

HB 4296

FILED

2008 MAR 31 PM 12: 25

GENE W. FINN
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4296

(By Delegates Canterbury, Campbell and Crosier)



Passed March 8, 2008

In Effect Ninety Days from Passage

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H. B. 4296

(BY DELEGATES CANTERBURY, CAMPBELL AND CROSIER)

[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §53-4A-7 of the Code of West Virginia, 1931, as amended, relating to the rights of crime victims; requiring that prosecuting attorneys provide notice to victims of crimes of violence or next of kin in homicides when a habeas corpus proceeding vacates a conviction or sentence and the victim or next of kin previously provides names and addresses.

Be it enacted by the Legislature of West Virginia:

That §53-4A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4A. POST-CONVICTION HABEAS CORPUS.

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

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

27 (b) A record of all proceedings under this article and all
28 hearings and evidence shall be made and kept. The
29 evidentiary depositions of witnesses taken by either the
30 petitioner or the state, on reasonable notice to the other, may
31 be read as evidence. The court may receive proof by proper
32 oral testimony or other proper evidence. All of the evidence
33 shall be made a part of the record. When a hearing is held
34 and/or evidence is taken by a judge of a circuit court or
35 statutory court in vacation, a transcript of the proceedings
36 shall be signed by the judge and certified to the clerk of the

37 court in which the judgment is to be rendered, and be entered
38 by him among the records of that court. A record of all
39 proceedings in the supreme court of appeals shall be entered
40 among the records of such court.

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

60 (d) Notwithstanding any provision of law to the contrary,
61 whenever a conviction from a crime of violence is reversed
62 or a sentence of incarceration for such an offence is vacated
63 pursuant to the provisions of this article, the prosecuting
64 attorney of the county of prosecution shall, prior to a retrial
65 or entering into any plea negotiations or sentence
66 negotiations to resolve the matter, notify the victim or if the
67 offence was a homicide, the next of kin of the victim, by
68 United States mail sent to the last known address of said
69 person, if his or her name and address has previously been
70 provided to the prosecuting attorney.

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



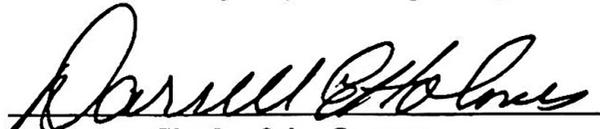
Chairman Senate Committee



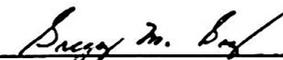
Chairman House Committee

Originating in the House.

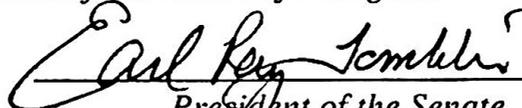
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates

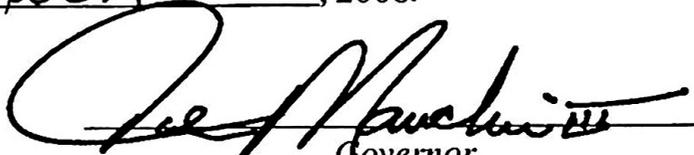


President of the Senate



Speaker of the House of Delegates

The within is approved this the 3/8
day of March, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 25 2008

Time 10:35pm