

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 710 Session of
2013

INTRODUCED BY GREENLEAF, FONTANA, RAFFERTY, TARTAGLIONE,
WASHINGTON, ERICKSON, HUGHES, SOLOBAY AND FERLO,
MARCH 20, 2013

REFERRED TO JUDICIARY, MARCH 20, 2013

AN ACT

Amending Titles 18 (Crimes and Offenses), 42 (Judiciary and
Judicial Procedure) and 44 (Law and Justice) of the
Pennsylvania Consolidated Statutes, providing for tampering
with biological evidence; further providing for controlled
substance forfeiture and for preservation of biological
evidence; repealing provisions relating to postconviction DNA
testing; further providing for jurisdiction and proceedings;
providing for postconviction DNA testing; and providing for
forensic laboratories and for powers and duties of the board.

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

Section 1. Title 18 of the Pennsylvania Consolidated
Statutes is amended by adding a section to read:

§ 5113. Tampering with biological evidence.

A person commits a misdemeanor of the first degree if he
knowingly and intentionally destroys, alters or tampers with
biological evidence that is required to be preserved under 42
Pa.C.S § 9502 (relating to preservation of biological evidence)
with the intent to prevent that evidence from being subjected to
DNA testing or prevent the production or use of that evidence in
an official proceeding.

Section 2. Section 6801(f) and (h) of Title 42 are amended to read:

§ 6801. Controlled substances forfeiture.

* * *

(f) Use of cash or proceeds of property.--Cash or proceeds of forfeited property transferred to the custody of the district attorney pursuant to subsection (e) shall be placed in the operating fund of the county in which the district attorney is elected. The appropriate county authority shall immediately release from the operating fund, without restriction, a [like amount] portion for the use of the district attorney enforcing the provisions of The Controlled Substance, Drug, Device and Cosmetic Act while retaining an adequate balance to preserve biological evidence as required under section 9502 (relating to preservation of biological evidence). The entity having budgetary control shall not anticipate future forfeitures or proceeds therefrom in adoption and approval of the budget for the district attorney.

* * *

(h) Authorization to utilize property.--The district attorney and the Attorney General shall utilize forfeited property or proceeds thereof for the purpose of enforcing the provisions of The Controlled Substance, Drug, Device and Cosmetic Act, 18 Pa.C.S. (relating to crimes and offenses) and 75 Pa.C.S. (relating to vehicles). In appropriate cases, the district attorney and the Attorney General may designate proceeds from forfeited property to be utilized by community-based drug and crime-fighting programs and for relocation and protection of witnesses in criminal cases.

* * *

1 Section 3. Title 42 is amended by adding a section to read:
2 § 9502. Preservation of biological evidence.

3 (a) General rule.--Notwithstanding any other provision of
4 law, the prosecuting jurisdiction or its designee shall preserve
5 biological evidence that was secured in the investigation or
6 prosecution of a criminal offense, if criminal proceedings are
7 pending or if a defendant is under a sentence of imprisonment
8 for that offense. Prosecuting jurisdictions may act jointly to
9 comply with this section.

10 (b) Applicability.--Subsection (a) shall not apply if:

11 (1) a court has denied a request or motion for DNA
12 testing of the biological evidence by the defendant under Ch.
13 95, Subch. E (relating to postconviction DNA testing), and no
14 appeal is pending;

15 (2) after a conviction becomes final and the defendant
16 has exhausted all opportunities for direct review of the
17 conviction, the defendant, his counsel of record and the
18 public defender is notified that the biological evidence may
19 be destroyed and the defendant does not file a motion under
20 Ch. 95 Subch. E, within one year of receipt of the notice; or

21 (3) the evidence must be returned to its rightful owner,
22 or is of such a size, bulk or physical character as to render
23 retention impractical and:

24 (i) the prosecuting jurisdiction or its designee
25 takes reasonable measures to remove and preserve portions
26 of the material evidence sufficient to permit future DNA
27 testing; or

28 (ii) the biological evidence has already been
29 subjected to DNA testing under Ch. 95 Subch. E and the
30 results included the defendant as the source of the

1 evidence.

2 (c) Other preservation requirement.--Biological evidence
3 required to be preserved under this section shall be preserved
4 under reasonable conditions designed to preserve the integrity
5 of the evidence and the testing process, which must be
6 consistent with applicable standards promulgated by a nationally
7 recognized accrediting board and approved by the Forensic
8 Advisory Board. Nothing in this section preempts or supersedes
9 any statute, regulation, court order or other provision of law
10 that may require evidence, including biological evidence, to be
11 preserved.

12 (d) Regulations.--Not later than 180 days after the date of
13 this section's enactment, the prosecuting jurisdiction shall
14 promulgate rules or regulations to implement and enforce this
15 section, including appropriate disciplinary sanctions to ensure
16 compliance.

17 (e) Fee.--Unless the court finds that undue hardship would
18 result, a fee of \$125 shall automatically be assessed on a
19 person convicted or adjudicated delinquent for a criminal
20 offense requiring preservation of biological evidence under this
21 section. All proceeds derived from this fee shall be transmitted
22 to the prosecuting jurisdiction. This fee is in addition to any
23 other fees imposed by statutory authority and the fee shall be
24 assessed per capita rather than per criminal offense or amount
25 of biological evidence. This fee shall be collected in
26 accordance with section 9728 (relating to collection of
27 restitution, reparation, fees, costs, fines and penalties).
28 Subsection (a) applies regardless whether a fee under this
29 subsection is assessed and collected. If the conviction or
30 adjudication of delinquency is reversed or vacated or if the

1 sentence is vacated, the prosecuting jurisdiction shall promptly
2 refund the fee.

3 (f) Definitions.--As used in this section, the following
4 words and phrases shall have the meanings given to them in this
5 subsection:

6 "Biological evidence." The contents of a sexual assault
7 examination kit, and any item that contains blood, semen, hair,
8 saliva, skin tissue, fingernail scrapings, bone, bodily fluids
9 or other biological material that was collected as part of the
10 criminal investigation that may be probative of the
11 perpetrator's identity or may reasonably be used to incriminate
12 or exculpate any person for the offense. This definition applies
13 whether that material is cataloged separately, e.g., on a slide
14 or swab or in a test tube, or is present on other evidence,
15 including clothing, ligatures, bedding or other household
16 material, drinking cups or cigarettes.

17 "Criminal offense." An act that can be prosecuted under any
18 of the following provisions of 18 Pa.C.S. (relating to crimes
19 and offenses):

20 Chapter 25 (relating to criminal homicide).

21 Chapter 27 (relating to assault).

22 Chapter 29 (relating to kidnapping).

23 Chapter 31 (relating to sexual offenses).

24 Chapter 37 (relating to robbery).

25 "Prosecuting jurisdiction." The county where the criminal
26 offense occurred.

27 Section 4. Section 9543.1 of Title 42 is repealed:

28 [§ 9543.1. Postconviction DNA testing.

29 (a) Motion.--

30 (1) An individual convicted of a criminal offense in a

1 court of this Commonwealth and serving a term of imprisonment
2 or awaiting execution because of a sentence of death may
3 apply by making a written motion to the sentencing court for
4 the performance of forensic DNA testing on specific evidence
5 that is related to the investigation or prosecution that
6 resulted in the judgment of conviction.

7 (2) The evidence may have been discovered either prior
8 to or after the applicant's conviction. The evidence shall be
9 available for testing as of the date of the motion. If the
10 evidence was discovered prior to the applicant's conviction,
11 the evidence shall not have been subject to the DNA testing
12 requested because the technology for testing was not in
13 existence at the time of the trial or the applicant's counsel
14 did not seek testing at the time of the trial in a case where
15 a verdict was rendered on or before January 1, 1995, or the
16 applicant's counsel sought funds from the court to pay for
17 the testing because his client was indigent and the court
18 refused the request despite the client's indigency.

19 (b) Notice to the Commonwealth.--

20 (1) Upon receipt of a motion under subsection (a), the
21 court shall notify the Commonwealth and shall afford the
22 Commonwealth an opportunity to respond to the motion.

23 (2) Upon receipt of a motion under subsection (a) or
24 notice of the motion, as applicable, the Commonwealth and the
25 court shall take the steps reasonably necessary to ensure
26 that any remaining biological material in the possession of
27 the Commonwealth or the court is preserved pending the
28 completion of the proceedings under this section.

29 (c) Requirements.--In any motion under subsection (a), under
30 penalty of perjury, the applicant shall:

1 (1) (i) specify the evidence to be tested;
2 (ii) state that the applicant consents to provide
3 samples of bodily fluid for use in the DNA testing; and
4 (iii) acknowledge that the applicant understands
5 that, if the motion is granted, any data obtained from
6 any DNA samples or test results may be entered into law
7 enforcement databases, may be used in the investigation
8 of other crimes and may be used as evidence against the
9 applicant in other cases.

10 (2) (i) assert the applicant's actual innocence of the
11 offense for which the applicant was convicted; and

12 (ii) in a capital case:

13 (A) assert the applicant's actual innocence of
14 the charged or uncharged conduct constituting an
15 aggravating circumstance under section 9711(d)
16 (relating to sentencing procedure for murder of the
17 first degree) if the applicant's exoneration of the
18 conduct would result in vacating a sentence of death;
19 or

20 (B) assert that the outcome of the DNA testing
21 would establish a mitigating circumstance under
22 section 9711(e)(7) if that mitigating circumstance
23 was presented to the sentencing judge or jury and
24 facts as to that issue were in dispute at the
25 sentencing hearing.

26 (3) present a prima facie case demonstrating that the:

27 (i) identity of or the participation in the crime by
28 the perpetrator was at issue in the proceedings that
29 resulted in the applicant's conviction and sentencing;
30 and

(ii) DNA testing of the specific evidence, assuming exculpatory results, would establish:

(A) the applicant's actual innocence of the offense for which the applicant was convicted;

(B) in a capital case, the applicant's actual innocence of the charged or uncharged conduct constituting an aggravating circumstance under section 9711(d) if the applicant's exoneration of the conduct would result in vacating a sentence of death; or

(C) in a capital case, a mitigating circumstance under section 9711(e) (7) under the circumstances set forth in subsection (c) (1) (iv).

(d) Order.--

(1) Except as provided in paragraph (2), the court shall order the testing requested in a motion under subsection (a) under reasonable conditions designed to preserve the integrity of the evidence and the testing process upon a determination, after review of the record of the applicant's trial, that the:

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

(ii) evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been altered in any material respect; and

(iii) motion is made in a timely manner and for the purpose of demonstrating the applicant's actual innocence and not to delay the execution of sentence or administration of justice.

(2) The court shall not order the testing requested in a motion under subsection (a) if, after review of the record of

1 the applicant's trial, the court determines that there is no
2 reasonable possibility that the testing would produce
3 exculpatory evidence that:

4 (i) would establish the applicant's actual innocence
5 of the offense for which the applicant was convicted;

6 (ii) in a capital case, would establish the
7 applicant's actual innocence of the charged or uncharged
8 conduct constituting an aggravating circumstance under
9 section 9711(d) if the applicant's exoneration of the
10 conduct would result in vacating a sentence of death; or

11 (iii) in a capital case, would establish a
12 mitigating circumstance under section 9711(e)(7) under
13 the circumstances set forth in subsection (c)(1)(iv).

14 (e) Testing procedures.--

15 (1) Any DNA testing ordered under this section shall be
16 conducted by:

17 (i) a laboratory mutually selected by the
18 Commonwealth and the applicant;

19 (ii) if the Commonwealth and the applicant are
20 unable to agree on a laboratory, a laboratory selected by
21 the court that ordered the testing; or

22 (iii) if the applicant is indigent, the testing
23 shall be conducted by the Pennsylvania State Police or,
24 at the Pennsylvania State Police's sole discretion, by a
25 laboratory designated by the Pennsylvania State Police.

26 (2) The costs of any testing ordered under this section
27 shall be paid:

28 (i) by the applicant; or

29 (ii) in the case of an applicant who is indigent, by
30 the Commonwealth of Pennsylvania.

1 (3) Testing conducted by the Pennsylvania State Police
2 shall be carried out in accordance with the protocols and
3 procedures established by the Pennsylvania State Police.

4 (f) Posttesting procedures.--

5 (1) After the DNA testing conducted under this section
6 has been completed, the applicant may, pursuant to section
7 9545(b)(2) (relating to jurisdiction and proceedings), during
8 the 60-day period beginning on the date on which the
9 applicant is notified of the test results, petition to the
10 court for postconviction relief pursuant to section 9543(a)
11 (2)(vi) (relating to eligibility for relief).

12 (2) Upon receipt of a petition filed under paragraph
13 (1), the court shall consider the petition along with any
14 answer filed by the Commonwealth and shall conduct a hearing
15 thereon.

16 (3) In any hearing on a petition for postconviction
17 relief filed under paragraph (1), the court shall determine
18 whether the exculpatory evidence resulting from the DNA
19 testing conducted under this section would have changed the
20 outcome of the trial as required by section 9543(a)(2)(vi).

21 (g) Effect of motion.--The filing of a motion for forensic
22 DNA testing pursuant to subsection (a) shall have the following
23 effect:

24 (1) The filing of the motion shall constitute the
25 applicant's consent to provide samples of bodily fluid for
26 use in the DNA testing.

27 (2) The data from any DNA samples or test results
28 obtained as a result of the motion may be entered into law
29 enforcement databases, may be used in the investigation of
30 other crimes and may be used as evidence against the

applicant in other cases.

(h) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Applicant." The individual who files a motion under subsection (a).

"DNA." Deoxyribonucleic acid.]

Section 5. Section 9545(b) of Title 42 is amended to read:

§ 9545. Jurisdiction and proceedings.

* * *

(b) Time for filing petition.--

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

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

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

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

(2) Any petition invoking an exception provided in paragraph (1) shall be filed within [60 days] one year of the

1 date the claim could have been presented.

2 (3) For purposes of this subchapter, a judgment becomes
3 final at the conclusion of direct review, including
4 discretionary review in the Supreme Court of the United
5 States and the Supreme Court of Pennsylvania, or at the
6 expiration of time for seeking the review.

7 (4) For purposes of this subchapter, "government
8 officials" shall not include defense counsel, whether
9 appointed or retained.

10 (5) This subsection does not apply to a petition filed
11 under Subchapter E (relating to postconviction DNA testing).

12 * * *

13 Section 6. Chapter 95 of Title 42 is amended by adding a
14 subchapter to read:

15 SUBCHAPTER E

16 POSTCONVICTION DNA TESTING

17 Sec.

18 9581. Short title of subchapter.

19 9582. Definitions.

20 9583. Right to file petition for DNA testing.

21 9584. Form of petition.

22 9585. Filing, docketing and effect of petition.

23 9586. Counsel for indigent petitioners.

24 9587. Dismissal or acceptance for adjudication.

25 9588. Proceedings on petition.

26 9589. Comparisons with CODIS data.

27 9590. Discovery.

28 9591. Testing procedures.

29 9592. Appeal.

30 9593. Procedure after test results.

1 § 9581. Short title of subchapter.

2 This subchapter shall be known and may be cited as the
3 Pennsylvania Postconviction DNA Testing Act.

4 § 9582. Definitions.

5 The following words and phrases when used in this subchapter
6 shall have the meanings given in this section unless the context
7 clearly indicates otherwise:

8 "Biological evidence." The contents of a sexual assault
9 examination kit and any item that contains blood, semen, hair,
10 saliva, skin tissue, fingernail scrapings, bone, bodily fluids
11 or other biological material that was collected as part of the
12 criminal investigation that may be probative of the
13 perpetrator's identity or may reasonably be used to incriminate
14 or exculpate any person for the offense. This definition applies
15 whether that material is cataloged separately, e.g., on a slide
16 or swab or in a test tube, or is present on other evidence,
17 including clothing, ligatures, bedding or other household
18 material, drinking cups or cigarettes.

19 "CODIS." The Federal Combined DNA Index System.

20 "DNA testing." Postconviction forensic DNA testing under
21 this subchapter.

22 "State DNA Data Base." The State DNA Data Base established
23 under 44 Pa.C.S. § 2312 (relating to State DNA Data Base).

24 "Successive petition." A petition for DNA testing filed by a
25 petitioner who has previously filed a petition for DNA testing.

26 § 9583. Right to file petition for DNA testing.

27 Notwithstanding any other provision of law governing
28 postconviction relief, an individual convicted of a crime may
29 file a petition for DNA testing under this subchapter. A waiver
30 of the right to file a petition for DNA testing is not

effective, whether the purported waiver is made by itself, as
part of an agreement resulting in a plea of guilty or nolo
contendere, or in any other manner.

§ 9584. Form of petition.

(a) Contents of petition.--The petition for DNA testing must
be made under oath by the petitioner and must include the
following:

(1) A statement of the facts relied on in support of the
petition, including a description of the physical evidence
containing DNA to be tested and, if known, the present
location or the last known location of the evidence and how
it was originally obtained.

(2) A statement that the evidence was not previously
tested for DNA or a statement that subsequent scientific
developments in DNA testing techniques would likely produce a
definitive result establishing that the petitioner is not the
person who committed the crime.

(3) A statement that the petitioner is innocent of a
crime for which the petitioner was sentenced.

(4) In a successive petition, the person's certification
that he has not filed a previous petition on similar grounds,
and a statement of the reason for the petitioner's failure to
raise the current grounds in the previous petition.

(5) A statement describing how the requested DNA testing
will exonerate the defendant of the crime or will mitigate
the sentence received by the petitioner for the crime.

(6) The petitioner's consent to provide samples of
bodily fluid for use in the DNA testing.

(7) The petitioner's consent that the data from any DNA
samples or test results obtained as a result of the petition

1 may be entered into law enforcement databases, used in the
2 investigation of other crimes or used as evidence against the
3 petitioner in other cases.

4 (b) Form.--If the Supreme Court promulgates an official form
5 for a petition for DNA testing, the Department of Corrections
6 shall make the form available to prisoners.

7 § 9585. Filing, docketing and effect of petition.

8 (a) Filing.--A request for DNA testing may be filed at any
9 time following sentencing, and shall be by written petition and
10 be filed with the clerk of courts of the judicial district in
11 which the sentence was imposed.

12 (b) Notice to the Commonwealth.--A copy of the petition
13 shall be served on the attorney for the Commonwealth. The
14 Commonwealth may respond in accordance with the Pennsylvania
15 Rules of Criminal Procedure.

16 (c) Court rules.--Except as otherwise provided in this
17 subchapter, the Pennsylvania Rules of Criminal Procedure apply
18 to a petition for DNA testing, and the petition shall be
19 considered a petition for postconviction collateral relief under
20 those rules.

21 (d) Effect of filing petition.--

22 (1) The filing of a petition for forensic DNA testing
23 constitutes the petitioner's consent to provide samples of
24 bodily fluid for use in the DNA testing.

25 (2) The filing of the petition also constitutes the
26 consent of the petitioner that the data from any DNA samples
27 or test results obtained as a result of the petition may be
28 entered into law enforcement databases, used in the
29 investigation of other crimes or used as evidence against the
30 petitioner in other cases.

1 (3) The court shall ensure that the petitioner has filed
2 the petition with knowledge of paragraphs (1) and (2) and has
3 knowingly and intelligently consented to their provisions.
4 Averments in the petition as provided under section 9584(a)
5 (6) and (7) (relating to form of petition), or a written
6 representation that the petitioner has filed the petition
7 with knowledge of paragraphs (1) and (2) and has knowingly
8 and intelligently consented to their provisions, filed of
9 record and signed by petitioner or counsel for the
10 petitioner, is sufficient to establish consent under this
11 paragraph.

12 (e) Inventory.--Upon receipt of a petition for DNA testing,
13 the Commonwealth shall promptly prepare an inventory of the
14 evidence related to the case and serve a copy of the inventory
15 to the prosecution, the petitioner, the petitioner's attorney
16 and the court.
17 § 9586. Counsel for indigent petitioners.

18 (a) Request for counsel.--An indigent, convicted individual
19 may request appointment of counsel to prepare a petition for DNA
20 testing by sending a written request to the court. The request
21 shall include the individual's statement that he was not the
22 perpetrator of the crime and that DNA testing is relevant to his
23 assertion of innocence. The request also shall include the
24 individual's statement as to whether he previously has had
25 counsel appointed under this section. If any of the information
26 required by this subsection is missing from the request, the
27 court shall return the request to the convicted individual and
28 advise him that the matter cannot be considered without the
29 missing information or, if the Supreme Court has promulgated a
30 form for a request for appointment of counsel to prepare a

1 petition for DNA testing, the court may send him that form.

2 (b) Appointment of counsel.--Upon a finding that the
3 individual is indigent:

4 (1) If counsel has not previously been appointed under
5 this subsection, the court shall appoint counsel to
6 investigate and, if appropriate, to file a petition for DNA
7 testing and to represent the individual solely for the
8 purpose of obtaining the testing.

9 (2) If counsel has been previously appointed under this
10 section, the court may appoint counsel to perform the duties
11 described in paragraph (1).

12 § 9587. Dismissal or acceptance for adjudication.

13 (a) General rule.--Unless subsection (c) applies, the court
14 shall dismiss a petition on its own motion without requiring the
15 Commonwealth to respond to the petition if either of the
16 following apply:

17 (1) The petition is frivolous.

18 (2) In the case of a successive petition, the petition
19 fails to meet the requirements of subsection (b).

20 (b) Successive petitions.--The court shall hear a successive
21 petition if the petition alleges substantially new or different
22 grounds for relief, including factual, scientific or legal
23 arguments not previously presented, or the availability of more
24 advanced DNA technology that provides a reasonable probability
25 of more probative results.

26 (c) Interests of justice.--The court may adjudicate any
27 petition under this subchapter if the interests of justice so
28 require.

29 § 9588. Proceedings on petition.

30 (a) Criteria for relief.--Unless the court dismisses a

petition under section 9587 (relating to dismissal or acceptance for adjudication), the court shall promptly conduct a hearing on the petition. The court shall grant the DNA testing requested by the petition if it finds all of the following:

(1) The petitioner has demonstrated a reasonable probability that the petitioner would not have been convicted or would have received a lesser sentence if favorable results had been obtained through DNA testing, under this subchapter or under previously applicable law, at the time of the original prosecution.

(2) The evidence to be tested was secured in relation to the offense underlying the challenged conviction and one of the following applies:

(i) The evidence was not previously subjected to DNA testing under this subchapter or under previously applicable law.

(ii) Although previously subjected to DNA testing under this subchapter or under previously applicable law, the evidence can be subjected to additional DNA testing that provides a reasonable likelihood of more probative results.

(3) At least one item of evidence that the petitioner seeks to have tested is in existence.

(4) The chain of custody of the evidence to be tested establishes that the evidence has not been tampered with, replaced or altered in any material respect or, if the chain of custody does not establish the integrity of the evidence, the results of the DNA testing can establish the integrity of the evidence. Evidence that has been in the custody of law enforcement, other government officials or a public or

1 private hospital shall be presumed to satisfy this paragraph,
2 absent specific evidence of material tampering, replacement
3 or alteration.

4 (5) The petition is made to demonstrate factual
5 innocence or the appropriateness of a lesser sentence and not
6 solely to unreasonably delay the execution of sentence or the
7 administration of justice.

8 (b) Other orders.--The court may make such other orders as
9 may be appropriate in connection with proceedings under this
10 subchapter, either on its own initiative or on motion of any
11 party to the proceedings.

12 § 9589. Comparisons with CODIS data.

13 For purposes of supporting a petition under this subchapter,
14 a petitioner may request and the court may order a law
15 enforcement entity that has access to CODIS or the State DNA
16 Data Base to submit the DNA profile obtained from probative
17 biological material from crime scene evidence to those databases
18 to determine whether that profile matches a profile of a known
19 individual or a profile from an unsolved crime. The DNA profile
20 submitted to the databases must comply with the Federal Bureau
21 of Investigation's requirements for the uploading of crime scene
22 profiles to CODIS.

23 § 9590. Discovery.

24 (a) Court orders.--At any time after a petition has been
25 filed under this subchapter, the court may order the
26 Commonwealth to do any or all of the following:

27 (1) Locate and provide the petitioner with any reports,
28 notes, logs or other documents relating to items of physical
29 evidence collected in connection with the case, or otherwise
30 assist the petitioner in locating items of biological

1 evidence that the Commonwealth contends have been lost or
2 destroyed.

3 (2) Take reasonable measures to locate biological
4 evidence that may be in the custody of the Commonwealth.

5 (3) Assist the petitioner in locating evidence that may
6 be in the custody of a public or private hospital, public or
7 private laboratory or other facility.

8 (4) Produce laboratory reports prepared in connection
9 with the DNA testing, as well as the underlying data and the
10 laboratory notes, if evidence had previously been subjected
11 to DNA testing under this subchapter or previously applicable
12 law.

13 (b) Previous testing.--If the prosecution or the petitioner
14 previously conducted DNA testing or other testing of biological
15 evidence without knowledge of the other party, that testing
16 shall be revealed in the petition for testing or the response.

17 (c) Reports and data.--If the court orders new DNA testing,
18 the court shall order the production of any laboratory reports
19 prepared in connection with the DNA testing. The court may also
20 order production of the underlying data or other laboratory
21 documents.

22 (d) Results.--The results of the DNA testing shall be
23 disclosed to the prosecution, the petitioner and the court.

24 § 9591. Testing procedures.

25 (a) Court supervision.--The court may order any or all of
26 the following:

27 (1) The preservation of some portion of the sample for
28 replication of the test.

29 (2) Additional DNA testing, if the results of the
30 initial testing are inconclusive or additional scientific

1 analysis of the results is otherwise required.

2 (3) The collection and DNA testing of additional
3 reference samples for comparison purposes.

4 (b) Selection of laboratory.--DNA testing shall be conducted
5 by a laboratory mutually selected by the Commonwealth and the
6 petitioner. If the Commonwealth and the petitioner are unable to
7 agree on a laboratory, the testing shall be conducted by a
8 laboratory selected by the court. If the petitioner is indigent,
9 the testing shall be conducted by the Pennsylvania State Police
10 or, at the Pennsylvania State Police's sole discretion, by a
11 laboratory designated by the Pennsylvania State Police. A
12 laboratory selected under this subsection must be accredited.

13 (c) Costs.--The costs of DNA testing shall be paid by the
14 petitioner, or in the case of an indigent petitioner, by the
15 Commonwealth.

16 (d) Testing by the Pennsylvania State Police.--DNA testing
17 conducted by the Pennsylvania State Police shall be carried out
18 in accordance with the protocols and procedures established by
19 the Pennsylvania State Police and approved by ASCLD/LAB.

20 (e) Confidentiality.--DNA profile information from
21 biological samples taken from any individual under this
22 subchapter is exempt from any law requiring disclosure of
23 information to the public.

24 (f) Definitions.--As used in this section, the following
25 words and phrases shall have the meanings given to them in this
26 subsection:

27 "Accredited." Accredited by ASCLD/LAB.

28 "ASCLD/LAB." The Laboratory Accreditation Board of the
29 American Society of Crime Laboratory Directors.

30 § 9592. Appeal.

1 A petitioner may appeal a decision denying DNA testing under
2 the Pennsylvania Rules of Appellate Procedure.
3 § 9593. Procedure after test results.

4 (a) Results favorable to petitioner.--If the results of DNA
5 testing are favorable to the petitioner, the court shall conduct
6 a hearing to determine the appropriate relief to be granted.
7 Based on the results of the testing and any evidence or other
8 matter presented at the hearing, the court shall thereafter
9 enter any order that serves the interests of justice. An order
10 under this subsection may:

11 (1) Set aside or vacate the petitioner's judgment of
12 conviction, judgment of not guilty by reason of mental
13 disease or defect or adjudication of delinquency.

14 (2) Grant the petitioner a new trial or fact-finding
15 hearing.

16 (3) Grant the petitioner a new sentencing hearing,
17 commitment hearing or dispositional hearing.

18 (4) Discharge the petitioner from custody.

19 (5) Specify the disposition of any evidence that remains
20 after the completion of the testing.

21 (6) Grant the petitioner additional discovery on matters
22 related to DNA test results or the conviction or sentence
23 under attack, including documents pertaining to the original
24 criminal investigation or the identities of other suspects.

25 (7) Direct the Commonwealth to place any unidentified
26 DNA profile obtained from DNA testing into CODIS or the State
27 DNA Data Base.

28 (b) Results unfavorable to petitioner.--If the results of
29 the tests are not favorable to the petitioner, the court shall
30 dismiss the petition and may make any further orders that are

1 appropriate. An order under this section may:

2 (1) Direct that the Pennsylvania Board of Probation and
3 Parole be notified of the test results.

4 (2) Direct that the petitioner's DNA profile be added to
5 the Commonwealth's convicted offender database.

6 Section 7. Title 44 is amended by adding a section to read:

7 § 2319.1. Comparisons with CODIS data.

8 For purposes of obtaining exculpatory evidence prior to trial
9 or supporting an application for executive clemency, a court may
10 order that a law enforcement entity that has access to CODIS or
11 the State DNA Data Base to submit the DNA profile obtained from
12 probative biological material from crime scene evidence to
13 determine whether that profile matches a profile of a known
14 individual or a profile from an unsolved crime. The DNA profile
15 submitted to the data bases must comply with the Federal Bureau
16 of Investigation's requirements for the uploading of crime scene
17 profiles to CODIS.

18 Section 8. Title 44 is amended by adding a part to read:

19 PART V

20 FORENSIC LABORATORIES

21 Chapter

22 91. Preliminary Provisions (Reserved)

23 93. Accreditation

24 95. Oversight

25 CHAPTER 91

26 PRELIMINARY PROVISIONS

27 (RESERVED)

28 CHAPTER 93

29 ACCREDITATION

30 Subchapter

1 A. Public Laboratories

2 B. (Reserved)

3 SUBCHAPTER A

4 PUBLIC LABORATORIES

5 Sec.

6 9301. Definitions.

7 9302. Technical peer review system.

8 9303. Proficiency testing program.

9 9304. Accreditation.

10 9305. External investigation.

11 § 9301. Definitions.

12 The following words and phrases when used in this subchapter
13 shall have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Forensic laboratory." A laboratory operated by the
16 Commonwealth or a municipality whose experts perform forensic
17 tests and provide opinion testimony in a court of law.

18 "Forensic test." A medical, chemical, toxicological,
19 ballistic or other expert examination or test performed on
20 physical evidence, including DNA evidence, to determine the
21 association of evidence to a crime.

22 "Nationally recognized accreditation standards." Standards
23 adopted by the American Society of Crime Laboratory Directors
24 Laboratory Accreditation Board, the American Board of Forensic
25 Toxicology or a similar board that covers a forensic test or
26 examination done by a forensic investigator or scientist.

27 "Physical evidence." A tangible object or substance relating
28 to a crime.

29 "Proficiency testing program." A program whereby the
30 competency of analysis and the quality of performance of a

1 laboratory is evaluated by external testing.

2 "Technical peer review system." A system whereby the
3 casework by an employee of a forensic laboratory is reviewed for
4 administrative and technical correctness by a qualified
5 administrator or peer or both.

6 § 9302. Technical peer review system.

7 All forensic laboratories shall have a technical peer review
8 system sufficient to meet or exceed nationally recognized
9 accreditation standards.

10 § 9303. Proficiency testing program.

11 All forensic laboratories shall have a proficiency testing
12 program sufficient to meet or exceed nationally recognized
13 accreditation standards.

14 § 9304. Accreditation.

15 (a) General rule.--All forensic laboratories shall be
16 accredited by a nationally recognized accrediting board for the
17 forensic tests performed by the forensic laboratory.

18 (b) Exception.--A forensic laboratory may be exempt from the
19 accreditation required under subsection (a) if independent
20 accreditation by a nationally recognized accrediting board is
21 unavailable or inappropriate for the forensic laboratory or the
22 applicable forensic test.

23 § 9305. External investigation.

24 The Commonwealth and municipalities with forensic
25 laboratories shall have a governmental entity with an
26 appropriate process in place to independently, externally
27 investigate allegations of serious negligence or misconduct
28 committed by employees or contractors of the forensic laboratory
29 that substantially affect the integrity of forensic results.

30 SUBCHAPTER B

(RESERVED)

CHAPTER 95

OVERSIGHT

Subchapter

A. Advisory Board

B. (Reserved)

SUBCHAPTER A

ADVISORY BOARD

Sec.

9501. Establishment.

9502. Powers and duties.

9503. Cooperation.

9504. Report.

9505. Investigations.

§ 9501. Establishment.

(a) Membership.--There is established a Forensic Advisory Board, which shall consist of:

(1) The director of the Pennsylvania State Police's Bureau of Forensic Services, ex officio.

(2) A forensic scientist employed by the Pennsylvania State Police's Bureau of Forensic Services.

(3) Two forensic scientists employed by accredited, privately operated forensic laboratories.

(4) A director of a forensic laboratory operated by a municipality.

(5) The Attorney General, ex officio.

(6) A full-time, sworn chief of police.

(7) A district attorney.

(8) A public defender.

(9) A criminal defense attorney who is not a public

1 defender.

2 (10) A judge from a court of common pleas.

3 (11) A criminal justice or forensic science faculty
4 member from the Pennsylvania State System of Higher
5 Education.

6 (12) A board-certified forensic pathologist who is a
7 coroner or medical examiner.

8 (b) Terms.--The members under subsection (a)(1) and (5)
9 shall serve ex officio. The member under subsection (a)(2) shall
10 serve at the pleasure of the director of the Pennsylvania State
11 Police's Bureau of Forensic Services. All other members shall
12 serve a term of three years, except the members initially
13 appointed under subsection (a)(7), (9) and (12), whose initial
14 term shall be one year and the members initially appointed under
15 subsection (a)(8) and (11) and one of those appointed under
16 subsection (a)(3), whose initial term shall be two years.
17 Vacancies shall be filled by the appointing authority for the
18 remainder of the vacated term.

19 (c) Appointments.--The member under subsection (a)(2) shall
20 be appointed by the director of the Pennsylvania State Police's
21 Bureau of Forensic Services. The ex officio members may
22 designate a substitute to serve on the Forensic Advisory Board.
23 The member appointed under subsection (a)(4) may designate a
24 subordinate who is a forensic scientist to substitute for and
25 serve on the Forensic Advisory Board. The chief justice shall
26 appoint the member under subsection (a)(10). All other members
27 shall be appointed by the Governor. Members may be reappointed.
28 The board may annually select a chairman and vice chairman, who
29 shall be selected from the members under subsection (a)(3), (10),
30 (11) and (12).

1 (d) Quorum.--Seven members of the Forensic Advisory Board
2 constitute a quorum.

3 § 9502. Powers and duties.

4 (a) Recommendations.--The Forensic Advisory Board shall
5 review and make recommendations as to how best to configure,
6 fund and improve the delivery of State and municipal forensic
7 laboratory services. To the extent feasible, the review and
8 recommendations shall include, but are not limited to,
9 addressing the following issues:

10 (1) If the existing mix of Commonwealth and municipal
11 forensic laboratories is the most effective and efficient
12 means to meet current and projected needs.

13 (2) Whether publicly operated forensic laboratories
14 should be consolidated. If consolidation occurs, who should
15 have oversight of forensic laboratories.

16 (3) Whether all publicly operated forensic laboratories
17 should provide similar services or if certain services should
18 be centralized.

19 (4) Consideration of how other states manage and oversee
20 their forensic laboratories.

21 (5) With respect to staff and training, consideration of
22 the following:

23 (i) How to address recruitment and retention of
24 forensic laboratory staff.

25 (ii) Whether educational and training opportunities
26 are adequate to meet projected staffing requirements of
27 publicly operated forensic laboratories.

28 (iii) Whether continuing education is available to
29 ensure that forensic science personnel are up-to-date in
30 their fields of expertise.

1 (iv) If forensic laboratory personnel should be
2 certified and if so, the appropriate certifier.

3 (v) Whether continuing education available to the
4 bar and judiciary adequately serves the needs of the
5 criminal justice system.

6 (6) With respect to funding, consideration of the
7 following:

8 (i) Whether the current method of funding publicly
9 operated forensic laboratories is predictable, stable and
10 adequate to meet future growth demands and to provide
11 accurate and timely testing results.

12 (ii) The adequacy of salary structures at publicly
13 operated forensic laboratories to attract and retain
14 competent analysts and examiners.

15 (iii) Whether publicly operated forensic
16 laboratories are appropriately maximizing their
17 opportunities to receive grants and other supplements.

18 (7) With respect to performance standards and equipment,
19 consideration of the following:

20 (i) Whether workload demands at publicly operated
21 forensic laboratories are being prioritized properly to
22 deal with backlogs and whether there are important
23 workload issues not being addressed.

24 (ii) If existing publicly operated forensic
25 laboratories have the necessary capabilities, staffing
26 and equipment.

27 (iii) Whether publicly operated forensic
28 laboratories are compliant with Chapter 93 (relating to
29 accreditation).

30 (b) Reporting system.--The Forensic Advisory Board shall

1 develop and implement a reporting system through which a
2 publicly operated forensic laboratory reports professional
3 negligence and misconduct.

4 (c) Standards.--The Forensic Advisory Board shall promulgate
5 standards it approves under 42 Pa.C.S. § 9502(c) (relating to
6 preservation of biological evidence).

7 (d) Training.--The Forensic Advisory Board may coordinate,
8 offer and collect a fee to train or otherwise provide continuing
9 education relating to forensic science and its applications to
10 criminal investigators, crime scene investigators, prosecutors,
11 defense attorneys, judges, forensic nurses, coroners, medical
12 examiners, forensic scientists and others involved in criminal
13 justice who would benefit from these educational opportunities.

14 § 9503. Cooperation.

15 Forensic laboratories operated by the Commonwealth and
16 municipalities shall cooperate with and assist the Forensic
17 Advisory Board. Administrative support for the Forensic Advisory
18 Board shall be provided by the Governor's Office.

19 § 9504. Report.

20 The Forensic Advisory Board shall periodically report its
21 recommendations and basis for its recommendations as well as the
22 results of any investigations to the investigated entity or
23 party, the Governor and the General Assembly. The
24 recommendations shall be made publicly accessible.

25 § 9505. Investigations.

26 (a) Professional negligence; misconduct.--For an
27 investigation under section 9305 (relating to external
28 investigation), the Forensic Advisory Board shall timely
29 investigate any allegation reported under section 9502(b)
30 (relating to powers and duties) and may investigate other

1 allegations of professional negligence or misconduct that would
2 substantially affect the integrity of the results of forensic
3 analyses.

4 (b) Costs.--Any costs incurred by the board shall be borne
5 by the laboratory, facility or entity being investigated.

6 (c) Assistance.--If necessary, the board may contract with a
7 qualified person or ask any publicly employed forensic scientist
8 to assist the board in fulfilling its duties under this section.
9 In obtaining assistance under this subsection, the board may
10 neither ask nor accept assistance from a forensic scientist
11 employed by a publicly operated forensic laboratory that is the
12 subject of the investigation.

13 (d) Recusal.--Any member of the board associated with a
14 publicly operated forensic laboratory that is the subject of an
15 investigation under this section must recuse himself from any
16 deliberation and action the board might take in the matter.

17 (e) Duties.--The board shall:

18 (1) Prepare a written report that identifies and
19 describes all methods and procedures used to discover the
20 alleged actions, whether the allegations are founded and any
21 corrective actions taken or suggested.

22 (2) Conduct retrospective examinations of other forensic
23 analyses to determine if a pattern of negligence or
24 misconduct exists and to perform follow-up examinations to
25 make certain any and all corrective actions were properly
26 implemented.

27 (3) Ensure compliance with established retention and
28 preservation of evidence regulations.

29 SUBCHAPTER B

30 (RESERVED)

1 Section 9. This act shall take effect as follows:

2 (1) The following provisions shall take effect
3 immediately:

4 (i) This section.

5 (ii) The addition of 44 Pa.C.S. § 9301 and Ch. 95.

6 (2) The addition of 44 Pa.C.S. § 9302 shall take effect
7 in three years.

8 (3) The addition of 44 Pa.C.S. § 9303 shall take effect
9 in five years.

10 (4) The addition of 44 Pa.C.S. § 9304 shall take effect
11 in seven years.

12 (5) The addition of 44 Pa.C.S. § 9305 shall take effect
13 in two years.

14 (6) The remainder of this act shall take effect in 120
15 days.