

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 81

Special Session No. 1 of
1995

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

SENATOR GREENLEAF, JUDICIARY, RE-REPORTED AS AMENDED,
MAY 23, 1995

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 and 9545 of Title 42 of~~ <—
8 ~~the Pennsylvania Consolidated Statutes are amended to read:~~

9 SECTION 1. TITLE 42 OF THE PENNSYLVANIA CONSOLIDATED <—
10 STATUTES IS AMENDED BY ADDING A SECTION TO READ:

11 § 9541.1. DEFINITIONS.

12 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
13 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
14 CONTEXT CLEARLY INDICATES OTHERWISE:

15 "GOVERNMENT OFFICIAL." DOES NOT INCLUDE DEFENSE COUNSEL,
16 WHETHER APPOINTED OR RETAINED.

17 SECTION 2. SECTIONS 9542, 9543, 9544, 9545 AND 9546 OF TITLE
18 42 ARE AMENDED TO READ:

1 § 9542. Scope of subchapter.

2 This subchapter provides for an action by which persons
3 convicted of crimes they did not commit [or] and persons serving
4 [unlawful] illegal sentences may obtain collateral relief [and
5 for an action by which persons can raise claims which are
6 properly a basis for Federal habeas corpus relief]. The action
7 established in this subchapter shall be the sole means of
8 obtaining collateral relief and encompasses all other common law
9 and statutory remedies for the same purpose that exist when this
10 subchapter takes effect, including habeas corpus and coram
11 nobis. This subchapter is not intended to limit the availability
12 of remedies in the trial court or on direct appeal from the
13 judgment of sentence, nor is this subchapter intended to provide
14 a means for raising issues waived in prior proceedings. EXCEPT <—
15 AS SPECIFICALLY PROVIDED OTHERWISE, THIS SUBCHAPTER SHALL APPLY
16 TO CAPITAL AND NONCAPITAL CASES.

17 § 9543. Eligibility for relief.

18 (a) General rule.--To be eligible for relief under this
19 subchapter, [a person] THE PETITIONER must plead and prove by a <—
20 preponderance of the evidence all of the following:

21 (1) That the [person] PETITIONER has been convicted of a <—
22 crime under the laws of this Commonwealth and is:

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

25 (ii) awaiting execution of a sentence of death for
26 the crime; or

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

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

1 (i) A violation of the Constitution [of
2 Pennsylvania] or laws] of this Commonwealth or the <—
3 Constitution or laws of the United States which, in the
4 circumstances of the particular case, so undermined the
5 truth-determining process that no reliable adjudication
6 of guilt or innocence could have taken place.

7 (ii) Ineffective assistance of counsel which, in the
8 circumstances of the particular case, so undermined the
9 truth-determining process that no reliable adjudication
10 of guilt or innocence could have taken place.

11 (iii) A plea of guilty unlawfully induced where the
12 circumstances make it likely that the inducement caused
13 [an individual] the person PETITIONER to plead guilty and <—
14 the person PETITIONER is innocent. <—

15 (iv) The improper obstruction by [Commonwealth] <—
16 GOVERNMENT officials of the petitioner's right of appeal <—
17 where a meritorious appealable issue existed and was
18 properly preserved in the trial court.

19 [(v) A violation of the provisions of the
20 Constitution, law or treaties of the United States which
21 would require the granting of Federal habeas corpus
22 relief to a State prisoner.]

23 (vi) The unavailability at the time of trial of
24 exculpatory evidence that has subsequently become
25 available and [that] would have [affected] changed the <—
26 outcome of the trial if it had been introduced.

27 (vii) The imposition of a sentence greater than the
28 lawful maximum.

29 (viii) A proceeding in a tribunal without
30 jurisdiction.

1 (3) That the allegation of error has not been
2 [previously litigated and {one of the following applies}: <—
3 (i) The allegation of error has not been] waived. <—
4 [(ii) If the allegation of error has been waived,
5 the alleged error has resulted in the conviction or
6 affirmance of sentence of an innocent individual.
7 (iii) If the allegation of error has been waived,
8 the waiver of the allegation of error during pretrial,
9 trial, post-trial or direct appeal proceedings does not
10 constitute a State procedural default barring Federal
11 habeas corpus relief.]
12 ~~(ii) The petitioner is innocent.~~ <—
13 (4) That the failure to litigate the issue prior to or
14 during trial, DURING UNITARY REVIEW or on direct appeal could <—
15 not have been the result of any rational, strategic or
16 tactical decision by counsel.
17 (b) Exception.--Even if the petitioner meets the
18 requirements of subsection (a), the petition shall {be dismissed <—
19 if it appears AT ANY TIME that,} ~~not be granted unless, after~~ <—
20 ~~being given a reasonable opportunity, the Commonwealth fails to~~
21 ~~show that~~ because of delay in filing the petition, the
22 Commonwealth has been prejudiced either in its ability to
23 respond to the petition or in its ability to re-try the
24 petitioner. This subsection does not apply if the petitioner
25 shows that the petition is based on grounds of which the
26 petitioner could not have [had knowledge] DISCOVERED by the <—
27 exercise of reasonable diligence before the delay became
28 prejudicial to the Commonwealth.
29 § 9544. Previous litigation and waiver.
30 (a) Previous litigation.--For [the purpose] PURPOSES of this <—

1 subchapter, an issue has been previously litigated if:

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

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

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

10 ~~(b) Issues waived. For the purposes of this subchapter, an~~ <—
11 ~~issue is waived if the petitioner failed to raise it [and if]~~
12 ~~when it could have been raised before [the] trial, at [the]~~
13 ~~trial, during unitary review, on appeal, in a habeas corpus~~
14 ~~proceeding or [other proceeding actually conducted or in a prior~~
15 ~~proceeding actually initiated under this subchapter]~~
16 ~~postconviction proceeding.~~

17 (B) ISSUES WAIVED.--FOR [THE] PURPOSES OF THIS SUBCHAPTER, <—
18 AN ISSUE IS WAIVED IF THE PETITIONER COULD HAVE RAISED IT BUT
19 FAILED TO [RAISE IT AND IF IT COULD HAVE BEEN RAISED] DO SO
20 BEFORE [THE] TRIAL, AT [THE] TRIAL, DURING UNITARY REVIEW, ON
21 APPEAL[,] OR IN A [HABEUS CORPUS] POSTCONVICTION PROCEEDING [OR
22 OTHER PROCEEDING ACTUALLY CONDUCTED OR IN A PRIOR PROCEEDING
23 ACTUALLY INITIATED UNDER THIS SUBCHAPTER].

24 § 9545. Jurisdiction and proceedings.

25 (a) Original jurisdiction.--Original jurisdiction over a
26 proceeding under this subchapter shall be in the court [in which <—
27 the conviction was obtained.] OF COMMON PLEAS. NO COURT HAS <—
28 AUTHORITY TO ENTERTAIN A REQUEST FOR A FORM OF RELIEF IN
29 ANTICIPATION OF THE FILING OF A PETITION UNDER THIS SUBCHAPTER.

30 [(b) Rules governing proceedings.--The Supreme Court may, by <—

1 general rule, prescribe procedures to implement the action
2 established under this subchapter but shall not expand, contract
3 or modify the grounds for relief set forth in this subchapter.] <—

4 ~~(e)~~ (B) Time for filing petition.-- <—

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

9 (i) the failure to raise the claim previously was
10 the result of interference by ~~Commonwealth~~ GOVERNMENT <—
11 officials with the presentation of the claim in violation
12 of the Constitution or laws of this Commonwealth or the
13 Constitution or laws of the United States;

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

17 (iii) the right asserted is a Federal constitutional
18 right that was recognized after the time period provided <—
19 in this section and has been held by the Supreme Court of
20 the United States BY THE SUPREME COURT OF THE UNITED <—
21 STATES AFTER THE TIME PERIOD PROVIDED IN THIS SECTION AND
22 HAS BEEN HELD BY THAT COURT to apply retroactively.

23 (2) Any petition invoking an exception provided in
24 paragraph (1) shall be filed within 60 days of the date the
25 claim could have been presented.

26 (3) For purposes of this subchapter, a judgment becomes
27 final at the conclusion of direct review, including
28 discretionary review in the Supreme Court of the United <—
29 States and the Supreme Court of Pennsylvania, PENNSYLVANIA <—
30 AND THE SUPREME COURT OF THE UNITED STATES, or at the

1 expiration of time for seeking the review.

2 ~~(d) Stay of execution.~~ <—

3 ~~(1) No court shall have the authority to issue a stay of~~
4 ~~execution unless the petition for postconviction relief under~~
5 ~~this subchapter meets all the requirements of this subchapter~~
6 ~~and the petitioner makes a strong showing:~~

7 ~~(i) of likelihood of success on the merits;~~

8 ~~(ii) that the petitioner will be irreparably injured~~
9 ~~absent a stay;~~

10 ~~(iii) that the issuance of the stay will not~~
11 ~~substantially injure the Commonwealth; and~~

12 ~~(iv) that the stay is in the public interest.~~

13 (4) WHERE A PETITIONER HAS BEEN REPRESENTED BY NEW <—
14 COUNSEL POSTTRIAL, INCLUDING ON DIRECT APPEAL, A PETITION FOR
15 RELIEF UNDER THIS SUBCHAPTER SHALL BE DEEMED TIMELY ONLY IF
16 IT SATISFIES THE REQUIREMENTS OF PARAGRAPH (1) AND IS FILED
17 WITHIN 60 DAYS OF THE DATE THE JUDGMENT BECAME FINAL OR THE
18 DATE THE CLAIM COULD HAVE BEEN PRESENTED, WHICHEVER IS LATER.

19 (C) STAY OF EXECUTION.--

20 (1) NO COURT SHALL HAVE THE AUTHORITY TO ISSUE A STAY OF
21 EXECUTION IN ANY CASE EXCEPT AS ALLOWED UNDER THIS
22 SUBCHAPTER.

23 (2) NO STAY MAY BE ISSUED UNLESS A PETITION FOR
24 POSTCONVICTION RELIEF WHICH MEETS ALL THE REQUIREMENTS OF
25 THIS SUBCHAPTER HAS BEEN FILED AND IS PENDING AND THE
26 PETITIONER MAKES A STRONG SHOWING OF LIKELIHOOD OF SUCCESS ON
27 THE MERITS.

28 ~~(2)~~ (3) If a stay of execution is granted, all <—
29 limitations periods set forth under sections 9574 (relating
30 to answer to petition), 9575 (relating to disposition without

evidentiary hearing) and 9576 (relating to evidentiary hearing), shall apply to the litigation of the petition.

~~(e)~~ (D) Evidentiary hearing.--

(1) Where a petitioner requests an evidentiary hearing, the petition shall include a notarized affidavit from each intended witness stating the witness's name, address, date of birth and substance of testimony AND SHALL INCLUDE DOCUMENTS MATERIAL TO THAT WITNESS'S TESTIMONY.

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

~~(3) Failure to provide affidavits as directed by~~ UNLESS THE COMMONWEALTH AGREES TO PROCEED WITHOUT THE AFFIDAVITS AND DOCUMENTS DESCRIBED IN PARAGRAPH (1) OR TO RECEIVE THEM AT A LATER TIME, FAILURE TO SUBSTANTIALLY COMPLY WITH THE REQUIREMENTS OF paragraph (1) shall render the proposed witnesses' testimony inadmissible.

§ 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

1 RELIEF IN A CASE IN WHICH THE DEATH PENALTY HAS BEEN IMPOSED
2 SHALL BE DIRECTLY APPEALABLE [ONLY] BY THE COMMONWEALTH TO THE
3 SUPREME COURT PURSUANT TO ITS RULES. AN ORDER UNDER THIS
4 SUBCHAPTER DENYING A PETITIONER FINAL RELIEF IN A CASE IN WHICH
5 THE DEATH PENALTY HAS BEEN IMPOSED SHALL BE REVIEWABLE ONLY BY
6 PETITION FOR ALLOWANCE OF APPEAL TO THE SUPREME COURT.

7 Section 2 3. Chapter 95 of Title 42 is amended by adding a <—
8 subchapter to read:

9 SUBCHAPTER D

10 UNITARY REVIEW IN DEATH PENALTY CASES

11 Sec.

12 9570. Short title of subchapter.

13 9571. Scope of subchapter.

14 9572. Representation of counsel.

15 9573. Time for petition; CONTENTS OF PETITION. <—

16 9574. Answer to petition.

17 9575. Disposition without evidentiary hearing.

18 9576. Evidentiary hearing.

19 9577. Disposition and appeal.

20 § 9570. Short title of subchapter.

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

23 § 9571. Scope of subchapter.

24 (a) Unified means of challenging proceedings.--This
25 subchapter establishes a unified means of challenging
26 proceedings that resulted in a sentence of death.

27 (b) ~~Sole means of challenging proceedings~~ APPOINTMENT OF NEW <—
28 COUNSEL.--Under the action provided in this subchapter, a person
29 sentenced to death shall be entitled to new counsel and to the
30 litigation of claims alleging the pretrial, trial or sentencing

1 error. The unitary review proceeding shall be the sole means of
2 challenging proceedings prior to direct appeal. Only those
3 issues raised during unitary review shall be deemed preserved
4 for appellate review.

5 (c) Replaces ~~prior~~ POSTAPPEAL COLLATERAL review.--The <—
6 unitary review proceeding established under this subchapter is
7 intended to replace postappeal collateral review of death
8 penalty cases with preappeal collateral review. Pursuant to this
9 subchapter and Subchapter B (relating to post conviction
10 relief), no relief under Subchapter B shall be available to a
11 person sentenced to death unless the petition brought under that
12 subchapter meets the requirements for a second or subsequent
13 petition.

14 (d) ~~Availability of postconviction remedies~~ CAPITAL CASE IN <—
15 WHICH DEATH PENALTY NOT IMPOSED.--This subchapter is not
16 intended to limit the availability of postconviction remedies in
17 capital cases ~~where~~ IN WHICH the death penalty was not imposed. <—
18 § 9572. Representation of counsel.

19 (a) New counsel.--Immediately after the formal imposition of
20 sentence on all charges by the court, or within 30 days of the
21 verdict of the death penalty, whichever occurs later, the court
22 shall appoint new counsel for the purposes of unitary review and
23 direct appeal, unless:

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

28 (2) the petitioner retains counsel for the unitary
29 review proceeding.

30 (b) Prior attorney.--No petitioner may be represented by an

1 attorney, whether retained or appointed, who has represented the
2 petitioner at any prior stage of the proceedings unless the
3 court finds, after a colloquy on the record, that the petitioner
4 has knowingly, intelligently and voluntarily waived his right to
5 ~~claim prior counsel's ineffectiveness.~~ CHALLENGE THE <—
6 EFFECTIVENESS OF COUNSEL'S PRIOR REPRESENTATION.

7 (C) STANDARDS FOR APPOINTMENT OF COUNSEL.--THE SUPREME COURT
8 SHALL ADOPT STANDARDS FOR THE APPOINTMENT OF COUNSEL TO CONDUCT
9 UNITARY REVIEW AND DIRECT APPEALS IN CAPITAL CASES. WHEN
10 ADOPTING THE STANDARDS, THE SUPREME COURT SHALL CONSIDER, WHERE
11 PRACTICABLE, THE FOLLOWING CRITERIA:

12 (1) COUNSEL IS ADMITTED TO PRACTICE IN PENNSYLVANIA.

13 (2) COUNSEL IS AN EXPERIENCED AND ACTIVE TRIAL
14 PRACTITIONER WITH AT LEAST FIVE YEARS' LITIGATION EXPERIENCE
15 IN THE FIELD OF CRIMINAL LAW.

16 (3) COUNSEL HAS PRIOR EXPERIENCE AS COUNSEL IN NO FEWER
17 THAN FIVE JURY OR BENCH TRIALS OF SERIOUS AND COMPLEX CASES
18 WHICH WERE TRIED TO COMPLETION, AS WELL AS PRIOR EXPERIENCE
19 AS POSTCONVICTION COUNSEL IN AT LEAST THREE CASES IN FEDERAL
20 OR STATE COURT. IN ADDITION, OF THE FIVE JURY OR BENCH TRIALS
21 WHICH WERE TRIED TO COMPLETION, THE ATTORNEY SHOULD HAVE BEEN
22 COUNSEL IN AT LEAST THREE CASES IN WHICH THE CHARGE WAS
23 MURDER, OR ALTERNATIVELY, OF THE FIVE TRIALS, AT LEAST ONE
24 WAS A MURDER TRIAL AND AN ADDITIONAL THREE WERE FELONY JURY
25 TRIALS.

26 (4) COUNSEL IS FAMILIAR WITH THE PRACTICE AND PROCEDURE
27 OF THE APPROPRIATE COURTS, INCLUDING FEDERAL COURTS OF THE
28 JURISDICTION.

29 (5) COUNSEL HAS DEMONSTRATED THE NECESSARY PROFICIENCY
30 AND COMMITMENT WHICH EXEMPLIFY THE QUALITY OF REPRESENTATION

1 APPROPRIATE TO CAPITAL CASES.

2 § 9573. Time for petition; CONTENTS OF PETITION. <—

3 (a) Filing date.--Any petition under this subchapter shall
4 be filed within ~~90~~ 120 days of the date the trial transcript is <—
5 filed with the court. The court may, for good cause shown, grant
6 an extension of time of up to ~~60~~ 90 days. <—

7 (B) SUBSEQUENT OR UNTIMELY CLAIMS.--IF A PETITION OR AN <—
8 AMENDMENT OR SUPPLEMENT TO A PETITION IS FILED OUTSIDE THE TIME
9 SPECIFIED IN SUBSECTION (A), THAT FILING SHALL BE DISMISSED
10 UNLESS IT SATISFIES ONE OF THE EXCEPTIONS PROVIDED IN SECTION
11 9545(C)(1) (RELATING TO JURISDICTION AND PROCEEDINGS).

12 ~~(b)~~ (C) Appellate review.--Only claims raised in the unitary <—
13 review petition shall be considered preserved for appellate
14 review.

15 ~~(e)~~ (D) Evidentiary hearing.--Where a petition requests an <—
16 evidentiary hearing, the petition shall include a notarized
17 affidavit from each intended witness stating the witness's name,
18 address, date of birth and substance of testimony AND SHALL <—
19 INCLUDE DOCUMENTS MATERIAL TO THAT WITNESS'S TESTIMONY.

20 ~~(d) No other discovery~~ (E) OTHER MATERIALS.--No other <—
21 discovery, at any stage of proceeding under this subchapter,
22 shall be permitted except upon leave of court with a showing of
23 exceptional circumstances.

24 ~~(e) Affidavits. Failure to provide affidavits as directed~~ <—
25 ~~by subsection (e)~~

26 (F) AFFIDAVITS.--UNLESS THE COMMONWEALTH AGREES TO PROCEED <—
27 WITHOUT THE AFFIDAVITS AND DOCUMENTS DESCRIBED IN SUBSECTION (D)
28 OR TO RECEIVE THEM AT A LATER TIME, FAILURE TO COMPLY WITH THE
29 REQUIREMENTS OF SUBSECTION (D) shall render the proposed
30 witnesses' testimony inadmissible.

1 § 9574. Answer to petition.

2 The Commonwealth may file a written answer to the petition
3 within 60 days of the filing and service of the petition. For
4 good cause shown, the court may grant an extension of time of up
5 to 60 days. Failure to file an answer shall not constitute an
6 admission of ~~the well-pleaded~~ ANY facts alleged in the petition. <—

7 § 9575. Disposition without evidentiary hearing.

8 (a) Evidentiary hearing.--Not later than the 20th day after
9 the last date the Commonwealth may answer the petition, the
10 court shall determine whether or not an evidentiary hearing is
11 warranted. An evidentiary hearing shall not be warranted unless
12 controverted, previously unresolved factual issues material to
13 petitioner's conviction or sentence exist.

14 (b) Written order.--Failure of the court to issue a written
15 order within the period prescribed under subsection (a) shall
16 constitute a determination that no evidentiary hearing is
17 warranted.

18 (c) Disposing of petition.--If the determination is made
19 that no evidentiary hearing is warranted, the court shall, no
20 later than 60 days from the date of that determination, dispose
21 of the petition, after oral argument if requested.

22 § 9576. Evidentiary hearing.

23 (a) Order.--If the court determines that an evidentiary
24 hearing is warranted, the court shall enter an order, not later
25 than the 20th day after the last date the Commonwealth may
26 answer the petition, setting a date for the hearing.

27 (b) Date.--The hearing shall be scheduled to occur not less
28 than ten days and not more than 45 days from the date of the
29 order setting the hearing. THE COURT MAY, FOR GOOD CAUSE SHOWN, <—
30 GRANT LEAVE TO CONTINUE THE HEARING.

1 (c) Disposing of petition.--Not later than 60 days after the
2 evidentiary hearing, the court shall dispose of the petition.

3 § 9577. Disposition and appeal.

4 The order disposing of the petition shall constitute the
5 final judgment for purposes of direct review under section
6 9711(h) (relating to sentencing procedure for murder of the
7 first degree).

8 Section 3 4. This act shall apply as follows: <—

9 ~~(1) The amendment of 42 Pa.C.S. §§ 9542, 9543, 9544 and <—~~
10 ~~9545 shall apply on the date of enactment to petitioners~~
11 ~~whose judgment has not yet become final on the date of~~
12 ~~enactment. Petitioners whose judgment has become final on or~~
13 ~~before the date of enactment shall only be deemed to have~~
14 ~~filed a timely petition under 42 Pa.C.S. Ch. 95 Subch. B if~~
15 ~~their first petitions are filed within one year of the date~~
16 ~~of enactment.~~

17 (1) THE AMENDMENT OR ADDITION OF 42 PA.C.S. §§ 9541.1, <—
18 9542, 9543, 9544, 9545 AND 9546 SHALL APPLY TO PETITIONS
19 FILED AFTER THE EFFECTIVE DATE OF THIS ACT; HOWEVER, A
20 PETITIONER WHOSE JUDGMENT HAS BECOME FINAL ON OR BEFORE THE
21 EFFECTIVE DATE OF THIS ACT SHALL ONLY BE DEEMED TO HAVE FILED
22 A TIMELY PETITION UNDER 42 PA.C.S. CH. 95 SUBCH. B IF THE
23 PETITIONER'S FIRST PETITION IS FILED WITHIN ONE YEAR OF THE
24 EFFECTIVE DATE OF THIS ACT.

25 (2) The addition of 42 Pa.C.S. Ch. 95 Subch. D shall
26 apply in all cases in which the death penalty is imposed on
27 or after September 1, 1995.

28 Section 4 5. This act shall take effect in 60 days. <—