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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 81

Special Session No. 1 of  
1995

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INTRODUCED BY GREENLEAF, O'PAKE, ANDREZESKI, DELP, KASUNIC,  
MOWERY, PETERSON, ROBBINS, SALVATORE, WENGER AND FISHER,  
MARCH 15, 1995

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AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
OCTOBER 30, 1995

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, further providing for  
3 postconviction relief; and providing for unitary review in  
4 death penalty cases.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Sections 9542, 9543, 9544, 9545 and 9546 of Title  
8 42 of the Pennsylvania Consolidated Statutes are amended to  
9 read:

10 § 9542. Scope of subchapter.

11 This subchapter provides for an action by which persons  
12 convicted of crimes they did not commit [or] and persons serving  
13 [unlawful] illegal sentences may obtain collateral relief [and  
14 for an action by which persons can raise claims which are  
15 properly a basis for Federal habeas corpus relief]. The action  
16 established in this subchapter shall be the sole means of  
17 obtaining collateral relief and encompasses all other common law

1 and statutory remedies for the same purpose that exist when this  
2 subchapter takes effect, including habeas corpus and coram  
3 nobis. This subchapter is not intended to limit the availability  
4 of remedies in the trial court or on direct appeal from the  
5 judgment of sentence, nor is this subchapter intended to provide  
6 a means for raising issues waived in prior proceedings. Except  
7 as specifically provided otherwise, all provisions of this  
8 subchapter shall apply to capital and noncapital cases.

9 § 9543. Eligibility for relief.

10 (a) General rule.--To be eligible for relief under this  
11 subchapter, [a person] the petitioner must plead and prove by a  
12 preponderance of the evidence all of the following:

13 (1) That the [person] petitioner has been convicted of a  
14 crime under the laws of this Commonwealth and is:

15 (i) currently serving a sentence of imprisonment,  
16 probation or parole for the crime;

17 (ii) awaiting execution of a sentence of death for  
18 the crime; or

19 (iii) serving a sentence which must expire before  
20 the person may commence serving the disputed sentence.

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

23 (i) A violation of the Constitution [of Pennsylvania  
24 or laws] of this Commonwealth or the Constitution or laws  
25 of the United States which, in the circumstances of the  
26 particular case, so undermined the truth-determining  
27 process that no reliable adjudication of guilt or  
28 innocence could have taken place.

29 (ii) Ineffective assistance of counsel which, in the  
30 circumstances of the particular case, so undermined the

1 truth-determining process that no reliable adjudication  
2 of guilt or innocence could have taken place.

3 (iii) A plea of guilty unlawfully induced where the  
4 circumstances make it likely that the inducement caused  
5 [an individual] the petitioner to plead guilty and the  
6 petitioner is innocent.

7 (iv) The improper obstruction by [Commonwealth]  
8 government officials of the petitioner's right of appeal  
9 where a meritorious appealable issue existed and was  
10 properly preserved in the trial court.

11 [(v) A violation of the provisions of the  
12 Constitution, law or treaties of the United States which  
13 would require the granting of Federal habeas corpus  
14 relief to a State prisoner.]

15 (vi) The unavailability at the time of trial of  
16 exculpatory evidence that has subsequently become  
17 available and [that] would have [affected] changed the  
18 outcome of the trial if it had been introduced.

19 (vii) The imposition of a sentence greater than the  
20 lawful maximum.

21 (viii) A proceeding in a tribunal without  
22 jurisdiction.

23 (3) That the allegation of error has not been  
24 [previously litigated and one of the following applies:

25 (i) The allegation of error has not been waived.

26 (ii) If the allegation of error has been waived, the  
27 alleged error has resulted in the conviction or  
28 affirmance of sentence of an innocent individual.

29 (iii) If the allegation of error has been waived,  
30 the waiver of the allegation of error during pretrial,

trial, post-trial or direct appeal proceedings does not constitute a State procedural default barring Federal habeas corpus relief.] previously litigated or waived.

(4) That the failure to litigate the issue prior to or during trial, during unitary review or on direct appeal could not have been the result of any rational, strategic or tactical decision by counsel.

(b) Exception.--Even if the petitioner [meets] has met the requirements of subsection (a), the petition shall be dismissed if it appears at any time that, because of delay in filing the petition, the Commonwealth has been prejudiced either in its ability to respond to the petition or in its ability to re-try the petitioner. A PETITION MAY BE DISMISSED DUE TO DELAY IN THE <—

FILING BY THE PETITIONER ONLY AFTER A HEARING UPON A MOTION TO DISMISS. This subsection does not apply if the petitioner shows that the petition is based on grounds of which the petitioner could not have [had knowledge] discovered by the exercise of reasonable diligence before the delay became prejudicial to the Commonwealth.

§ 9544. Previous litigation and waiver.

(a) Previous litigation.--For [the purpose] purposes of this subchapter, an issue has been previously litigated if:

[(1) it has been raised in the trial court, the trial court has ruled on the merits of the issue and the petitioner did not appeal;]

(2) the highest appellate court in which the petitioner could have had review as a matter of right has ruled on the merits of the issue; or

(3) it has been raised and decided in a proceeding collaterally attacking the conviction or sentence.

1 (b) Issues waived.--For [the] purposes of this subchapter,  
2 an issue is waived if the petitioner could have raised it but  
3 failed to [raise it and if it could have been raised] do so  
4 before [the] trial, at [the] trial, during unitary review, on  
5 appeal[,] or in a [habeas corpus] prior state postconviction  
6 proceeding [or other proceeding actually conducted or in a prior  
7 proceeding actually initiated under this subchapter].

8 § 9545. Jurisdiction and proceedings.

9 (a) Original jurisdiction.--Original jurisdiction over a  
10 proceeding under this subchapter shall be in the court [in which  
11 the conviction was obtained.] of common pleas. No court shall  
12 have authority to entertain a request for any form of relief in  
13 anticipation of the filing of a petition under this subchapter.

14 [(b) Rules governing proceedings.--The Supreme Court may, by  
15 general rule, prescribe procedures to implement the action  
16 established under this subchapter but shall not expand, contract  
17 or modify the grounds for relief set forth in this subchapter.]

18 (b) Time for filing petition.--

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

23 (i) the failure to raise the claim previously was  
24 the result of interference by government officials with  
25 the presentation of the claim in violation of the  
26 Constitution or laws of this Commonwealth or the  
27 Constitution or laws of the United States;

28 (ii) the facts upon which the claim is predicated  
29 were unknown to the petitioner and could not have been  
30 ascertained by the exercise of due diligence; or



petition), 9575 (relating to disposition without evidentiary hearing) and 9576 (relating to evidentiary hearing), shall apply to the litigation of the petition.

(d) Evidentiary hearing.--

(1) Where a petitioner requests an evidentiary hearing, the petition shall include a signed certification as to each intended witness stating the witness's name, address, date of birth and substance of testimony and shall include any documents material to that witness's testimony. Failure to substantially comply with the requirements of this paragraph shall render the proposed witness's testimony inadmissible.

(2) No discovery, at any stage of proceedings under this subchapter, shall be permitted except upon leave of court with a showing of exceptional circumstances.

(3) When a claim for relief is based on an allegation of ineffective assistance of counsel as a ground for relief, any privilege concerning counsel's representation as to that issue shall be automatically terminated.

§ 9546. Relief and order.

(a) General rule.--If the court [finds] rules in favor of the petitioner, it shall order appropriate relief and issue supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence or other matters that are necessary and proper.

[(b) Grounds to be stated.--The order finally disposing of the petition shall state grounds on which the case was determined.

(c) Status of order.--The order constitutes a final judgment for purposes of review.]

(d) Review of order in death penalty cases.--[A final court]

An order under this subchapter granting the petitioner final relief in a case in which the death penalty has been imposed shall be directly appealable [only] by the Commonwealth to the Supreme Court pursuant to its rules. An order under this subchapter denying a petitioner final relief in a case in which the death penalty has been imposed shall be reviewable only by petition for allowance of appeal to the Supreme Court.

Section 2. Chapter 95 of Title 42 is amended by adding a subchapter to read:

#### SUBCHAPTER D

##### UNITARY REVIEW IN DEATH PENALTY CASES

Sec.

9570. Short title of subchapter.

9571. Scope of subchapter.

9572. Representation of counsel.

9573. Time for petition; contents of petition.

9574. Answer to petition.

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9576. Evidentiary hearing.

9577. Disposition and appeal.

9578. Subsequent petitions.

9579. Certification.

§ 9570. Short title of subchapter.

This subchapter shall be known and may be cited as the Capital Unitary Review Act.

§ 9571. Scope of subchapter.

(a) Capital unitary review.--This subchapter establishes the sole means of challenging proceedings that resulted in a sentence of death. The unitary review proceeding provided by this subchapter shall replace postappeal collateral review of

1 death penalty cases with preappeal collateral review.

2 (b) Appointment of collateral counsel.--Under the action  
3 provided in this subchapter, a person sentenced to death shall  
4 be immediately entitled to new counsel for purposes of  
5 collateral review. The collateral proceeding shall occur in the  
6 trial court after the imposition of sentence and before appeal.  
7 The petitioner may raise any claim that could not have been  
8 raised previously, including claims of ineffective assistance of  
9 counsel.

10 (c) Capital appeal.--Direct appeal shall occur after the  
11 trial court has concluded collateral review. Claims raised on  
12 direct appeal shall be limited to those claims that were  
13 preserved at trial and that may be resolved on the basis of the  
14 record created up to and including sentencing. Collateral appeal  
15 shall occur simultaneously with direct appeal. Claims raised on  
16 collateral appeal shall be limited to claims that were preserved  
17 in the collateral proceeding in the trial court and to any other  
18 claim that could not have been raised previously, including  
19 claims of ineffective assistance of counsel on direct appeal.

20 (d) Limitation on subsequent petitions.--No further review  
21 shall be available except as provided in this subchapter.

22 (e) Capital case in which death penalty not imposed.--This  
23 subchapter does not apply to capital cases in which the death  
24 penalty was not imposed.

25 § 9572. Representation of counsel.

26 (a) Collateral counsel.--Immediately after the formal  
27 imposition of sentence on all charges or within 30 days of the  
28 verdict of the death penalty, whichever occurs later, the court  
29 shall appoint new counsel for the purposes of collateral review,  
30 unless:

1 (1) the petitioner has elected to proceed pro se and the  
2 court finds, after a colloquy on the record, that the  
3 petitioner's election is knowing, intelligent and voluntary;  
4 or

5 (2) the petitioner retains counsel for the unitary  
6 review proceeding.

7 (b) Prior attorney.--No petitioner may be represented on  
8 collateral review, either in the trial court or on appeal, by an  
9 attorney, whether retained or appointed, who has represented the  
10 petitioner at any other stage of the proceedings, including  
11 direct appeal, unless the court finds, after a colloquy on the  
12 record, that the petitioner has knowingly, intelligently and  
13 voluntarily waived his right to challenge the effectiveness of  
14 that attorney's representation.

15 (c) Standards for appointment of counsel.--The Supreme Court  
16 shall adopt standards for the appointment of counsel in capital  
17 cases. THESE STANDARDS SHALL APPLY FOR THE APPOINTMENT OF TRIAL  
18 COUNSEL, COLLATERAL REVIEW COUNSEL AND APPELLATE COUNSEL. When  
19 adopting the standards, the Supreme Court shall consider, where  
20 practicable, the following criteria:

21 (1) Counsel is admitted to practice in Pennsylvania.

22 (2) Counsel is an experienced and active trial  
23 practitioner with at least five years' litigation experience  
24 in the field of criminal law.

25 (3) Counsel has prior experience as counsel in a  
26 specified number of trials or other relevant proceedings.

27 (4) Counsel is familiar with the practice and procedure  
28 of the appropriate courts, including Federal courts of the  
29 jurisdiction.

30 (5) Counsel has demonstrated the necessary proficiency

1 and commitment which exemplify the quality of representation  
2 appropriate to capital cases.

3 (6) LOCAL PRACTICE FOR THE APPOINTMENT OF COUNSEL IN <—  
4 CAPITAL CASES.

5 Absent standards established under this subsection, the court  
6 may appoint such counsel as it deems qualified, in accordance  
7 with any local rules or practices. The existence or  
8 applicability of, or failure to comply with, such standards  
9 shall not provide a basis for relief.

10 § 9573. Time for petition; contents of petition.

11 (a) Filing date.--Any petition under this subchapter shall  
12 be filed within 120 days of the date the trial transcript is  
13 filed with the court. The court may, for good cause shown, grant  
14 extensions of time totaling no more than 90 days.

15 (b) Subsequent or untimely claims.--Any claim raised after  
16 the time specified in subsection (a) shall be dismissed unless  
17 it satisfies section 9578 (relating to subsequent petitions).

18 (c) Evidentiary hearing.--Where the petitioner requests an  
19 evidentiary hearing, the petition shall include a signed  
20 certification as to each intended witness stating the witness's  
21 name, address, date of birth and substance of testimony and  
22 shall include any documents material to that witness's  
23 testimony. Failure to substantially comply with the requirements  
24 of this subsection shall render the proposed witness's testimony  
25 inadmissible.

26 ~~(d) Other materials. No discovery, at any stage of~~ <—  
27 ~~proceeding under this subchapter, shall be permitted except upon~~  
28 ~~leave of court with a showing of exceptional circumstances.~~

29 (D) DISCOVERY.--DISCOVERY SHALL BE PERMITTED AND NO <—  
30 REASONABLE DISCOVERY REQUEST OF THE PETITIONER SHALL BE DENIED

1 EXCEPT UPON DEMONSTRATION OF EXCEPTIONAL CIRCUMSTANCES  
2 JUSTIFYING DENIAL OF THE DISCOVERY REQUESTS.

3 (e) Claim for relief.--When a claim for relief is based on  
4 an allegation of ineffective assistance of counsel as a ground  
5 for relief, any privilege concerning counsel's representation as  
6 to that issue shall be automatically terminated.

7 § 9574. Answer to petition.

8 The Commonwealth may file a written answer to the petition  
9 within 120 days of the filing and service of the petition. For  
10 good cause shown, the court may grant an extension of time of up  
11 to 90 days. Failure to file an answer shall not constitute an  
12 admission of any facts alleged in the petition.

13 § 9575. Disposition without evidentiary hearing.

14 (a) Evidentiary hearing.--No more than 20 days after the  
15 Commonwealth answers the petition, or, if no answer is filed, 20  
16 days after the deadline for answering, the court shall determine  
17 whether or not an evidentiary hearing is warranted. An  
18 evidentiary hearing shall not be warranted unless controverted,  
19 previously unresolved factual issues material to petitioner's  
20 conviction or sentence exist.

21 (b) Written order.--Failure of the court to issue a written  
22 order within the period prescribed under subsection (a) shall  
23 constitute a determination that ~~no~~ AN evidentiary hearing is <—  
24 warranted ON ANY CONTROVERTED PREVIOUSLY UNRESOLVED FACTUAL <—  
25 ISSUES MATERIAL TO PETITIONER'S CONVICTION OR SENTENCE.

26 (c) Disposing of petition.--If the determination is made  
27 that no evidentiary hearing is warranted, the court shall, no  
28 later than 90 days from the date of that determination, dispose  
29 of the petition, after oral argument if requested, and any  
30 postsentence motions filed under the Pennsylvania Rules of

1 Criminal Procedure.

2 § 9576. Evidentiary hearing.

3 (a) Order.--If the court determines that an evidentiary  
4 hearing is warranted, the court shall enter an order, no more  
5 than 20 days after the Commonwealth answers the petition, or, if  
6 no answer is filed, 20 days after the deadline for answering,  
7 setting a date for the hearing.

8 (b) Date.--The hearing shall be scheduled to occur not less  
9 than ten days and not more than 45 days from the date of the  
10 order setting the hearing. The court may, for good cause shown,  
11 grant leave to continue the hearing.

12 (c) Disposing of petition.--Not later than 90 days after the  
13 evidentiary hearing, the court shall dispose of the petition and  
14 any postsentence motions filed under the Pennsylvania Rules of  
15 Criminal Procedure.

16 § 9577. Disposition and appeal.

17 (a) Capital unitary review.--Review by the Supreme Court  
18 under section 9711(h) (relating to review of death sentence)  
19 shall comprise direct appeal and collateral appeal. The common  
20 pleas court order disposing of the petition under this  
21 subchapter shall constitute the final judgment for purposes of  
22 this review.

23 (b) Briefs for petitioner.--Unless the petitioner has waived  
24 the right to new counsel on collateral review, separate briefs  
25 shall be filed for direct appeal and collateral appeal. The time  
26 for filing the collateral appeal brief shall begin to run from  
27 service of the petitioner's brief on direct appeal.

28 (c) Brief for the Commonwealth.--The Commonwealth shall file  
29 a brief in response to the petitioner's direct and collateral  
30 appeal briefs. The time for filing the Commonwealth's brief

1 shall begin to run from service of the petitioner's brief on  
2 collateral appeal.

3 § 9578. Subsequent petitions.

4 (a) Further review.--No further review shall be available  
5 unless a petition is filed under Subchapter B (relating to post  
6 conviction relief) alleging that:

7 (1) the failure to raise the claim previously was the  
8 result of interference by government officials with the  
9 presentation of the claim in violation of the Constitution of  
10 the United States or laws of the United States or the  
11 Constitution of Pennsylvania or laws of this Commonwealth;

12 (2) the facts upon which the claim is predicated were  
13 unknown to the petitioner and could not have been ascertained  
14 in the exercise of due diligence; or

15 (3) the right asserted is a constitutional right that  
16 was recognized by the Supreme Court of the United States or  
17 the Supreme Court of Pennsylvania after the time period  
18 provided in this section and has been held by that court to  
19 apply retroactively.

20 (b) Exception petition.--Any petition invoking an exception  
21 provided in subsection (a) shall be filed within 60 days of the  
22 date the claim could have been presented.

23 § 9579. Certification.

24 (a) General rule.--By presenting to the court, whether by  
25 signing, filing, submitting, or later advocating, a pleading,  
26 written motion or other papers regarding a petition for  
27 collateral relief, an attorney or unrepresented party is  
28 certifying that, to the best of the person's knowledge,  
29 information and belief, formed after an inquiry reasonable under  
30 the circumstances, the following:

