

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

SENATE BILL

No. 385 Session of  
2023

---

INTRODUCED BY CAPPELLETTI, SCHWANK, KANE, SANTARSIERO, FONTANA,  
KEARNEY, HUGHES AND COSTA, FEBRUARY 21, 2023

---

REFERRED TO JUDICIARY, FEBRUARY 21, 2023

---

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, in post-trial matters,  
3 providing for postconviction relief for domestic violence  
4 survivors; and, in sentencing, providing for criminal  
5 prosecutions involving domestic violence survivors.

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

8 Section 1. Chapter 95 of Title 42 of the Pennsylvania  
9 Consolidated Statutes is amended by adding a subchapter to read:

10 SUBCHAPTER B.1

11 POSTCONVICTION RELIEF FOR

12 DOMESTIC VIOLENCE SURVIVORS

13 Sec.

14 9551. Scope of subchapter.

15 9552. Eligibility for relief.

16 9553. Postconviction appeal requests.

17 § 9551. Scope of subchapter.

18 This subchapter provides for an action by which a person who  
19 is a domestic violence survivor at the time the person committed

1 a crime may seek collateral relief from the person's conviction  
2 or sentence based on evidence that the domestic violence endured  
3 by the person substantially affected the person's participation  
4 in the crime.

5 § 9552. Eligibility for relief.

6 Notwithstanding any other provision of law, to be eligible  
7 for relief under this subchapter, the petitioner must plead and  
8 prove by preponderance of the evidence all of the following:

9 (1) That the petitioner has been convicted of a crime  
10 under the laws of this Commonwealth and is at the time relief  
11 is granted:

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

14 (ii) waiting execution of a sentence of death for  
15 the crime.

16 (2) That the conviction or sentence resulted from the  
17 following:

18 (i) Domestic violence endured by the petitioner at  
19 the time the person committed the crime that  
20 substantially affected the person's participation in the  
21 crime.

22 (ii) The failure of the court to take into account  
23 the impact of domestic violence on the commitment of the  
24 crime by the petitioner.

25 (3) That the petitioner is currently serving a sentence  
26 of at least one year.

27 § 9553. Postconviction appeal requests.

28 (a) Petitions.--A person seeking relief under this  
29 subchapter must file a petition with the court no later than  
30 five years after the person is convicted of the crime with the

1 evidence required under section 9552 (relating to eligibility  
2 for relief).

3 (b) Crimes of violence.--Notwithstanding any other provision  
4 of law, a plea of guilty or nolo contendere to a crime of  
5 violence, as defined in section 9714(g) (relating to sentences  
6 for second and subsequent offenses), or an inculpatory statement  
7 by the petitioner concerning the crime for which the petitioner  
8 was convicted, shall not prohibit the petitioner from seeking  
9 relief under this subchapter.

10 (c) Relief.--If the court finds that the petitioner provided  
11 the evidence required under section 9552, the court may take any  
12 of the following actions:

13 (1) Resentence the petitioner.

14 (2) Impose a sentence that is more lenient than  
15 specified in the sentencing guidelines adopted by the  
16 Pennsylvania Commission on Sentencing.

17 (3) Impose a sentence that does not include additional  
18 incarceration.

19 Section 2. Title 42 is amended by adding a section to read:  
20 § 9730.4. Criminal prosecutions involving domestic violence  
21 survivors.

22 Notwithstanding any other provision of law, in any criminal  
23 prosecution of an offense committed by a domestic violence  
24 survivor, a court shall take into account the domestic violence  
25 survivor's history of domestic violence victimization at the  
26 time of the offense and how much the domestic violence  
27 victimization affected the participation in the offense. If the  
28 court finds that the domestic violence survivor's participation  
29 in the offense was related to the domestic violence abuse  
30 endured by the survivor before or until the time of the offense,

1 the court may consider that finding as a mitigating factor and  
2 impose any of the following:

3 (1) A sentence that is more lenient than specified in  
4 the sentencing guidelines adopted by the Pennsylvania  
5 Commission on Sentencing.

6 (2) A sentence that does not include incarceration.

7 Section 3. This act shall take effect in 60 days.