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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2406 Session of  
2015

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INTRODUCED BY COHEN, BARBIN AND ROTHMAN, OCTOBER 17, 2016

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REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 17, 2016

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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 \* \* \*

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

21 \* \* \*

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

6           \* \* \*

7           Section 2. Title 42 is amended by adding a section to read:  
8    § 9543.2. Postconviction review for veterans with traumatic  
9           brain injury or post-traumatic stress disorder.

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

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

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

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

29           (ii) after the applicant's conviction.

30           (3) The applicant shall ensure that all necessary forms

1 authorizing the release of medical records have been  
2 completed as of the date of the motion.

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

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

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

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

18 (d) Order.--

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

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

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

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

30 (2) The court shall not order the performance or review

1 of the mental health evaluation requested in a motion under  
2 subsection (a) if, after review of the record of the  
3 applicant's trial, the court determines that there is no  
4 reasonable possibility that the evaluation would produce  
5 evidence that the individual is suffering from traumatic  
6 brain injury or post-traumatic stress disorder that may be a  
7 contributing factor in the applicant's conviction for the  
8 underlying offense.

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

13 (i) a veterans court; or

14 (ii) a judge trained to review matters pertaining to  
15 veterans.

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

25 (e) Mental health evaluation procedures.--

26 (1) After the mental health evaluation conducted or  
27 reviewed under this section has been completed, the applicant  
28 may, pursuant to section 9545(b)(2) (relating to jurisdiction  
29 and proceedings), during a 60-day period beginning on the  
30 date on which the applicant is notified of the evaluation

1 results, petition to the court under subsection (d)(3) for  
2 postconviction relief pursuant to section 9543(a)(2)(ix)  
3 (relating to eligibility for relief).

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

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

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

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

27 (1) The filing of the motion shall constitute the  
28 applicant's consent to undergo a mental health evaluation.

29 (2) The data from any evaluation obtained as a result of  
30 the motion may not be entered into law enforcement databases,

1 may not be used in the investigation of other crimes and may  
2 not be used as evidence against the applicant in any manner.

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

5 § 9545. Jurisdiction and proceedings.

6 \* \* \*

7 (b) Time for filing petition.--

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

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

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

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

25 (iv) evidence that the petitioner's diagnosis of  
26 traumatic brain injury or post-traumatic stress disorder  
27 as a result of service in the United States Armed Forces  
28 in a combat zone or other similar hazardous duty area was  
29 not considered by the court during the proceedings that  
30 resulted in the petitioner's conviction and sentencing.

1 \* \* \*

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

4 § 9711. Sentencing procedure for murder of the first degree.

5 \* \* \*

6 (e) Mitigating circumstances.--Mitigating circumstances  
7 shall include the following:

8 \* \* \*

9 (7.1) The defendant has undergone a mental health  
10 evaluation and has been found to be suffering from a  
11 traumatic brain injury or post-traumatic stress disorder as a  
12 result of service in the United States Armed Forces in a  
13 combat zone or other similar hazardous duty area.

14 \* \* \*

15 Section 5. The Supreme Court shall have the power to adopt  
16 rules as deemed necessary to carry out the provisions of this  
17 act.

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