
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 231 Session of
2023

INTRODUCED BY HILL-EVANS, MADDEN, BURGOS, HOHENSTEIN, SANCHEZ,
RABB, DELLOSO, HANBIDGE, CIRESI, D. WILLIAMS, KRAJEWSKI AND
HARKINS, MARCH 10, 2023

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 10, 2023

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 service-connected
5 mental health disability and further providing for
6 jurisdiction and proceedings; and, in sentencing, further
7 providing for sentencing procedure for murder of the first
8 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:

1 * * *

2 (ix) Failure to consider evidence that the
3 petitioner has a service-connected mental health
4 disability as defined in section 9543.2(g) (relating to
5 postconviction review for veterans with service-connected
6 mental health disability).

7 * * *

8 Section 2. Title 42 is amended by adding a section to read:
9 § 9543.2. Postconviction review for veterans with service-
10 connected mental health disability.

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

12 (1) An individual convicted of a criminal offense in a
13 court of this Commonwealth and serving a term of imprisonment
14 or awaiting execution because of a sentence of death may
15 submit a written motion to the sentencing court for the
16 performance or review of a mental health evaluation to
17 determine whether the individual has a service-connected
18 mental health disability.

19 (2) The applicant shall ensure that all necessary forms
20 authorizing the release of medical records have been
21 completed as of the date of the motion.

22 (b) Notice to the Commonwealth.--Upon receipt of a motion
23 under subsection (a), the court shall notify the Commonwealth
24 and shall afford the Commonwealth an opportunity to respond to
25 the motion.

26 (c) Requirements.--In a motion under subsection (a), the
27 applicant shall:

28 (1) In a capital case, assert that the outcome of the
29 mental health evaluation will establish a mitigating
30 circumstance under section 9711(e)(7.1) (relating to

1 sentencing procedure for murder of the first degree).

2 (2) Present a prima facie case demonstrating that a
3 mental health evaluation would establish that the applicant's
4 service-connected mental health disability was a contributing
5 factor in the applicant's conviction for the underlying
6 offense.

7 (d) Order.--

8 (1) Except as provided in paragraph (2), the sentencing
9 court shall order the performance or review of the mental
10 health evaluation requested in a motion under subsection (a)
11 upon a determination, after review of the record of the
12 applicant's trial, that the:

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

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

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

19 (2) The court shall not order the performance or review
20 of the mental health evaluation requested in a motion under
21 subsection (a) if, after review of the record of the
22 applicant's trial, the court determines that there is no
23 reasonable possibility that the evaluation would produce
24 evidence that the individual has a service-connected mental
25 health disability that may be a contributing factor in the
26 applicant's conviction for the underlying offense.

27 (3) Upon issuance of an order under paragraph (1), the
28 president judge of the court of common pleas having
29 jurisdiction shall assign the motion for postconviction
30 relief for review to:

1 (i) a veterans court; or

2 (ii) a judge trained to review matters pertaining to
3 veterans.

4 (4) If the court orders the performance or review of the
5 mental health evaluation requested in a motion under
6 subsection (a), the Department of Military and Veterans
7 Affairs may work with the United States Department of
8 Veterans Affairs to ensure that the applicant has the
9 opportunity to have a complete mental health evaluation
10 performed or reviewed by a health care practitioner with
11 expertise in service-connected mental health disabilities.

12 (e) Mental health evaluation procedures.--

13 (1) After the mental health evaluation conducted or
14 reviewed under this section has been completed, the applicant
15 may, in accordance with section 9545(b)(2) (relating to
16 jurisdiction and proceedings), during a 60-day period
17 beginning on the date on which the applicant is notified of
18 the evaluation results, petition to the court under
19 subsection (d)(3) for postconviction relief in accordance
20 with section 9543(a)(2)(ix) (relating to eligibility for
21 relief).

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

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

30 (4) If the mental health evaluation indicates that the

1 petitioner has a service-connected mental health disability,
2 the Commonwealth and the court shall take the steps
3 reasonably necessary to ensure that the Department of
4 Corrections is informed of the petitioner's disability status
5 and ensure that the petitioner receives all the protections
6 afforded to people with disabilities under 42 U.S.C. Ch. 126
7 (relating to equal opportunity for individuals with
8 disabilities).

9 (f) Effect of motion.--The filing of a motion for a mental
10 health evaluation in accordance with subsection (a) shall have
11 the following effect:

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

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

18 (g) Definitions.--As used in this section, the following
19 words and phrases shall have the meanings given to them in this
20 subsection unless the context clearly indicates otherwise:

21 "Applicant." An individual who submits a written motion to a
22 sentencing court for the performance or review of a mental
23 health evaluation to determine whether the individual has a
24 service-connected mental health disability under subsection (a)
25 (1).

26 "Service-connected mental health disability." A mental
27 health disorder incurred in the course of and as a result of
28 active duty or training for active duty in the United States
29 Armed Forces.

30 Section 3. Section 9545(b)(1) of Title 42 is amended to

1 read:

2 § 9545. Jurisdiction and proceedings.

3 * * *

4 (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 the petitioner proves that:

9 (i) the failure to raise the claim previously was
10 the result of interference by government officials with
11 the presentation of the claim in violation of the
12 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 constitutional right
18 that was recognized by the Supreme Court of the United
19 States or the Supreme Court of Pennsylvania after the
20 time period provided in this section and has been held by
21 that court to apply retroactively[.]; or

22 (iv) evidence that the petitioner's diagnosis of a
23 service-connected mental health disability, as defined in
24 section 9543.2(g) (relating to postconviction review for
25 veterans with service-connected mental health
26 disability), was not considered by the court during the
27 proceedings that resulted in the petitioner's conviction
28 and sentencing.

29 * * *

30 Section 4. Section 9711(e) of Title 42 is amended by adding

1 a paragraph to read:

2 § 9711. Sentencing procedure for murder of the first degree.

3 * * *

4 (e) Mitigating circumstances.--Mitigating circumstances
5 shall include the following:

6 * * *

7 (7.1) The defendant has undergone a mental health
8 evaluation and has been found to have a service-connected
9 mental health disability as defined in section 9543.2(g)
10 (relating to postconviction review for veterans with service-
11 connected mental health disability).

12 * * *

13 Section 5. The Supreme Court shall have the power to adopt
14 rules as deemed necessary to carry out the amendment or addition
15 of 42 Pa.C.S. §§ 9543(a)(2)(ix), 9543.2, 9545(b)(1) and 9711(e)
16 (7.1).

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