
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2248 Session of
2020

INTRODUCED BY HILL-EVANS, KINSEY, SCHLOSSBERG, ISAACSON, RABB,
READSHAW, BULLOCK, MURT, McCLINTON, FRANKEL, WEBSTER, SAYLOR,
FREEMAN, FITZGERALD, BARRAR, YOUNGBLOOD, HOWARD, ROZZI,
SHUSTERMAN, McNEILL, PASHINSKI, DONATUCCI, MIZGORSKI,
HANBIDGE, POLINCHOCK, ULLMAN, RADER, KORTZ, WHEATLEY AND KIM,
JANUARY 30, 2020

REFERRED TO COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY
PREPAREDNESS, JANUARY 30, 2020

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in post-trial matters,
3 further providing for eligibility for relief, providing for
4 postconviction review for veterans with traumatic brain
5 injury or post-traumatic stress disorder and further
6 providing for jurisdiction and proceedings; and, in
7 sentencing, further providing for sentencing procedure for
8 murder of the first degree.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 9543(a)(2) of Title 42 of the
12 Pennsylvania Consolidated Statutes is amended by adding a
13 subparagraph to read:

14 § 9543. Eligibility for relief.

15 (a) General rule.--To be eligible for relief under this
16 subchapter, the petitioner must plead and prove by a
17 preponderance of the evidence all of the following:

18 * * *

1 (2) That the conviction or sentence resulted from one or
2 more of the following:

3 * * *

4 (ix) Failure to consider evidence that the
5 petitioner is suffering from a traumatic brain injury or
6 post-traumatic stress disorder as a result of service in
7 the United States Armed Forces in a combat zone or other
8 similar hazardous duty area.

9 * * *

10 Section 2. Title 42 is amended by adding a section to read:

11 § 9543.2. Postconviction review for veterans with traumatic
12 brain injury or post-traumatic stress disorder.

13 (a) Motion.--The following apply:

14 (1) An individual convicted of a criminal offense in a
15 court of this Commonwealth and serving a term of imprisonment
16 or awaiting execution because of a sentence of death may
17 apply by making a written motion to the sentencing court for
18 the performance or review of a mental health evaluation to
19 determine whether the individual is suffering from traumatic
20 brain injury or post-traumatic stress disorder. The
21 individual must have sustained the injury while performing
22 service for the United States Armed Forces in a combat zone
23 or other similar hazardous duty area and be serving a term of
24 imprisonment to be eligible for postconviction review.

25 (2) The diagnosis of a traumatic brain injury or post-
26 traumatic stress disorder may have been determined either:

27 (i) prior to the applicant's conviction, provided
28 that the evidence of traumatic brain injury or post-
29 traumatic stress disorder was not considered by the court
30 during the proceedings that resulted in the applicant's

1 conviction and sentencing; or

2 (ii) after the applicant's conviction.

3 (3) The applicant shall ensure that all necessary forms
4 authorizing the release of medical records have been
5 completed as of the date of the motion.

6 (b) Notice to the Commonwealth.--Upon receipt of a motion
7 under subsection (a), the court shall notify the Commonwealth
8 and shall afford the Commonwealth an opportunity to respond to
9 the motion.

10 (c) Requirements.--In any motion under subsection (a), the
11 applicant shall:

12 (1) In a capital case, assert that the outcome of the
13 mental health evaluation will establish a mitigating
14 circumstance under section 9711(e)(7.1) (relating to
15 sentencing procedure for murder of the first degree).

16 (2) Present a prima facie case demonstrating that a
17 mental health evaluation would establish that the applicant's
18 traumatic brain injury or post-traumatic stress disorder was
19 a contributing factor in the applicant's conviction for the
20 underlying offense.

21 (d) Order.--

22 (1) Except as provided in paragraph (2), the sentencing
23 court shall order the performance or review of the mental
24 health evaluation requested in a motion under subsection (a)
25 upon a determination, after review of the record of the
26 applicant's trial, that the:

27 (i) requirements of subsection (c) have been met;

28 (ii) applicant is a veteran who served in the United
29 States Armed Forces in a combat zone or other similar
30 hazardous duty area; and

1 (iii) motion is not made to delay the execution of
2 sentence or administration of justice.

3 (2) The court shall not order the performance or review
4 of the mental health evaluation requested in a motion under
5 subsection (a) if, after review of the record of the
6 applicant's trial, the court determines that there is no
7 reasonable possibility that the evaluation would produce
8 evidence that the individual is suffering from traumatic
9 brain injury or post-traumatic stress disorder that may be a
10 contributing factor in the applicant's conviction for the
11 underlying offense.

12 (3) Upon issuance of an order under paragraph (1), the
13 president judge of the court of common pleas having
14 jurisdiction shall assign the motion for postconviction
15 relief for review to:

16 (i) a veterans court; or

17 (ii) a judge trained to review matters pertaining to
18 veterans.

19 (4) If the court orders the performance or review of the
20 mental health evaluation requested in a motion under
21 subsection (a), the Department of Military and Veterans
22 Affairs may work with the United States Department of
23 Veterans Affairs to ensure that the applicant has the
24 opportunity to have a complete mental health evaluation
25 performed or reviewed by a health care practitioner with
26 expertise in traumatic brain injuries or post-traumatic
27 stress disorders.

28 (e) Mental health evaluation procedures.--

29 (1) After the mental health evaluation conducted or
30 reviewed under this section has been completed, the applicant

1 may, pursuant to section 9545(b)(2) (relating to jurisdiction
2 and proceedings), during a 60-day period beginning on the
3 date on which the applicant is notified of the evaluation
4 results, petition to the court under subsection (d)(3) for
5 postconviction relief pursuant to section 9543(a)(2)(ix)
6 (relating to eligibility for relief).

7 (2) Upon receipt of a petition filed under paragraph
8 (1), the court shall consider the petition along with any
9 answer filed by the Commonwealth and shall conduct a hearing.

10 (3) In any hearing on a petition for postconviction
11 relief filed under paragraph (1), the court shall determine
12 whether any evidence resulting from the mental health
13 evaluation conducted or reviewed under this section would
14 have reasonably altered the outcome of the trial or sentence.

15 (4) If the mental health evaluation indicates that the
16 petitioner is suffering from a traumatic brain injury or
17 post-traumatic stress disorder as a result of service in the
18 United States Armed Forces in a combat zone or other similar
19 hazardous duty area, the Commonwealth and the court shall
20 take the steps reasonably necessary to ensure that the
21 Department of Corrections is informed of the petitioner's
22 disability status and ensure that the petitioner receives all
23 the protections afforded to people with disabilities under
24 the Americans with Disabilities Act of 1990 (Public Law 101-
25 336, 104 Stat. 327).

26 (f) Effect of motion.--The filing of a motion for a mental
27 health evaluation for a traumatic brain injury or post-traumatic
28 stress disorder pursuant to subsection (a) shall have the
29 following effect:

30 (1) The filing of the motion shall constitute the

1 applicant's consent to undergo a mental health evaluation.

2 (2) The data from any evaluation obtained as a result of
3 the motion may not be entered into law enforcement databases,
4 may not be used in the investigation of other crimes and may
5 not be used as evidence against the applicant in any manner.

6 Section 3. Section 9545(b)(1) of Title 42 is amended to
7 read:

8 § 9545. Jurisdiction and proceedings.

9 * * *

10 (b) Time for filing petition.--

11 (1) Any petition under this subchapter, including a
12 second or subsequent petition, shall be filed within one year
13 of the date the judgment becomes final, unless the petition
14 alleges and the petitioner proves that:

15 (i) the failure to raise the claim previously was
16 the result of interference by government officials with
17 the presentation of the claim in violation of the
18 Constitution or laws of this Commonwealth or the
19 Constitution or laws of the United States;

20 (ii) the facts upon which the claim is predicated
21 were unknown to the petitioner and could not have been
22 ascertained by the exercise of due diligence; [or]

23 (iii) the right asserted is a constitutional right
24 that was recognized by the Supreme Court of the United
25 States or the Supreme Court of Pennsylvania after the
26 time period provided in this section and has been held by
27 that court to apply retroactively[.]; or

28 (iv) evidence that the petitioner's diagnosis of
29 traumatic brain injury or post-traumatic stress disorder
30 as a result of service in the United States Armed Forces

1 in a combat zone or other similar hazardous duty area was
2 not considered by the court during the proceedings that
3 resulted in the petitioner's conviction and sentencing.

4 * * *

5 Section 4. Section 9711(e) of Title 42 is amended by adding
6 a paragraph to read:

7 § 9711. Sentencing procedure for murder of the first degree.

8 * * *

9 (e) Mitigating circumstances.--Mitigating circumstances
10 shall include the following:

11 * * *

12 (7.1) The defendant has undergone a mental health
13 evaluation and has been found to be suffering from a
14 traumatic brain injury or post-traumatic stress disorder as a
15 result of service in the United States Armed Forces in a
16 combat zone or other similar hazardous duty area.

17 * * *

18 Section 5. The Supreme Court shall have the power to adopt
19 rules as deemed necessary to carry out the provisions of this
20 act.

21 Section 6. This act shall take effect in 60 days.