

# City of Philadelphia



Council of the City of Philadelphia  
Office of the Chief Clerk  
Room 402, City Hall  
Philadelphia

(Resolution No. 180411)

## RESOLUTION

Urging the Pennsylvania General Assembly to amend Pennsylvania's Post Conviction Relief Act so that reliable evidence of innocence may be considered to prove that a person who is convicted of a crime is, in fact, not guilty.

WHEREAS, Judge John Bender wrote a concurring statement in *Commonwealth vs. Eric Riddick*, No. 3480EDA 2016, in which he stated, "I write separately only to express my utmost displeasure with the Post Conviction Relief Act's failure to facilitate justice in this case, where it is clear to all that it is likely that an innocent man sits behind bars for no better reason than a poorly conceived statute. No system of justice is perfect. However, a system of criminal justice that prevents the correction of obvious errors is easily improved – if only the legislature could see fit to do it." Former Justice James Fitzgerald, specially assigned to Superior Court, joined in this concurring statement; and

WHEREAS, A person convicted of a crime in Philadelphia may file a Post Conviction Relief Act (PCRA) petition to appeal their conviction; and

WHEREAS, There are limited grounds for appeal pursuant to 42 Pa. Cons. Stat. Sec. 9541 et. Seq., two of which are ineffective assistance of counsel and newly discovered evidence; and

WHEREAS, The PCRA unjustly punishes persons for the negligence of their counsel and/or the person's inability to comply with a very brief time limit in which to file a petition because of newly discovered evidence; and

WHEREAS, In order to prove ineffective assistance of counsel, the petitioner must meet a three-pronged test: the claim must have arguable merit, the act or omission did not reasonably advance the interest of the petitioner, and but for the act or omission, the petitioner probably would have been found not guilty; and

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WHEREAS, In order for counsel's representation to be unreasonable, the petitioner must prove that "no competent lawyer" would have acted in the same manner. This standard allows errors by counsel, which are far below the level of legal representation by reasonably competent and skilled attorneys with similar legal backgrounds and in the same legal community, to keep a person incarcerated and/or marked by a criminal record, despite substantial evidence that the individual is not guilty; and

WHEREAS, Under the PCRA, evidence that reasonably proves a petitioner is not guilty is not considered at all, if the petition is not filed within one year of the conviction, with only some limited exceptions; and

WHEREAS, If the petitioner obtains newly discovered evidence of innocence but the PCRA is filed after the initial one-year period, the petitioner must conclusively establish that the PCRA was filed within sixty days of discovering the new evidence; and

WHEREAS, Newly discovered evidence under the PCRA is not simply newly discovered evidence, but evidence that could not have been obtained by reasonable diligence that would have resulted in a not guilty verdict at trial. As a result, significant errors made at trial by petitioner's counsel may prevent evidence of innocence from being considered by the court and evidence newly obtained by petitioner will not be considered by the court, if it could have been obtained, but was not; and

WHEREAS, Wrongfully convicted and unlawfully incarcerated persons may not be aware of, or able to, file a writ of habeas corpus in federal court to determine if a state's imprisonment or detention of them is lawful; and

WHEREAS, The PCRA can be amended to instill confidence in the criminal justice system by simply extending the time periods for filing a PCRA petition and by raising the standard of legal representation to the same standard of competence and skill that medical professionals are held to in the Commonwealth of Pennsylvania; now, therefore, be it

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That it urges the Pennsylvania General Assembly to amend Pennsylvania's Post Conviction Relief Act so that reliable evidence of innocence may be considered to prove that a person who is convicted of a crime is, in fact, not guilty.

FURTHER RESOLVED, That a copy of this resolution be transmitted to the Pennsylvania General Assembly.

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CERTIFICATION: This is a true and correct copy of the original Resolution, Adopted by the Council of the City of Philadelphia on the third of May, 2018.

Darrell L. Clarke  
PRESIDENT OF THE COUNCIL

Michael A. Decker  
CHIEF CLERK OF THE COUNCIL

Introduced by: Councilmember Oh

Sponsored by: Councilmembers Oh, Jones, Blackwell, O'Neill, Johnson, Reynolds Brown, Green, Parker and Squilla