

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1969

ENROLLED

Com. Sub. for
SENATE BILL NO. 108

(By Mr. Poffenbeger and Mr. Brotherton, original sponsors)

PASSED March 3, 1969

In Effect Twenty days from Passage

#108

FILED IN THE OFFICE
JOHN B. COCKRELL, W
SECRETARY OF STATE
THIS DATE 3-17-69

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 108

(MR. POFFENBARGER and MR. BROTHERTON, *original sponsors*)

[Passed March 3, 1969; in effect ninety days from passage.]

AN ACT to amend article four, chapter fifty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a, relating to writs of error to judgment by courts of record of limited jurisdiction quashing indictments.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 4. APPEALS FROM COURTS OF RECORD OF LIMITED
JURISDICTION.**

§58-4-18a. Writ of error to judgment quashing indictment.

1 Notwithstanding anything hereinbefore contained in
2 this article, whenever in any criminal case an indictment
3 is held bad or insufficient by the judgment or order of any
4 court of record of limited jurisdiction, the state, on the
5 application of the attorney general or the prosecuting
6 attorney, may obtain a writ of error to secure a review
7 of such judgment or order by the circuit court of the
8 county in which such court of record of limited jurisdic-
9 tion sits. No such writ of error shall be allowed unless
10 the state presents its petition therefor to the circuit court,
11 or a judge thereof, within thirty days after the entry of
12 such judgment or order. No such judgment or order shall
13 finally discharge, or have the effect of finally discharging,
14 the accused from further proceedings on the indictment
15 unless the state fails, within such period of thirty days,
16 to apply for such writ of error, or fails to obtain such writ
17 of error upon an application made within such period; but
18 after the entry of such judgment or order the accused shall

19 not be kept in custody or required to give bail pending
20 the hearing and determination of the case by the circuit
21 court, or by the supreme court of appeals if a writ of
22 error is thereafter sought with respect to the decision of
23 the circuit court. If, upon the allowance of any such writ
24 of error, process from the circuit court (or the supreme
25 court of appeals in the event of further judicial review as
26 aforesaid) cannot for any reason be served personally
27 upon the accused, service may be had by filing a copy
28 thereof in the clerk's office of the court of record of
29 limited jurisdiction which entered such judgment or
30 order (or the circuit court if further judicial review is had
31 as aforesaid). Every such writ of error shall be heard and
32 determined as speedily as possible. If the judgment is
33 reversed and the indictment is held to be good and suffi-
34 cient for a trial of the accused thereon, the case shall be
35 remanded to the court of record of limited jurisdiction
36 in which the indictment was found, in order that such
37 trial may be had.

38 Except as herein otherwise provided, all of the pro-
39 visions of the other sections of this article shall, so far as

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40 appropriate, be applicable to a petition for a writ of error
41 under this section, and to all subsequent proceedings
42 thereon in case such writ of error is allowed or granted.

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

William Tomp
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard Myers
Clerk of the Senate

A. Blankenship
Clerk of the House of Delegates

Lloyd Jones
President of the Senate

Sam F. Banish
Speaker House of Delegates

The within approved this the 12th
day of March, 1969.

Arch A. Shaver Jr.
Governor



PRESENTED TO THE
GOVERNOR

Date 3/8/69
Time 4:50 p.m.

RECEIVED

MAR 17 10 23 AM '69
OFFICE OF
SECRETARY OF STATE
STATE OF WEST VIRGINIA