

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 589 Session of
2001

INTRODUCED BY GREENLEAF, HELFRICK, COSTA, LEMMOND, GERLACH,
M. WHITE, BOSCOLA, KUKOVICH, O'PAKE, JUBELIRER, MELLOW, FUMO,
HOLL, HUGHES, KITCHEN, LAVALLE, MADIGAN, MURPHY, MUSTO, PUNT,
SCHWARTZ, STACK, TARTAGLIONE, THOMPSON, TOMLINSON, WILLIAMS
AND WOZNIAK, MARCH 9, 2001

REFERRED TO JUDICIARY, MARCH 9, 2001

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for
3 postconviction DNA testing.

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

6 Section 1. Title 42 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 9543.1. Postconviction DNA testing.

9 (a) Motion.--

10 (1) An individual convicted of a criminal offense in a
11 court of this Commonwealth and serving a term of imprisonment
12 or awaiting execution because of a sentence of death may
13 apply by making a written motion to the sentencing court for
14 the performance of forensic DNA testing on specific evidence.

15 (2) The evidence may have been discovered either prior
16 to or after the applicant's conviction. The evidence shall be
17 available for testing as of the date of the motion. If the

1 evidence was discovered prior to the applicant's conviction,
2 the evidence shall not have been subject to the DNA testing
3 requested because the technology for testing was not in
4 existence at the time of the trial, or the applicant's
5 counsel did not seek testing at the time of the trial, or the
6 applicant's counsel sought funds from the court to pay for
7 the testing because his client was indigent and the court
8 refused the request.

9 (b) Notice to the Commonwealth.--

10 (1) Upon receipt of a motion under subsection (a), the
11 court shall notify the Commonwealth and shall afford the
12 Commonwealth an opportunity to respond to the motion.

13 (2) Upon receipt of a motion under subsection (a) or
14 notice of the motion, as applicable, the Commonwealth and the
15 court shall take the steps reasonably necessary to ensure
16 that any remaining biological material in the possession of
17 the Commonwealth or the court is preserved pending the
18 completion of the proceedings under this section.

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

21 (1) (i) assert the applicant's actual innocence of the
22 offense for which the applicant was convicted;

23 (ii) in a capital case, assert the applicant's
24 actual innocence of the charged or uncharged conduct
25 constituting an aggravating circumstance under section
26 9711(d) (relating to sentencing procedure for murder of
27 the first degree), if the applicant's exoneration of the
28 conduct would result in vacating a sentence of death; or

29 (iii) in a capital case, assert that the outcome of
30 the DNA testing would establish a mitigating circumstance

1 under section 9711(e).

2 (2) Present a prima facie case demonstrating that the:

3 (i) identity of or the participation in the crime by
4 the perpetrator was at issue in the proceedings that
5 resulted in the applicant's conviction and sentencing;
6 and

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

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

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

17 (C) in a capital case, a mitigating circumstance
18 under section 9711(e).

19 (d) Order.--

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

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

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

30 (iii) motion is made in a timely manner and for the

1 purpose of demonstrating the applicant's actual innocence
2 and not to delay the execution of sentence or
3 administration of justice.

4 (2) The court shall not order the testing requested in a
5 motion under subsection (a), if after review of the record of
6 the applicant's trial, the court determines that there is no
7 reasonable possibility that the testing would produce
8 exculpatory evidence that:

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

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

16 (iii) in a capital case, would establish a
17 mitigating circumstance under section 9711(e).

18 (e) Testing procedures.--

19 (1) Any DNA testing ordered under this section shall be
20 conducted by:

21 (i) a laboratory mutually selected by the
22 Commonwealth and the applicant; or

23 (ii) if the Commonwealth and the applicant are
24 unable to agree on a laboratory, a laboratory selected by
25 the court that ordered the testing.

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.

1 (f) Posttesting procedures.--

2 (1) Based on the results of the DNA testing conducted
3 under this section, the court shall make a written finding
4 that:

5 (i) the testing produced inconclusive evidence or
6 evidence implicating the applicant in the criminal
7 offense; or

8 (ii) that the DNA testing provided exculpatory
9 evidence.

10 (2) The applicant may appeal the finding of the court
11 under paragraph (1).

12 (3) If the court makes a finding that the DNA testing
13 provided exculpatory evidence:

14 (i) the applicant may, pursuant to section
15 9545(b)(2) (relating to jurisdiction and proceedings),
16 during the 60-day period beginning on the date on which
17 the court makes its finding, petition to the court that
18 ordered the testing for postconviction relief pursuant to
19 section 9543(a)(2)(vi) (relating to eligibility for
20 relief); and

21 (ii) upon receipt of a motion under subparagraph
22 (i), the court that ordered the testing shall consider
23 the motion, along with any answer filed by the
24 Commonwealth, and shall conduct a hearing thereon.

25 (4) In any hearing on a motion for postconviction relief
26 filed pursuant to paragraph (3), the court shall determine
27 whether the exculpatory evidence resulting from the DNA
28 testing conducted under this section would have changed the
29 outcome of the trial as required by section 9543(a)(2)(vi).

30 (g) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this
2 subsection:
3 "Applicant." The individual who files a motion under
4 subsection (a).
5 "DNA." Deoxyribonucleic acid.
6 Section 2. This act shall take effect in 60 days.