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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1323 Session of  
2022

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INTRODUCED BY CAPPELLETTI, FONTANA, STREET, KANE, HUGHES,  
SANTARSIERO, KEARNEY, SCHWANK, COSTA AND BROWNE,  
SEPTEMBER 7, 2022

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REFERRED TO JUDICIARY, SEPTEMBER 7, 2022

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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 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 and except as  
7 provided under subsection (b), to be eligible for relief under  
8 this subchapter, the petitioner must plead and prove by  
9 preponderance of the evidence all of the following:

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

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

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

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

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

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

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

28 § 9553. Postconviction appeal requests.

29 (a) Petitions.--A person seeking relief under this  
30 subchapter must file a petition with the court no later than

1 five years after the person is convicted of the crime with the  
2 evidence required under section 9552 (relating to eligibility  
3 for relief).

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

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

14 (1) Resentence the petitioner.

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

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

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

23 Notwithstanding any other provision of law and except as  
24 provided under subsection (b), in any criminal prosecution of an  
25 offense committed by a domestic violence survivor, a court shall  
26 take into account the domestic violence survivor's history of  
27 domestic violence victimization at the time of the offense and  
28 how much the domestic violence victimization affected the  
29 participation in the offense. If the court finds that the  
30 domestic violence survivor's participation in the offense was

1 related to the domestic violence abuse endured by the survivor  
2 before or until the time of the offense, the court may consider  
3 that finding as a mitigating factor and impose any of the  
4 following:

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

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

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