

The Maryland Version of the Uniform Post Conviction Procedure Act, with Special Reference to the Writ of Habeas Corpus

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Recommended Citation

John D. Alexander Jr., *The Maryland Version of the Uniform Post Conviction Procedure Act, with Special Reference to the Writ of Habeas Corpus*, 19 Md. L. Rev. 233 (1959)

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**The Maryland Version Of The Uniform Post Conviction
Procedure Act, With Special Reference To
The Writ Of Habeas Corpus¹**

Maryland's adoption of the Uniform Post Conviction Procedure Act is an attempt to limit the ever-increasing case load of the Court of Appeals by reducing the number of appeals arising from repeated collateral attacks on criminal convictions. At the same time it attempts to preserve, within clearly defined limits, appellate review for persons who are allegedly illegally imprisoned.² The Maryland Act is substantially the same as the Uniform Post Conviction Procedure Act.³ There is, however, one important difference. The Uniform Act applies to *all* collateral proceedings to test the legality of incarceration both in lower

¹ 3 MD. CODE (Cum. Supp. 1958) Art. 27, §§645 A - 645 J, as amended by MD. LAWS 1959, Ch. 429, effective June 1, 1959, hereinafter referred to as "The Act". All references are to the Act as amended.

² The Act accomplishes more than merely discouraging repetitious and frivolous claims for relief; in general it sets forth a more orderly and workable procedure than has heretofore been available in Maryland.

³ 9B UNIFORM LAWS ANNOTATED (1957) 352, §§1-14. According to the annotations as of July, 1959, one other state, Arkansas, had adopted this Uniform Act. ARK. STAT. (Cum. Supp. 1957) Art. 43, §§3101-3110.

and appellate courts.⁴ Under the Maryland Act, all post conviction proceedings, including petitions based on grounds heretofore only available under the writ of habeas corpus, may be brought in the lower court and are subject to appeal.⁵ However, the writ of habeas corpus may also be brought outside the provisions of the Act, although if this is done, there is no right of appeal.⁶

The Act is available to "[a]ny person convicted of a crime and incarcerated under sentence of death or imprisonment, . . ."⁷ It expressly applies to proceedings brought by defective delinquents under Article 31 B⁸ and persons confined as a result of convictions by a trial magistrate, including a magistrate of the Traffic Court of Baltimore City.⁹

Only those cases come under the Act in which the legality of petitioner's incarceration is subject to *collateral* attack upon grounds ". . . heretofore available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy . . ."¹⁰ While both the writ of

⁴ *Supra*, n. 3, §1.

⁵ The Act, §645 A(a), 645 I. Though the Maryland Act does not expressly state that a post conviction proceeding other than habeas corpus (such as coram nobis, *infra*, ns. 12-13) must follow the provisions of the Act in a lower court proceeding, the exceptional express treatment of the writ of habeas corpus hereafter discussed suggests such a conclusion. Because of Maryland's treatment of the writ of habeas corpus, its characterization of the Act as a Uniform Act should be viewed with caution. The Act, §645 J.

⁶ The Act, §645 A(b). The right to petition for a writ of habeas corpus under 4 MD. CODE (1957), Art. 42 is unaffected by the Act *except* that Art. 42, §6 formerly allowing petitioner to request leave to appeal is now repealed by MD. LAWS 1958, Ch. 45, §1. Thus the new Act is the sole route for *appeals* to the Court of Appeals. The Article 42 writ of habeas corpus has come full circle and now is substantially identical to its common law form. See *Oleviler v. Brady*, 185 Md. 341, 44 A. 2d 807 (1945).

⁷ The Act, §645 A(a). The Uniform Act is limited to felons. *Supra*, n. 3, §1.

⁸ The Act, §645 A(a). 3 MD. CODE (1957) Art. 31 B, §10. It follows that persons who are not imprisoned criminals nor defective delinquents cannot avail themselves of the Act. It should be noted that the writ of habeas corpus in Maryland applies to: "Any person, committed, detained, confined or restrained from his lawful liberty within this State for any alleged offense or *under any color or pretense whatsoever*, . . ." [Emphasis added]. 4 MD. CODE (1957) Art. 42, §3. While the limits of this latter class are not defined by Maryland law, persons within this class have never had appellate rights. Thus, for example, criminally insane and insane persons under confinement by 5 MD. CODE (1957) Art. 59, §§8, 20, had and still have a less complete remedy under the writ of habeas corpus than convicted criminals. *Miller v. Superintendent*, 190 Md. 741, 60 A. 2d 189 (1947); *Hoey v. Superintendent*, 212 Md. 636, 129 A. 2d 63 (1957); *Lutz v. Superintendent*, 203 Md. 675, 100 A. 2d 732 (1953).

⁹ The Act, §645 A(a).

¹⁰ The Act, §645 A(a). Post conviction procedures are concerned with the legality of incarceration and not with the guilt or innocence of the person imprisoned. The Act, §645 A(a) sets out the possible grounds for relief:

" . . . that the sentence or judgment was imposed in violation of the Constitution of the United States or the Constitution or laws of this

habeas corpus¹¹ and the writ of coram nobis¹² are recognized in Maryland,¹³ the remainder of this note for the most part treats the effect of the Act upon habeas corpus situations since: habeas corpus is the broader writ in Maryland, both in scope and use; (b) the history of the right to appeal in habeas corpus cases discloses both the necessity for and the purposes of the present Act; and (c) lastly, the Act has a more complex effect upon the writ of habeas corpus than upon other possible post conviction remedies.

In Maryland there was no common law right of appeal from habeas corpus proceedings.¹⁴ The Maryland Constitution's guaranty of the writ does not require that the writ be extended beyond its common law limits.¹⁵ However, some form of appellate review is desirable since it more fully protects the rights of the immediately concerned persons and at the same time creates a consistent body of substantive appellate law.¹⁶ The Act of 1945 for the first time gave an applicant for the writ of habeas corpus a right of appeal.¹⁷ In 1947 the Legislature unsuccessfully attempted to lighten the resulting case load of the Court of Appeals by substituting an application for leave to appeal in lieu of a direct appeal.¹⁸ However, the appellate remedy

State, or that the court or trial magistrate, including a Magistrate of the Traffic Court of Baltimore City, was without jurisdiction to impose the sentence, or that the sentence exceeds the maximum authorized by law, or that the sentence is otherwise subject to collateral attack"

The Act in no way affects original trial court proceedings or any direct appellate review of sentence or conviction. This section was applied in, *In Re: Homesic Pride*, *The Daily Record*, March 9, 1959 (Md. 1959).

¹¹ 4 MD. CODE (1957) Art. 42. For the purposes of this article the writ of habeas corpus and related procedure under Art. 42 will be referred to as the "common law writ of habeas corpus" as distinguished from proceedings under the Act.

¹² *Keane v. State*, 164 Md. 685, 166 A. 410 (1933); *Bernard v. State*, 193 Md. 1, 65 A. 2d 297 (1949).

¹³ For excellent discussions of the scope and substantive law of these writs see, *Bernard v. State*, *ibid.*; 9B UNIFORM LAWS ANNOTATED (1957) 345-351; Markell, *Review of Criminal Cases in Maryland by Habeas Corpus and by Appeal*, 101 U. Pa. L. Rev. 1154 (1953)..

¹⁴ *Bell v. The State Use of Miller*, 4 Gill 301 (Md. 1846); *Ex-parte Coston*, 23 Md. 271 (1865).

¹⁵ MD. CONST. Art. III, §55; *Olewiler v. Brady*, 185 Md. 341, 44 A. 2d 807 (1945); NILES, *MARYLAND CONSTITUTIONAL LAW* (1915) 215. That a state's denial of appeal in any criminal proceeding is not a denial of due process under the 14th Amendment, see, *McKane v. Durston*, 153 U.S. 684 (1894); *Griffin v. Illinois*, 351 U.S. 12 (1956), conc. op. 20, 21.

¹⁶ Markell, *Review of Criminal Cases in Maryland by Habeas Corpus and by Appeal*, 101 U. Pa. L. Rev. 1154, 1162-1163 (1953).

¹⁷ MD. LAWS 1945, Ch. 702, §3C; *McElroy v. Director*, 211 Md. 385, 389, 127 A. 2d 380 (1956).

¹⁸ 4 MD. CODE (1957) Art. 42, §6; *McElroy v. Director*, *ibid.* The attempt failed because MD. CONST. Art. IV, §15, requires that ". . . in every case an opinion, in writing, shall be filed." The amount of appellate consid-

has not only offered protection to persons allegedly unlawfully confined; it has also clogged the Court of Appeals with unfounded claims for relief.¹⁹ The present Act attempts to limit a petitioner to one appeal.

The Act does not abolish the common law petition for a writ of habeas corpus.²⁰ Instead, it sets up an alternative procedure under which applications for writs of habeas corpus may be treated either as they were prior to 1945 or as a proceeding under the Act.²¹ The applicant must consent before the latter procedure can be adopted.²² If there is such consent, or the applicant proceeds originally under the Act, the case will be heard in the court where the conviction took place.²³ If the applicant refuses such

eration and action was the same whether the court denied an appeal or a petition for leave to appeal. Markell, *supra*, n. 16, 1157-1158. This section of Art. 42 is now repealed by Md. LAWS 1958, Ch. 45, §1, making the Act the sole route for appeals.

¹⁹ Unfortunately, there are no statistics regarding how many persons have been released from incarceration by appellate action since 1945. However, former Chief Judge Markell says:

"The great majority of the 200 cases disposed of by the Court of Appeals [from 1945-1953] have been disposed of on the ground that habeas corpus cannot be used as an appeal or new trial. * * * Most of these cases have little basis except the applicant's dissatisfaction with his confinement. They are prosecuted without counsel and probably would not be undertaken by any lawyer." *Supra*, n. 16, 1160.

Frederick W. Invernizzi, Director, Administrative Office of the Courts, summarizes the more recent statistics as follows:

"The six years prior to 1956 saw 203 applications filed, of which 20 were unreported, three were granted, and 180 denied, necessitating a total of 176 opinions, an average of six opinions per judge. Then came the deluge, with 82 applications filed during the October 1956 term of court which, when coupled with thirteen advanced from the succeeding term, required the writing of 86 opinions, more than doubling the average number per judge. This, however, proved to be but a prelude of what was to come, as there were 128 such applications filed during the September 1957 term of court. Disposition of these cases required the writing of 104 opinions." *Administrative Office of the Courts, Third Annual Report (1958) 20.*

²⁰ This leaves the writ available to persons who do not come within the scope of the Act. See discussion, *supra*, n. 8. Furthermore this satisfies a constitutional objection that might be raised by those who are within the scope of the Act. Md. CONST. Art. III, §55, provides: "The General Assembly shall pass no Law suspending the privilege of the Writ of *Habeas Corpus*." The writ under Art. 42, without a right of appeal, satisfies the Constitution and is left in full force. *Cf. Olewiler v. Brady*, 185 Md. 341, 44 A. 2d 807 (1945).

²¹ The Act, §645 B(a). It appears that if the applicant does not evoke the Act directly, whether he is entitled to the alternative procedure provided thereby is within the discretion of the Court and not as of right.

²² The Act, §645 B(b).

²³ The Act, §§645 B(b), 645 C, 645 G. If the imprisonment results from a conviction by a trial magistrate the hearing court is the Circuit Court of the county where the conviction took place; or if the Baltimore City, the Criminal Court of Baltimore. For reasons of judicial and administrative convenience, venue is laid at the place of conviction and not that of incarceration or willy-nilly as under 4 MD. CODE (1957) Art. 42, §§1-3, applying to writs of habeas corpus not under the Act. The court of con-

consent, the petition is heard as a habeas corpus application in the court where it was filed,²⁴ and if heard and denied, there is no longer any right to request leave to appeal to the Court of Appeals from such denial.²⁵ On the other hand, in proceedings under the Act, any person aggrieved by the order of a judge may apply to the Court of Appeals for leave to prosecute an appeal.²⁶

Any post conviction remedy other than the writ of habeas corpus should be brought under the Act.²⁷ A defective delinquent can, if he desires, bring his existing habeas corpus proceeding as such or under the Act.²⁸

A petition for relief under the Act may be filed at any time; there are no limitations.²⁹ Once the aim of the Act is appreciated, the formal requirements of the petition speak for themselves. (1) The Act requires that hearings of petitions take place in the court of conviction. Therefore, except in a common law habeas corpus proceeding, a petition must be filed in the court of conviction and must specifically identify the judgment complained of.³⁰ (2) The Act attempts to bar frivolous claims for relief. Consequently, all facts within the personal knowledge of petitioner and the authenticity of all documents must be sworn to affirmatively.³¹ (3) The act intends to discourage repetition of the same claim by the petitioner. Therefore petitioner must specifically set forth the grounds for his petition and the relief desired. *The petition shall also identify any previous proceedings that the petitioner has taken to secure relief from his conviction.*³²

viction will be better able to determine the validity of petitioner's claims and will have a record of petitioner's past claims for relief under the Act. This provision may cause difficulty in those lower courts in counties which have only one judge, since §645 G disqualifies the judge who convicted the applicant, unless the applicant consents.

²⁴ The Act, §645 B(b).

²⁵ Md. LAWS 1958, Ch. 45, §1, repealing 4 Md. CODE (1957) Art. 42, §6.

²⁶ The Act, §645-I. "Any person" includes the Attorney General of Maryland or the State's Attorney. It should be noted that if the applicant adopts the common law habeas corpus procedure under Art. 42, and is successful, the State no longer has a right of appeal. *Supra*, n. 25.

²⁷ The Act, §645 C. See comment, *supra*, n. 5.

²⁸ The Act, §645 A(a), expressly includes defective delinquents. 3 Md. CODE (1957) Art. 31 B, §10(c), gives such persons the "... right to petition for habeas corpus as it might otherwise exist."

²⁹ The Act, §645 A(b).

³⁰ The Act, §§645 C, 645 D. If a petition for writ of habeas corpus is filed in a place other than the court of conviction and the petition is treated in the alternative under the Act, the papers will be transmitted to the court of conviction, §645 B(b).

³¹ The Act, §§645 C, 645 D. §645 D also states that arguments, citations, and discussions of authorities shall be omitted from the petition. §645 F provides that after the State's answer, no further pleadings shall be filed except as the court may order.

³² The Act, §645 D.

Perhaps the most effective provisions of the Act will be those regarding waiver. The first section of the Act denies relief if the alleged error has:

“. . . been previously and finally litigated or waived in the proceedings resulting in the conviction, or *in any other proceeding that the petitioner has taken to secure relief from his conviction.*”³³

The Court of Appeals in the first case arising under the Act has indicated that this language is broad enough to include determinations in prior habeas corpus proceedings.³⁴ It is not clear that the same result will obtain in the future in cases where the prior determination was not subject to appeal. In the above quoted portion of the Act, the phrase, “in any other proceeding” is qualified by the language, “finally litigated or waived”. Since there is no longer a right of appeal available in those habeas corpus proceedings which are not brought under the Act, it would seem that the question of the finality of orders in such proceedings should be determined by the law prior to 1945. In *Ex Parte Berman*, in 1936, Judge Chesnut said:

“The Maryland practice provides for issuance of the writ of habeas corpus by any of the State Judges but does not provide an appeal from their decisions. The refusal of the writ in one case is not regarded as *res adjudicata*.”³⁵

On the other hand, adopting this reasoning, a habeas corpus order under the Act would be a final judgment. Indeed, the Act expressly states the effect of any prior proceeding under the Act upon a subsequent attempt:

“All grounds for relief claimed by a petitioner *under this sub-title* must be raised in his original or amended petition, and any grounds not so raised are waived unless the court finds in a subsequent petition

³³ The Act, § 645 A(a). (Emphasis added.)

³⁴ *Byrd v. Warden, of the Maryland Penitentiary*, 147 A. 2d 701, 702-3 (Md. 1959). In this case petitioner had taken several habeas corpus cases to the Court of Appeals. There is no question that the prior *appellate* judgments were regarded as final.

³⁵ 14 F. Supp. 716, 717 (D. Md. 1936). *Cf.* *State ex rel Eyer v. Warden*, 190 Md. 767, 772, 59 A. 2d 745 (1948), *cert. den.* 335 U.S. 804 (1948); *Coston v. Coston*, 25 Md. 500 (1866). It is arguable that the Act itself supports this view. By §645 B(b) an application for the common law writ of habeas corpus cannot be treated as a proceeding under the Act *unless petitioner consents*. It is difficult to see what right of the petitioner is thus being protected unless it be immunity from the waiver provisions of the Act.

grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition."³⁶

Furthermore, the Act provides that a lower court order *under the Act* constitutes a final judgment for the purposes of review.³⁷

The Act, as amended, provides that a *subsequent* post conviction hearing will be granted only if the court which is petitioned finds a hearing necessary. If the court finds from the *subsequent* petition and the State's answer that there are no new grounds for relief or that the grounds relied upon have been waived, it may dismiss the *subsequent* petition without a hearing.³⁸

From the standpoint of waiver, the Act's retention of the common law habeas corpus proceeding, without a right of appeal, may be a trap for the unwary.³⁹ Laymen, unskilled in the law and not represented by counsel, cannot be expected to fully appreciate the consequences of the Act's waiver provisions. The Act therefore gives the hearing court broad discretion to allow amendment or complete withdrawal of petitions at any time prior to entry of judgment.⁴⁰ Furthermore, if the court is satisfied as to the truth of a petitioner's allegation of inability to pay costs and employ counsel, the Act provides that the court *shall* appoint counsel.⁴¹ However, under the Act as amended, counsel must be appointed only for petitioner's first petition. If on second or later petitions the court finds that all grounds for relief have previously been asserted or waived, no counsel need be appointed.⁴² This distinction

³⁶ The Act, §645 H. (Emphasis added). This section indicates that waiver applies only to previous proceedings under the Act. See *infra*, n. 40.

³⁷ The Act, §645 G.

³⁸ The Act, §645 H.

³⁹ Though the present writer disagrees, the language of *Byrd v. Warden of the Maryland Penitentiary*, 147 A. 2d 701 (Md. 1959) which relies on the broad language of §645 A(a), indicates that a petitioner who in the future chooses the common law habeas corpus route and receives an adverse lower court determination would be barred from later urging the same grounds in a proceeding under the Act and thus could never obtain appellate review of the validity of those grounds for relief previously asserted in the common law proceeding. Furthermore, a rigorous application of the waiver rule is justifiable only where petitioner has, in fact, knowledge of the law either personally or from counsel.

⁴⁰ The Act, §645 F.

⁴¹ The Act, §645 E.

⁴² The Act, §645 H. This section, as amended, is apparently the legislature's response to the *Byrd* case, *supra*, n. 39, and *Hobbs v. Warden of Maryland Penitentiary*, 148 A. 2d 380 (Md. 1959) which held that under the Act as originally enacted an indigent petitioner who filed a petition was entitled to a hearing and appointment of counsel even though the

is sound; in the ordinary case under the Act an indigent petitioner gets one paid in full proceeding, if necessary, all the way to the Court of Appeals, but no more.⁴³

The Act does not state whether, if a hearing is necessary, the petitioner has a right to appear at the hearing. This will depend upon whether the Court of Appeals characterizes the proceedings under the Act as criminal or civil.⁴⁴

A beneficial innovation found in the Act is the express requirement that the lower court order making final disposition of the petition shall clearly state the grounds on which the case was determined and whether a federal or a state right was presented and decided.⁴⁵ One advantage of requiring such a record is that it clearly determines exhaustion of State remedy for the purpose of obtaining access to the Federal courts.⁴⁶

The appeal procedure under the Act, instituted by requesting leave to prosecute an appeal within 30 days after the final lower court order, is essentially the same as formerly available in habeas corpus cases.⁴⁷

The Act in essence simplifies post conviction procedure and in the ordinary case allows but one appeal to the Court of Appeals. Unfortunately, it does not, and cannot, completely solve the problem of appeals from frivolous second proceedings which inevitably arises once any appeals from post conviction hearings are allowed. For example, a prisoner who has completely raised or waived all his possible grounds for relief in previous post conviction proceedings, whether under the Act or not, files a subsequent petition under the Act; the lower court properly denies relief on

petitioned court decided that all the grounds for relief asserted had been previously unsuccessfully raised in habeas corpus proceedings. Appointment of counsel is still mandatory in the case of an original petition.

⁴³ However, if in a subsequent petition facts were alleged showing that petitioner could not have reasonably raised a certain ground for relief, petitioner would be entitled to paid counsel. The Act, §645 H.

If the Court of Appeals grants leave to appeal and also finds the petitioner unable to pay the costs of the review, all necessary costs, including court costs, stenographic services, and printing *shall* be paid by the political subdivision in which the judgment is rendered. The Act, §645 E.

⁴⁴ *Cf. Olewiler v. Brady*, 185 Md. 341, 44 A. 2d 807 (1945). 9B UNIFORM LAWS ANNOTATED (1957) 357, §7, comment, states that the prisoner need not be brought before the court for the hearing. The language of the Maryland Act, §645 G, is, "The court *may* order the petitioner brought before it for the hearing." (Emphasis added).

⁴⁵ The Act, §645 G. It should be noted that this section expressly provides that the lower court order ". . . constitutes a final judgment for the purposes of review."

⁴⁶ See *Darr v. Burford*, 339 U.S. 200 (1950).

⁴⁷ The Act, §645-I. MD. RULES 811 a, 816 b, 830 a 1, 291 b 1, 893. MD. LAWS 1958, Ch. 45, §1, repeals 4 MD. CODE (1957) Art. 42, §6, which formerly provided for appeals by persons entitled to the writ of habeas corpus.

grounds of prior determination and waiver; nevertheless the persistent petitioner files a request with the Court of Appeals for leave to prosecute an appeal. The Court of Appeals still must act on this request.⁴⁸ Fortunately however, the provisions of the Act require a record which will enable the Court of Appeals to quickly dispose of such frivolous appeals.⁴⁹ It is clear that in view of the provisions of the Act and its obvious intent, a person seeking relief under the Act would be well advised to carefully, with the aid of counsel, marshal any and all grounds for relief in his original petition.

The Legislature of this State by allowing appeals in post conviction cases, has chosen to provide persons greater safeguards of their liberty than are constitutionally required. To borrow from former Chief Judge Markell's reference to the Act of 1945 which first granted appeals in habeas corpus cases, the result of the Post Conviction Procedure Act will be ". . . to put an end to long-standing abuse of the writ and to preserve the writ for its historic objects as a bulwark of liberty."⁵⁰

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⁴⁸ See discussion, *supra*, n. 18, and related text.

⁴⁹ See Maryland Rule 826 b, requiring the record to consist of the original papers. Thus a glance at the subsequent petition will show the true situation.

⁵⁰ Markell, *Review of Criminal Cases in Maryland by Habeas Corpus and by Appeal*, 101 U. Pa. L. Rev. 1154, 1162-1163 (1953).