

## No. 1982-122

## AN ACT

## SB 563

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, increasing the period of time within which prosecutions may be brought for certain offenses and providing for post conviction hearings.

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

Section 1. Subsection (b) of section 5552 of Title 42, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended to read:

§ 5552. Other offenses.

\* \* \*

(b) Major offenses.—A prosecution for any of the following offenses [under Title 18 (relating to crimes and offenses)] must be commenced within five years after it is committed:

**[Section 3123 (relating to involuntary deviate sexual intercourse).**

**Section 3301 (relating to arson and related offenses).**

**Section 3502 (relating to burglary).**

**Section 3701 (relating to robbery).**

**Section 4101 (relating to forgery).**

**Section 4902 (relating to perjury).]**

**(1) Under Title 18 (relating to crimes and offenses):**

***Section 911 (relating to corrupt organizations).***

***Section 2706 (relating to terroristic threats).***

***Section 2901 (relating to kidnapping).***

***Section 3121 (relating to rape).***

***Section 3123 (relating to involuntary deviate sexual intercourse).***

***Section 3301 (relating to arson and related offenses).***

***Section 3502 (relating to burglary).***

***Section 3701 (relating to robbery).***

***Section 3921 (relating to theft by unlawful taking or disposition) through section 3931 (relating to theft of unpublished dramas and musical compositions).***

***Section 4101 (relating to forgery).***

***Section 4108 (relating to commercial bribery and breach of duty to act disinterestedly).***

***Section 4109 (relating to rigging publicly exhibited contest).***

***Section 4302 (relating to incest).***

***Section 4701 (relating to bribery in official and political matters) through section 4703 (relating to retaliation for past official action).***

*Section 4902 (relating to perjury) through section 4912 (relating to impersonating a public servant).*

*Section 4952 (relating to intimidation of witnesses or victims).*

*Section 4953 (relating to retaliation against witness or victim).*

*Section 5101 (relating to obstructing administration of law or other governmental function).*

*Section 5512 (relating to lotteries, etc.) through section 5514 (relating to pool selling and bookmaking).*

*Section 5902(b) (relating to prostitution and related offenses).*

(2) *Any offense punishable under section 13(f) of the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."*

(3) *Any conspiracy to commit any of the offenses set forth in paragraphs (1) and (2).*

\* \* \*

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

**CHAPTER 95  
POST-TRIAL MATTERS  
[(Reserved)]**

**SUBCHAPTER A  
GENERAL PROVISIONS  
(Reserved)**

**SUBCHAPTER B  
POST CONVICTION HEARINGS**

Sec.

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§ 9541. Short title of subchapter.

This subchapter shall be known and may be cited as the "Post Conviction Hearing Act."

§ 9542. Scope of subchapter.

This subchapter establishes a post conviction procedure for providing relief from convictions obtained and sentences imposed without due process of law. The procedure established in this subchapter shall encompass all common law and statutory procedures for the same purpose that

exist when this subchapter takes effect, including habeas corpus and coram nobis. However, nothing in this subchapter limits the availability of remedies in the trial court or on direct appeal.

§ 9543. Eligibility for relief.

To be eligible for relief under this subchapter, a person must initiate a proceeding by filing a petition under section 9545 (relating to filing and content of petition) and must prove the following:

(1) That he has been convicted of a crime.

(2) That he is incarcerated in this Commonwealth under a sentence of death or imprisonment or on parole or probation.

(3) That his conviction or sentence resulted from one or more of the following reasons:

(i) The introduction of evidence obtained pursuant to an unlawful arrest.

(ii) The introduction of evidence obtained by an unconstitutional search and seizure.

(iii) The introduction of a coerced confession into evidence.

(iv) The introduction into evidence of a statement obtained in the absence of counsel at a time when representation is constitutionally required.

(v) The infringement of his privilege against self-incrimination under either Federal or State law.

(vi) The denial of his constitutional right to representation by competent counsel.

(vii) A plea of guilty unlawfully induced.

(viii) The unconstitutional suppression of evidence by the Commonwealth.

(ix) The unconstitutional use by the Commonwealth of perjured testimony.

(x) The obstruction by Commonwealth officials of petitioner's right of appeal.

(xi) His being twice placed in jeopardy.

(xii) The abridgement in any other way of any right guaranteed by the constitutions or laws of this Commonwealth or of the United States, including a right that was not recognized as existing at the time of the trial if the constitution requires retrospective application of that right.

(xiii) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and that would have affected the outcome of the trial if it had been introduced.

(4) That the error resulting in his conviction and sentence has not been finally litigated or waived.

§ 9544. When an issue is finally litigated or waived.

(a) Issues finally litigated.—For the purpose of this subchapter, an issue is finally 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 has knowingly and understandingly failed to appeal the trial court's ruling.

(2) The Superior Court has ruled on the merits of the issue and the petitioner has knowingly and understandingly failed to avail himself of further appeals.

(3) The Supreme Court has ruled on the merits of the issue.

(b) Issues waived.—For the purposes of this subchapter, an issue is waived if:

(1) The petitioner knowingly and understandingly failed to raise it and it could have been raised before the trial, at the trial, on appeal, in a habeas corpus proceeding or any other proceeding actually conducted or in a prior proceeding actually initiated under this subchapter.

(2) The petitioner is unable to prove the existence of extraordinary circumstances to justify his failure to raise the issue.

(c) Presumption.—There is a rebuttable presumption that a failure to appeal a ruling or to raise an issue is a knowing and understanding failure.

§ 9545. Filing and content of petition.

(a) Filing.—Any person who desires to obtain relief under this subchapter may initiate a post conviction proceeding by filing a petition (together with three copies thereof), verified by affidavit, with the clerk of the court in which he was convicted and sentenced which court is hereby granted jurisdiction to hear and determine the petition. Subject to the provisions of subsection (c), he may file a petition at any time.

(b) Content.—A petition shall be in the following forms:

(1) The petition must state that it is a Post Conviction Hearing Act petition and must include the name of the petitioner, his place of confinement, an identification of the proceedings in which the petitioner was convicted and the place of conviction, the date of the entry of judgment, the sentence imposed, all facts in support of the alleged error on which the petition is based, the relief desired and an identification of all previous proceedings that the petitioner has taken to secure relief from his conviction or sentence.

(2) The petition must either include affidavits, records and other supporting evidence or state why they are not included.

(3) The petition shall not include argument or citation and discussion of authorities.

(4) All facts within the personal knowledge of the petitioner must be set forth separately from other allegations of fact.

(c) All available grounds to be set forth.—Any person desiring to obtain relief under this subchapter shall set forth in the petition all of his then available grounds for such relief for any particular sentence he is currently serving and he shall be entitled to only one petition for each crime. The failure to raise any issue in the petition shall be deemed a waiver of any right to future presentation of another petition containing grounds for relief that were available and could have been presented.

§ 9546. Docketing and service of petition.

(a) General rule.—Upon receipt of a petition seeking relief under this subchapter, the clerk of the court in which the indictment upon which sentence was imposed shall immediately docket the petition to the same term and number as the original proceedings and promptly notify the court and serve a copy upon the district attorney.

(b) Multiple indictments and sentences.—In the event the petitioner's incarceration is by virtue of multiple indictments and sentences, the case shall be docketed to the same term and number as the indictment upon which the first unexpired sentence was imposed, but the court may take judicial notice of all proceedings had upon the multiple indictments.

§ 9547. Amendment and withdrawal of petition.

The court may grant leave to amend or withdraw the petition at any time. Amendment shall be freely allowed in order to achieve substantial justice. No petition may be dismissed for want of particularity unless the petitioner is first given an opportunity to clarify the petition.

§ 9548. Answer to petition.

The district attorney shall respond by answer or motion within 20 days from the date the petition is served upon him or within such time as the court orders. If the petition does not include records of the proceedings, the respondent shall file with his answer the records that are material to the questions raised in the petition.

§ 9549. Hearing on petition.

(a) When required.—If a petition alleges facts that, if proven, would entitle the petitioner to relief, the court shall grant a hearing which may extend only to the issues raised in the petition or answer.

(b) When not required.—The court may deny a hearing if the petitioner's claim is patently frivolous and is without a trace of support either in the record or from other evidence submitted by the petitioner. The court may also deny a hearing on a specific question of fact when a full and fair evidentiary hearing upon that question was held at the original trial or at any later proceeding.

(c) Scope of hearing.—The petitioner shall have a full and fair hearing on his petition. The court shall receive all evidence, which shall be recorded, that is relevant and necessary to support the claims in the petition, including affidavits, depositions, oral testimony, certificate of the trial judge and relevant and necessary portions of transcripts of prior proceedings.

(d) Appearance by petitioner.—The petitioner has the right to appear in person at the hearing.

§ 9550. Order of court and final disposition of petition.

(a) Order of court.—If the court finds in favor of the petitioner, it shall order appropriate relief and issue any supplementary orders as to arraignment, retrial, custody, bail, discharge, correction of sentence or other matters that are necessary and proper.

(b) Final disposition of petition.—The order finally disposing of the petition shall state grounds on which the case was determined and

whether a Federal or a State right was presented and decided. This order constitutes a final judgment for purposes of review.

§ 9551. Pauper petitions.

(a) General rule.—If the petition alleges that the petitioner is unable to pay the costs of the proceeding, the court may order that the petitioner be permitted to proceed as a poor person and order a transcript of the proceedings delivered to the petitioner.

(b) Appointment of counsel.—If the petitioner is without counsel and alleges that he is without means to procure counsel, he shall state whether or not he wishes counsel to be appointed to represent him. If appointment of counsel is so requested and the court is of the opinion that a hearing on the petition is required, the court shall appoint counsel if satisfied that the petitioner has no means to procure counsel. The appointment of counsel shall not be required if the petitioner's claim is patently frivolous and without trace of support in the record as provided by section 9549 (relating to hearing on petition).

Section 3. The act of January 25, 1966 (1965 P.L.1580, No.554), known as the "Post Conviction Hearing Act," is repealed.

Section 4. (a) Section 1 shall take effect in 60 days.

(b) Sections 2 and 3 shall take effect immediately. If this act is enacted subsequent to June 27, 1982, sections 2 and 3 shall be retroactive to June 27, 1982.

APPROVED—The 13th day of May, A. D. 1982.

DICK THORNBURGH