with subdivision (1) of this subsection or the hearing of the announcement of the court's ruling in court, constitutes actual notice to the respondent of the contents of the final personal safety order.

(B) Service is complete upon mailing.

(f) Length of effectiveness. -- All relief granted in a final personal safety order shall be effective for the period stated in the order, not to exceed two years.

WV Legislature

§53-8-8. Modification and rescission.

(a) A personal safety order may be modified or rescinded during the term of the personal safety order after:

(1) Giving notice to the petitioner and the respondent; and

(2) A hearing.

(b) Modification may include extending the term of the personal safety order if the order was previously issued for a term of less than the two-year maximum term set forth in section seven of this article.

WV Legislature

§53-8-9. Appeals.

(a) If a magistrate grants or denies relief under a petition filed under this article, a respondent or a petitioner may appeal to the circuit court for the county where the magistrate court is located.

(b) An appeal taken under this section shall be heard de novo in the circuit court.

(c) (1) If an appeal is filed under this section, the magistrate court judgment shall remain in effect until superseded by a judgment of the circuit court; and

(2) Unless the circuit court orders otherwise, modification or enforcement of the magistrate court order shall be by the magistrate court.

WV Legislature

§53-8-10. Statement concerning violations.

A temporary personal safety order and final personal safety order issued under this article shall state that a violation of the order may result in:

(1) Criminal prosecution; and

(2) Incarceration, fine or both.

WV Legislature

§53-8-11. Penalties.

(a) Fines or incarceration. -- An individual who fails to comply with the relief granted in a temporary personal safety order or a final personal safety order entered pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall:

(1) For a first offense, be fined not more than $1,000 or confined in jail not more than ninety days, or both; and

(2) For a second or subsequent offense, be fined not more than $2,500 or confined in jail not more than one year, or both.

(b) Arrest. -- A law-enforcement officer shall arrest with or without a warrant and take into custody an individual who the officer has probable cause to believe is in violation of a temporary or final personal safety order in effect at the time of the violation.

WV Legislature

§53-8-12. Priority of petitions.

Any petition filed in magistrate court under the provisions of this article shall be given priority over any other civil action before the court, except actions pursuant to article twenty-seven, chapter forty-eight of this code and those in which trial is in progress, and shall be docketed immediately upon filing.

WV Legislature

§53-8-13. Fees and costs.

(a) Charges for fees and costs postponed. -- No fees may be charged for the filing of petitions or other papers, service of petitions or orders, copies of orders or other costs for services provided by, or associated with, any proceedings under this article until the matter is brought before the court for final resolution.

(b) Assessment of court costs and fees when temporary order is denied. -- If the petition is denied, court costs and fees shall be assessed by the magistrate against the petitioner at the conclusion of the temporary hearing, unless a fee waiver affidavit reflecting inability to pay has been filed or prohibited by federal law.

(c) Costs and fees may not be assessed against a prevailing party.

(d) Assessment of court costs and fees when personal safety order is granted. -- Except as in subsection (c), court costs and fees shall be assessed by the court at the conclusion of a proceeding, unless a fee waiver affidavit reflecting inability to pay has been filed.

(e) Assessment of court costs and fees when petitioner moves to terminate order. -- No court costs or fees shall be assessed against a petitioner who moves to terminate an order, whether the court grants or denies the motion.

(f) A person seeking waiver of fees, costs or security pursuant to section one, article two, chapter fifty-nine of this code shall execute before the clerk where the matter is pending a fee waiver affidavit which shall be kept confidential. An additional fee waiver affidavit shall be filed whenever the financial condition of the person no longer conforms to the financial condition established by the Supreme Court of Appeals for determining inability to pay fees or whenever an order has been entered directing the filing of a new affidavit.

WV Legislature

§53-8-14. Service by law enforcement.

Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized and required to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. No law-enforcement officer may refuse to serve any pleadings or orders entered pursuant to this article. Law enforcement shall attempt to serve all orders without delay: Provided, That service of process shall be attempted within seventy-two hours of law enforcement's receipt of the order. If service is not made, law enforcement shall continue to attempt service on the respondent until proper service is made.

WV Legislature

§53-8-15. Rules and forms.

(a) Authorized. -- The Supreme Court of Appeals may adopt rules and forms to implement the provisions of this article.

(b) Petition form. --

(1) The Supreme Court of Appeals is requested to adopt a form for a petition under this article.

(2) A petition form shall contain notice to a petitioner that an individual who knowingly provides false information in a petition filed under this subtitle is guilty of a misdemeanor and, on conviction, is subject to the penalties specified in section four of this article.

WV Legislature

§53-8-16. Limitation on use of information.

Nothing in this article authorizes the inclusion of information contained in petition, pleadings or orders provided for by this article to be submitted to any local, state, interstate, national or international systems of criminal identification pursuant to section twenty-four, article two, chapter fifteen of this code. Nothing in this section prohibits the West Virginia State Police from processing information through its criminal identification bureau with respect to any actual charge or conviction of a crime.

WV Legislature

§53-8-17. Sealing of records.

(a) Definitions. —

(1) In this section the following words have the meanings indicated.

(2) "Court record" means an official record of a court about a proceeding that the clerk of a court or other court personnel keeps. "Court record" includes an index, a docket entry, a petition or other pleading, a memorandum, a transcription of proceedings, an electronic recording, an order and a judgment.

(3) "Seal" means to remove information from public inspection in accordance with this section.

(4) "Sealing" means:

(A) With respect to a record kept in a courthouse, removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access;

(B) With respect to electronic information about a proceeding on the website maintained by the magistrate court, circuit court or the Supreme Court of Appeals, removing the information from the public website; and

(C) With respect to a record maintained by any law-enforcement agency, by removing to a separate secure area to which persons who do not have a legitimate reason for access are denied access.

(b) Written request. — Either party to a petition filed pursuant to this article may file a written request with the clerk to seal all court records relating to the proceeding.

(c) Timing. — A request for sealing under this section may not be filed within two years after the entry of a final order, or the denial or dismissal of the petition.

(d) Notice, hearing and findings. —

(1) On the filing of a request for sealing under this section, the court shall schedule a hearing on the request.

(2) The court shall give notice of the hearing to the parties.

(3) After the hearing, the court shall order the sealing of all court records relating to the proceeding if the court finds:

(A) Good cause to grant the request. In determining whether there is good cause to grant the request to seal court records, the court shall balance the privacy and potential danger of adverse consequences to the parties against the potential risk of future harm and danger to

WV Legislature

the petitioner and the community; and

(B) That none of the following are pending at the time of the hearing:

(I) A temporary personal safety order or protective order issued against the respondent in a proceeding between the petitioner and the respondent; or

(ii) A criminal charge against the respondent arising from an alleged act described in subsection (a) section four of this article in which the petitioner is the victim.

(e) Access to a sealed record. —

(1) This section does not preclude the following persons from accessing a sealed record for a legitimate reason:

(A) A law-enforcement officer;

(B) An attorney who represents or has represented the petitioner or the respondent in a proceeding;

(C) A prosecuting attorney; or

(D) An employee of the Department of Human Services and the Department of Health.

(2) (A) A person not listed in subdivision (1) of this subsection may subpoena or file a motion for access to a record sealed under this section.

(B) If the court finds that the person has a legitimate reason for access, the court may grant the person access to the sealed record under the terms and conditions that the court determines.

(C) In ruling on a motion under this subdivision, the court shall balance the person's need for access to the record with the respondent's right to privacy and the potential harm of unwarranted adverse consequences to the respondent that the disclosure may create.

(f) Compliance with order. — Within sixty days after entry of an order under subdivision (3), subsection (d) of this section, each custodian of court records that are subject to the order of sealing shall advise in writing the court and the parties of compliance with the order.

WV Legislature