

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 38

(By Mr. Cason, Mr. President, and
Mr. Woulard)

PASSED January 25, 1967

In Effect from Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 1-31-67

38

ENROLLED

Senate Bill No. 38

(By MR. CARSON, MR. PRESIDENT, and MR. MORELAND)

[Passed January 25, 1967; in effect from passage.]

AN ACT to amend chapter fifty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, providing for full post-conviction review upon the granting of a writ of habeas corpus; recognizing the original jurisdiction of the supreme court of appeals and the circuit courts of this state in such matters; conferring jurisdiction in such matters on certain courts of record of limited jurisdiction in this state; relating to the petition for, and the granting or refusal of, and service and return of, such a writ; relating to hearings and judgment thereon; providing under certain circumstances for the appointment of an attorney; relating to the costs, expenses and fees

incident to such post-conviction review; relating to the powers of judges or a judge in vacation with respect to such post-conviction review; relating to the right of appeal; relating to construction of the article and the repeal of certain provisions to the extent of their inconsistency; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter fifty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four-a, to read as follows:

ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.

§53-4A-1. Writ of habeas corpus for post-conviction review.

(a) Any person convicted of a crime and incarcerated
2 under sentence of imprisonment therefor who contends
3 that there was such a denial or infringement of his
4 rights as to render the conviction or sentence void under
5 the constitution of the United States or the constitu-
6 tion of this state, or both, or that the court was without
7 jurisdiction to impose the sentence, or that the sentence
8 exceeds the maximum authorized by law, or that the

9 conviction or sentence is otherwise subject to collateral
10 attack upon any ground of alleged error heretofore avail-
11 able under the common law or any statutory provision
12 of this state, may, without paying a filing fee, file a peti-
13 tion for a writ of habeas corpus ad subjiciendum, and
14 prosecute the same, seeking release from such illegal im-
15 prisonment, correction of the sentence, the setting aside
16 of the plea, conviction and sentence, or other relief, if
17 and only if such contention or contentions and the grounds
18 in fact or law relied upon in support thereof have not
19 been previously and finally adjudicated or waived in
20 the proceedings which resulted in the conviction and
21 sentence, or in a proceeding or proceedings on a prior
22 petition or petitions filed under the provisions of this
23 article, or in any other proceeding or proceedings which
24 the petitioner has instituted to secure relief from such
25 conviction or sentence. Any such petition shall be filed
26 with the clerk of the supreme court of appeals, or the
27 clerk of any circuit court, said supreme court of appeals
28 and all circuit courts of this state having been granted
29 original jurisdiction in habeas corpus cases by the con-

stitution 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

51 sentence, or in a proceeding or proceedings on a prior
52 petition or petitions filed under the provisions of this
53 article, or in any other proceeding or proceedings insti-
54 tuted by the petitioner to secure relief from his convic-
55 tion or sentence, there was a decision on the merits
56 thereof after a full and fair hearing thereon and the time
57 for the taking of an appeal with respect to such decision
58 has not expired or has expired, as the case may be, or
59 the right of appeal with respect to such decision has been
60 exhausted, unless said decision upon the merits is clearly
61 wrong.

62 (c) For the purposes of this article, a contention or
63 contentions and the grounds in fact or law relied upon
64 in support thereof shall be deemed to have been waived
65 when the petitioner could have advanced, but intelli-
66 gently and knowingly failed to advance, such contention
67 or contentions and grounds before trial, at trial, or on
68 direct appeal (whether or not said petitioner actually
69 took an appeal), or in a proceeding or proceedings on a
70 prior petition or petitions filed under the provisions of
71 this article, or in any other proceeding or proceedings

72 instituted by the petitioner to secure relief from his con-
73 viction or sentence, unless such contention or contentions
74 and grounds are such that, under the constitution of
75 the United States or the constitution of this state, they
76 cannot be waived under the circumstances giving rise to
77 the alleged waiver. When any such contention or conten-
78 tions and grounds could have been advanced by the peti-
79 tioner before trial, at trial, or on direct appeal (whether
80 or not said petitioner actually took an appeal), or in a
81 proceeding or proceedings on a prior petition or petitions
82 filed under the provisions of this article, or in any other
83 proceeding or proceedings instituted by the petitioner
84 to secure relief from his conviction or sentence, but were
85 not in fact so advanced, there shall be a rebuttable pre-
86 sumption that the petitioner intelligently and knowingly
87 failed to advance such contention or contentions and
88 grounds.

89 (d) For the purposes of this article, and notwithstand-
90 ing any other provisions of this article, no such conten-
91 tion or contentions and grounds shall be deemed to have
92 been previously and finally adjudicated or to have been

93 waived where, subsequent to any decision upon the merits
94 thereof or subsequent to any proceeding or proceedings
95 in which said question otherwise may have been waived,
96 any court whose decisions are binding upon the supreme
97 court of appeals of this state or any court whose decisions
98 are binding upon the lower courts of this state holds that
99 the constitution of the United States or the constitution
100 of West Virginia, or both, impose upon state criminal
101 proceedings a procedural or substantive standard not
102 theretofore recognized, if and only if such standard is
103 intended to be applied retroactively and would thereby
104 affect the validity of the petitioner's conviction or
105 sentence.

106 (e) The writ of habeas corpus ad subjiciendum pro-
107 vided for in this article is not a substitute for nor does
108 it affect any remedies which are incident to the criminal
109 proceedings in the trial court or any remedy of direct
110 review of the conviction or sentence, but such writ com-
111 prehends and takes the place of all other common law
112 and statutory remedies, including, but not limited to, the
113 writ of habeas corpus ad subjiciendum provided for in

114 article four of this chapter, which have heretofore been
115 available for challenging the validity of a conviction or
116 sentence and shall be used exclusively in lieu thereof:
117 *Provided*, That nothing contained in this article shall
118 operate to bar any proceeding or proceedings in which
119 a writ of habeas corpus ad subjiciendum is sought for
120 any purpose other than to challenge the legality of a
121 criminal conviction or sentence of imprisonment therefor.
122 A petition for a writ of habeas corpus ad subjiciendum
123 in accordance with the provisions of this article may be
124 filed at any time after the conviction and sentence in
125 the criminal proceedings have been rendered and imposed
126 and the time for the taking of an appeal with respect
127 thereto has expired or the right of appeal with respect
128 thereto has been exhausted.

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

A petition seeking a writ of habeas corpus ad subji-
2 ciendum in accordance with the provisions of this article
3 shall identify the proceedings in which the petitioner was

4 convicted and sentenced, give the date of the entry of
5 the judgment and sentence complained of, specifically set
6 forth the contention or contentions and grounds in fact
7 or law in support thereof upon which the petition is
8 based, and clearly state the relief desired. Affidavits,
9 exhibits, records or other documentary evidence support-
10 ing the allegations of the petition shall be attached to
11 the petition unless there is a recital therein as to why
12 they are not attached. All facts within the personal knowl-
13 edge of the petitioner shall be set forth separately from
14 other allegations, and such facts and the authenticity of
15 all affidavits, exhibits, records or other documentary evi-
16 dence attached to the petition must be sworn to affirma-
17 tively as true and correct. The petition must also identify
18 any previous proceeding or proceedings on a petition
19 or petitions filed under the provisions of this article, or
20 any other previous proceeding or proceedings which the
21 petitioner instituted to secure relief from his conviction
22 or sentence and must set forth the type or types of such
23 previous proceeding or proceedings, the contention or
24 contentions there advanced, the grounds in fact or law

25 assigned therein for the relief there sought, the date
26 thereof, the forum in which instituted and the result
27 thereof. Argument, citations and discussion of authori-
28 ties shall be omitted from the petition, but may be filed
29 as a separate document or documents. The supreme court
30 of appeals may by rule prescribe the form of the petition,
31 verification and the writ itself. The clerk of the court in
32 which the petition is filed shall docket the petition upon
33 its receipt, and shall bring the petition and any affidavits,
34 exhibits, records and other documentary evidence at-
35 tached thereto to the attention of the court.

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

(a) If the petition, affidavits, exhibits, records and
2 other documentary evidence attached thereto, or the
3 record in the proceedings which resulted in the conviction
4 and sentence, or the record or records in a proceeding or
5 proceedings on a prior petition or petitions filed under
6 the provisions of this article, or the record or records in
7 any other proceeding or proceedings instituted by the

8 petitioner to secure relief from his conviction or sentence
9 (if any such record or records are part of the official court
10 files of the court with whose clerk the petition is filed
11 and are thus available for examination and review by
12 such court) show to the satisfaction of the court that the
13 petitioner is entitled to no relief, or that the contention
14 or contentions and grounds (in fact or law) advanced
15 have been previously and finally adjudicated or waived,
16 the court shall by order entered of record refuse to grant
17 a writ, and such refusal shall constitute a final judgment.
18 If it appears to such court from said petition, affidavits,
19 exhibits, records and other documentary evidence, or
20 any such available record or records referred to above,
21 that there is probable cause to believe that the petitioner
22 may be entitled to some relief, and that the contention or
23 contentions and grounds (in fact or law) advanced have
24 not been previously and finally adjudicated or waived,
25 the court shall forthwith grant a writ, directed to and
26 returnable as provided in subsection (b) hereof. If any
27 such record or records referred to above are not a part
28 of the official court files of the court with whose clerk the

29 petition is filed and are thus not available for examina-
30 tion and review by such court, the determination as to
31 whether to refuse or grant the writ shall be made on the
32 basis of the petition, affidavits, exhibits, records and other
33 documentary evidence attached thereto.

34 (b) Any writ granted in accordance with the provi-
35 sions of this article shall be directed to the person under
36 whose supervision the petitioner is incarcerated. Whether
37 the writ is granted by the supreme court of appeals, a
38 circuit court, or any statutory court in this state, it shall,
39 in the discretion of the court, be returnable before (i)
40 the court granting it, (ii) the circuit court, or a statutory
41 court, of the county wherein the petitioner is incarcerated,
42 or (iii) the circuit court, or the statutory court, in which,
43 as the case may be, the petitioner was convicted and
44 sentenced.

45 (c) The clerk of the court to which a writ granted in
46 accordance with the provisions of this article is made
47 returnable shall promptly bring the petition and any affi-
48 davits, exhibits, records and other documentary evi-
49 dence attached thereto, and the writ to the attention of

50 the court if the writ was granted by some other court,
51 and in every case deliver a copy of such petition and any
52 affidavits, exhibits, records and other documentary evi-
53 dence attached thereto and the writ to the prosecuting
54 attorney of the county, or the attorney general if the writ
55 is returnable before the supreme court of appeals. The
56 prosecuting attorney or the attorney general, as the case
57 may be, shall represent the state in all cases arising under
58 the provisions of this article.

**§53-4A-4. Inability to pay costs, etc.; appointment of counsel;
obtaining copies of record or records in criminal pro-
ceedings 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
2 may allege facts to show that the petitioner is unable to
3 pay the costs of the proceeding or to employ counsel, may
4 request permission to proceed in forma pauperis and may
5 request the appointment of counsel. If the court to which
6 the writ is returnable (hereinafter for convenience of
7 reference referred to simply as "the court," unless the

8 context in which used clearly indicates that some other
9 court is intended) is satisfied that the facts alleged in
10 this regard are true, and that the petition was filed in
11 good faith, and has merit or is not frivolous, the court
12 shall order that the petitioner proceed in forma pauperis,
13 and the court shall appoint counsel for the petitioner. If
14 it shall appear to the court that the record in the proceed-
15 ings which resulted in the conviction and sentence, in-
16 cluding, but not limited to, a transcript of the testimony
17 therein, or the record or records in a proceeding or pro-
18 ceedings on a prior petition or petitions filed under the
19 provisions of this article, or the record or records in any
20 other proceeding or proceedings instituted by the peti-
21 tioner to secure relief from his conviction or sentence, or
22 all of such records, or any part or parts thereof, are neces-
23 sary for a proper determination of the contention or con-
24 tentions and grounds (in fact or law) advanced in the
25 petition, the court shall, by order entered of record, direct
26 the state to make arrangements for copies of any such
27 record or records, or all of such records, or such part or
28 parts thereof as may be sufficient, to be obtained for ex-

29 amination and review by the court, the state and the
30 petitioner. The state may on its own initiative obtain
31 copies of any record or records, or all of the records, or
32 such part or parts thereof as may be sufficient, as afore-
33 said, for its use and for examination and review by the
34 court and the petitioner. If, after judgment is entered
35 under the provisions of this article, an appeal or writ of
36 error is sought by the petitioner in accordance with the
37 provisions of section nine of this article, and the court
38 which rendered the judgment is of opinion that the review
39 is being sought in good faith and the grounds assigned
40 therefor have merit or are not frivolous, and such court
41 finds that the petitioner is unable to pay the costs incident
42 thereto or to employ counsel, the court shall, upon the
43 petitioner's request, order that the petitioner proceed in
44 forma pauperis and shall appoint counsel for the peti-
45 tioner. If an appeal or writ of error is allowed, whether
46 upon application of the petitioner or the state, the re-
47 viewing court shall, upon the requisite showing and re-
48 quest as aforesaid, order that the petitioner proceed in
49 forma pauperis and shall appoint counsel for the peti-

50 tioner. If it is determined that the petitioner has the
51 financial means with which to pay the costs incident to
52 any proceedings hereunder and to employ counsel, or that
53 the petition was filed in bad faith or is without merit or
54 is frivolous, or that review is being sought or prosecuted
55 in bad faith or the grounds assigned therefor are without
56 merit or are frivolous, the request to proceed in forma
57 pauperis and for the appointment of counsel shall be
58 denied and the court making such determination shall
59 enter an order setting forth the findings pertaining thereto
60 and such order shall be final.

61 (b) Whenever it is determined that a petitioner shall
62 proceed in forma pauperis, all necessary costs and ex-
63 penses incident to proceedings hereunder, originally, or
64 on appeal pursuant to section nine of this article, or both,
65 including, but not limited to, all court costs, the reason-
66 able expenses actually and necessarily incurred in the
67 representation of a petitioner by any attorney appointed
68 hereunder to represent him and the cost of furnishing
69 transcripts, shall, upon certification by the court to the
70 state auditor, be paid out of the treasury of the state from

71 the appropriation for criminal charges. Any attorney ap-
72 pointed in accordance with the provisions of this section
73 shall be paid the same fee as an attorney appointed in a
74 felony case receives, and any such fee shall be paid by
75 the state auditor as expenses in felony cases are paid, all
76 as prescribed in section one, article three, chapter sixty-
77 two of this code, as amended. All costs and expenses in-
78 curred incident to obtaining copies of any record or
79 records, or all of the records, or such part or parts thereof
80 as may be sufficient, as aforesaid, for examination and
81 review by the court, the state and the petitioner, shall,
82 where the petitioner is proceeding in forma pauperis, and
83 the court orders the state to make arrangements for the
84 obtaining of same or the state obtains the same on its own
85 initiative, be paid out of the treasury of the state, upon
86 certification by the court to the state auditor, from the
87 appropriation for criminal charges. All such costs, ex-
88 penses and fees shall be paid as provided in this subsec-
89 tion (b) notwithstanding the fact that all proceedings
90 under the provisions of this article are civil and not
91 criminal in character. In the event a petitioner who is

92 proceeding in forma pauperis does not substantially pre-
93 vail, all such costs, expenses and fees shall be and consti-
94 tute a judgment of the court against the petitioner to be
95 recovered as any other judgment for costs.

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

§53-4A-5. Service of writ.

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

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

Within such time as may be specified in the writ or as
2 the court may fix, the state shall make its return. No
3 other or further pleadings shall be filed except as the
4 court may order. At any time prior to entry of judgment
5 on the writ in accordance with the provisions of this
6 article, the court may permit the petitioner to withdraw
7 his petition. The court may make such orders as to amend-
8 ment of the petition or return or other pleading, as to
9 pleading over, or filing other or further pleadings, or ex-
10 tending the time for the making of the return or the
11 filing of other pleadings, as shall seem to the court to be
12 appropriate, meet and reasonable. In considering the
13 petition, the return or other pleading, or any amendment
14 thereof, substance and not form shall control.

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

(a) If the petition, affidavits, exhibits, records and
2 other documentary evidence attached thereto, or the re-
3 turn or other pleadings, or the record in the proceedings
4 which resulted in the conviction and sentence, or the rec-
5 ord or records in a proceeding or proceedings on a prior
6 petition or petitions filed under the provisions of this
7 article, or the record or records in any other proceeding
8 or proceedings instituted by the petitioner to secure relief
9 from his conviction or sentence, show to the satisfaction
10 of the court that the petitioner is entitled to no relief, or
11 that the contention or contentions and grounds (in fact
12 or law) advanced have been previously and finally ad-
13 judicated or waived, the court shall enter an order deny-
14 ing the relief sought. If it appears to the court from said
15 petition, affidavits, exhibits, records and other docu-
16 mentary evidence attached thereto, or the return or other
17 pleadings, or any such record or records referred to above,
18 that there is probable cause to believe that the petitioner
19 may be entitled to some relief and that the contention or
20 contentions and grounds (in fact or law) advanced have

21 not been previously and finally adjudicated or waived, the
22 court shall promptly hold a hearing and/or take evidence
23 on the contention or contentions and grounds (in fact or
24 law) advanced, and the court shall pass upon all issues of
25 fact without a jury. The court may also provide for one
26 or more hearings to be held and/or evidence to be taken in
27 any other county or counties in the state.

28 (b) A record of all proceedings under this article and
29 all hearings and evidence shall be made and kept. The
30 evidentiary depositions of witnesses taken by either the
31 petitioner or the state, on reasonable notice to the other,
32 may be read as evidence. The court may receive proof
33 by proper oral testimony or other proper evidence. All
34 of the evidence shall be made a part of the record. When
35 a hearing is held and/or evidence is taken by a judge of a
36 circuit court or statutory court in vacation, a transcript
37 of the proceedings shall be signed by the judge and cer-
38 tified to the clerk of the court in which the judgment is
39 to be rendered, and be entered by him among the records
40 of that court. A record of all proceedings in the supreme
41 court of appeals shall be entered among the records of
42 such court.

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

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

A writ may be granted or refused in accordance with
2 the provisions of this article by any three concurring

3 judges of the supreme court of appeals, or a judge of
4 any circuit court or any statutory court, in vacation as
5 well as by any such court in term, and any such writ may
6 be made returnable, consistent with the provisions of
7 subsection (b) of section three of this article, to the
8 supreme court of appeals in term, or to a judge of a cir-
9 cuit court or any statutory court in vacation as well as
10 to such court in term. Although a writ granted in accord-
11 ance with the provisions of this article is returnable to a
12 circuit court in term or a statutory court in term, the
13 contention or contentions and grounds (in fact or law)
14 advanced, and any incidental matters related thereto,
15 may be heard and/or determined or passed upon by a
16 judge of the court in vacation. Any judge of the supreme
17 court of appeals (where at least three judges of such court
18 concur therein), or of a circuit court or a statutory court,
19 in vacation shall have the same power to enforce obedi-
20 ence to the writ, to compel the attendance of witnesses,
21 or to punish contempt of their or his authority, as a court
22 has; and the judgment of a judge of a circuit court or a
23 statutory court in vacation when entered of record shall

24 be considered and be enforced as if it were a judgment
25 of the court among whose records it is entered.

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

(a) A final judgment entered under the provisions of
2 this article by a statutory court may be appealed by the
3 petitioner or the state to the circuit court of the county
4 upon application for an appeal or writ of error in the
5 manner and within the time provided in article four,
6 chapter fifty-eight of this code, as amended. A final judg-
7 ment entered under the provisions of this article by a
8 circuit court or a final judgment entered by the circuit
9 court after an appeal or writ of error was granted by
10 such circuit court with respect to the judgment of a
11 statutory court entered under the provisions of this ar-
12 ticle, as well as an order by a circuit court rejecting an
13 appeal from or writ of error to the judgment of a statutory
14 court entered under the provisions of this article, may
15 be appealed by the petitioner or the state to the supreme
16 court of appeals upon application for an appeal or writ
17 of error in the manner and within the time provided by

18 law for civil appeals generally. When an application for
19 an appeal or writ of error is rejected by the circuit court
20 (and the order of rejection is not appealed to the supreme
21 court of appeals), or the supreme court of appeals, as
22 the case may be, or both, the order sought to be reviewed
23 shall thereby become final to the same extent and with
24 like effect as if said order had been affirmed on appeal.

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

§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.

§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.

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

William Tompos
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

Takes effect from _____ Passage.

Howard Hughes
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard E. Cannon
President of the Senate

H. Laban White
Speaker House of Delegates

The within approved this the 31st
day of January, 1967.

Hubert C. Smith
Governor

PRESENTED TO THE
GOVERNOR

Date 1/30/67

Time 2.10 P.M.