

LD3459843

HOUSE BILL NO. 2307

Offered January 23, 1995

A BILL to amend and reenact §§ 8.01-654, 17-97, 17-110.2 and 19.2-163.7 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 8.01-654.1, 8.01-654.2 and 53.1-232.1 relating to prisoners sentenced to death.

Patrons—Baker, Albo, Forbes, Hamilton, Kilgore, O'Brien and Wagner

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-654, 17-97, 17-110.2 and 19.2-163.7 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 8.01-654.1, 8.01-654.2 and 53.1-232.1 as follows:

§ 8.01-654. When and by whom writ granted; what petition to contain.

A. The writ of habeas corpus ad subjiciendum shall be granted forthwith by *the Supreme Court* or any circuit court, to any person who shall apply for the same by petition, showing by affidavits or other evidence probable cause to believe that he is detained without lawful authority.

B. 1. With respect to any such petition filed by a petitioner held under criminal process, and subject to the provisions of *subsection C of this section and of § 17-97*, only the circuit court which entered the original judgment order of conviction or convictions complained of in the petition shall have authority to issue writs of habeas corpus. If a district court entered the original judgment order of conviction or convictions complained of in the petition, only the circuit court for the city or county wherein the district court sits shall have authority to issue writs of habeas corpus. Hearings on such petition, where granted in the circuit court, may be held at any circuit court within the same circuit as the circuit court in which the petition was filed, as designated by the judge thereof.

2. Such petition shall contain all allegations the facts of which are known to petitioner at the time of filing and such petition shall enumerate all previous applications and their disposition. No writ shall be granted on the basis of any allegation the facts of which petitioner had knowledge at the time of filing any previous petition.

3. Such petition may allege detention without lawful authority through challenge to a conviction, although the sentence imposed for such conviction is suspended or is to be served subsequently to the sentence currently being served by petitioner.

4. In the event the allegations of illegality of the petitioner's detention can be fully determined on the basis of recorded matters, the court may make its determination whether such writ should issue on the basis of the record.

5. The court shall give findings of fact and conclusions of law following a determination on the record or after hearing, to be made a part of the record and transcribed.

6. If petitioner alleges as a ground for illegality of his detention the inadequacy of counsel, he shall be deemed to waive his privilege with respect to communications between such counsel and himself to the extent necessary to permit a full and fair hearing for the alleged ground.

C. 1. *With respect to any such petition filed by a petitioner held under the sentence of death, and subject to the provisions of this subsection, the Supreme Court shall have exclusive jurisdiction to consider and award writs of habeas corpus. The circuit court which entered the judgment order setting the sentence of death shall have authority to conduct an evidentiary hearing on such a petition only if directed to do so by order of the Supreme Court.*

2. *Hearings conducted in a circuit court pursuant to an order issued under the provisions of subdivision 1 of this subsection shall be limited in subject matter to the issues enumerated in the order.*

3. *The circuit court shall conduct such a hearing within ninety days after the order of the Supreme Court has been received and shall report its findings of fact and recommend conclusions of law to the Supreme Court within sixty days after the conclusion of the hearing. Any objection to the order of the circuit court must be filed in the Supreme Court within thirty days after the report is filed.*

§ 8.01-654.1. *Limitation on consideration of petition filed by prisoner sentenced to death.*

No petition for a writ of habeas corpus filed by a prisoner held under a sentence of death shall be considered unless it is filed within sixty days after the earliest of: (i) denial by the United States Supreme Court of a petition for a writ of certiorari to the judgment of the Supreme Court of Virginia on appeal, (ii) a decision by the United States Supreme Court affirming imposition of the sentence of death when such decision is in a case resulting from a granted writ of certiorari to the judgment of the Supreme Court of Virginia on direct appeal, or (iii) the period for filing a timely petition for certiorari

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HB2307

60 *has expired without such a petition being filed.*

61 *§ 8.01-654.2. Prohibition of ex parte motions.*

62 *The circuit court shall have no authority to entertain an ex parte motion relating to an appointment*
63 *of counsel pursuant to § 19.2-163.7 or relating to any petition for a writ of habeas corpus filed under*
64 *§ 8.01-654 or § 17-97.*

65 *§ 17-97. Habeas corpus, appeals, writs of error and supersedeas.*

66 *The Court shall also have jurisdiction to award writs of habeas corpus and of such appeals, writs of*
67 *error and supersedeas as may be legally docketed in or transferred to the Court. In accordance with*
68 *§ 8.01-654, the Court shall have exclusive jurisdiction to award writs of habeas corpus upon petitions*
69 *filed by prisoners held under the sentence of death.*

70 *§ 17-110.2. Priority given to such review.*

71 *The Supreme Court shall, in setting its docket, give priority to the review of cases in which the*
72 *sentence of death has been imposed over other cases pending in the Court. In setting its docket, the*
73 *Court shall also give priority to the consideration and disposition of petitions for writs of habeas corpus*
74 *filed by prisoners held under sentence of death.*

75 *§ 19.2-163.7. Counsel in capital cases.*

76 *In any case in which an indigent defendant is charged with a capital offense, the judge of the circuit*
77 *court, upon request for the appointment of counsel, shall appoint one or more attorneys from the list or*
78 *lists established by the Public Defender Commission pursuant to § 19.2-163.8 to represent the defendant*
79 *at trial and, if the defendant is sentenced to death, on appeal. If the sentence of death is affirmed on*
80 *appeal, the court shall, upon a request filed not later than thirty days after the decision of the Supreme*
81 *Court of Virginia, appoint counsel from the same list, or such other list as the Commission may*
82 *establish, to represent an indigent prisoner under sentence of death in a state habeas corpus proceeding.*

83 *§ 53.1-232.1. When execution dates required.*

84 *In a criminal case where a sentence of death has been imposed, the trial court shall set an execution*
85 *date when it is notified in writing by the Attorney General or the attorney for the Commonwealth, and*
86 *the court finds that: (i) the Supreme Court of Virginia has denied habeas corpus relief or the time for*
87 *filing a timely habeas corpus petition in that Court has passed without such a petition being filed, (ii)*
88 *the Supreme Court of the United States has issued a final order disposing of the case after granting a*
89 *stay to review the judgment of the Supreme Court of Virginia on habeas corpus, (iii) the United States*
90 *Court of Appeals has affirmed the denial of federal habeas corpus relief or the time for filing a timely*
91 *appeal in that court has passed without such an appeal being filed, or (iv) the Supreme Court of the*
92 *United States has issued a final order after granting a stay in order to dispose of the petition for a writ*
93 *of certiorari to review the judgment of the United States Court of Appeals.*

94 *The trial court shall conduct a proceeding to set the date within ten days after receiving the written*
95 *notice from the Attorney General or the attorney for the Commonwealth. The execution date set by the*
96 *trial court shall be no later than sixty days after the date of the proceeding. Nothing in this provision*
97 *shall prohibit the trial court from setting an execution date under circumstances other than those*
98 *specified herein. Once an execution date is scheduled, a stay of execution may be granted by the trial*
99 *court or the Supreme Court of Virginia only upon a showing of substantial grounds for habeas corpus*
100 *relief.*