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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL  
No. 589      Session of  
2001

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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, A.  
WILLIAMS, WOZNIAK AND BRIGHTBILL, MARCH 9, 2001

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AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF  
REPRESENTATIVES, AS AMENDED, JUNE 18, 2002

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, providing FOR PERMISSIBLE <—  
3 ARGUMENT AS TO DAMAGES AT TRIAL AND for postconviction DNA  
4 testing.

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

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

9 SECTION 1. TITLE 42 OF THE PENNSYLVANIA CONSOLIDATED <—  
10 STATUTES IS AMENDED BY ADDING SECTIONS TO READ:

11 § 8315. PERMISSIBLE ARGUMENT AS TO DAMAGES AT TRIAL.

12 (A) GENERAL RULE.--EXCEPT AS PROVIDED IN SUBSECTION (B), IN  
13 ANY CIVIL ACTION TRIED BEFORE A JUDGE, JURY OR OTHER TRIBUNAL,  
14 AN ATTORNEY DURING CLOSING ARGUMENT:

15 (1) MAY SPECIFICALLY ARGUE IN LUMP SUMS OR BY  
16 MATHEMATICAL FORMULAE THE AMOUNT HE DEEMS TO BE AN

1 APPROPRIATE AWARD FOR ALL PAST AND FUTURE ECONOMIC OR  
2 NONECONOMIC DAMAGES OR BOTH ECONOMIC AND NONECONOMIC DAMAGES  
3 CLAIMED TO BE RECOVERABLE.

4 (2) MAY, ON BEHALF OF A DEFENDANT, ARGUE TO THE JUDGE,  
5 JURY OR OTHER TRIBUNAL THAT AN AWARD OF ZERO DAMAGES IS  
6 APPROPRIATE, EVEN IF THERE IS A FINDING OF LIABILITY AGAINST  
7 THE DEFENDANT.

8 (B) PRIOR DISCLOSURE REQUIRED.--

9 (1) NO PARTY MAY ARGUE A SPECIFIC SUM AS PROVIDED IN  
10 SUBSECTION (A) UNLESS THE PARTY FIRST DISCLOSES TO THE COURT  
11 AND OPPOSING COUNSEL THAT THE PARTY INTENDS TO ARGUE THE  
12 SPECIFIC DAMAGES LISTED IN SUBSECTION (A) PRIOR TO THE  
13 PRESENTATION OF CLOSING ARGUMENTS.

14 (2) NOTHING IN THIS SUBSECTION SHALL BE CONSTRUED TO  
15 PREVENT A DEFENDANT FROM ARGUING IN ANY CASE THAT THE FACTS  
16 AND EVIDENCE SUPPORT A FINDING OF NO LIABILITY.

17 (3) NOTWITHSTANDING PARAGRAPH (1), ARGUMENTS AS TO  
18 APPROPRIATE AMOUNT OF ECONOMIC DAMAGES MAY BE MADE WITHOUT  
19 NOTICE TO OPPOSING COUNSEL IF EVIDENCE SUPPORTING ECONOMIC  
20 DAMAGES HAS BEEN INTRODUCED AT TRIAL.

21 (C) JURY INSTRUCTION.--WHENEVER, IN A CIVIL ACTION TRIED  
22 BEFORE A JURY, SPECIFIC LUMP SUMS OR MATHEMATICAL FORMULAE ARE  
23 ARGUED DURING CLOSING ARGUMENTS AS PROVIDED FOR IN SUBSECTION  
24 (A), THE TRIAL COURT SHALL INSTRUCT THE JURY THAT THE SUMS OR  
25 MATHEMATICAL FORMULAE ARGUED ARE NOT EVIDENCE BUT ONLY ARGUMENTS  
26 AND THAT THE DETERMINATION OF THE AMOUNT OF APPROPRIATE DAMAGES  
27 TO BE AWARDED, IF ANY, IS SOLELY FOR THE JURY'S DETERMINATION.

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  
14 counsel did not seek testing at the time of the trial in a  
15 case where a verdict was rendered on or before January 1,  
16 1995, or the applicant's counsel sought funds from the court  
17 to pay for the testing because his client was indigent and  
18 the court 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 ANY  
6           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           ~~(ii) assert the applicant's actual innocence of the~~       <—  
11           (2) (I) ASSERT THE APPLICANT'S ACTUAL INNOCENCE OF THE       <—  
12           offense for which the applicant was convicted; AND       <—  
13           ~~(iii) in a capital case, assert the applicant's~~       <—  
14                   (II) IN A CAPITAL CASE:       <—  
15                           (A) ASSERT THE APPLICANT'S actual innocence of  
16                   the charged or uncharged conduct constituting an  
17                   aggravating circumstance under section 9711(d)  
18                   (relating to sentencing procedure for murder of the  
19                   first degree), if the applicant's exoneration of the  
20                   conduct would result in vacating a sentence of death;  
21                   or  
22           ~~(iv) in a capital case, assert that the outcome of~~       <—  
23                   (B) ASSERT THAT THE OUTCOME OF the DNA testing       <—  
24                   would establish a mitigating circumstance under  
25                   section 9711(e)(7) when IF that mitigating       <—  
26                   circumstance was presented to the sentencing judge or  
27                   jury and facts as to that issue were in dispute at  
28                   the sentencing hearing.  
29           ~~(2)~~ (3) Present a prima facie case demonstrating that       <—  
30           the:

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

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

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

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

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

18       (d) Order.--

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

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

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

29                   (iii) motion is made in a timely manner and for the  
30                   purpose of demonstrating the applicant's actual innocence

1       and not to delay the execution of sentence or  
2       administration of justice.

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

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

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

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

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;

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; or

26                      (iii) if the applicant is indigent, the testing  
27                      shall be conducted by the Pennsylvania State Police or,  
28                      at the Pennsylvania State Police's sole discretion, by a  
29                      laboratory designated by the Pennsylvania State Police.

30       (2) The costs of any testing ordered under this section

1 shall be paid:

2 (i) by the applicant; or

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

5 (f) Posttesting procedures.--

6 (1) After the DNA testing conducted under this section  
7 has been completed the applicant may, pursuant to section  
8 9545(b)(2) (relating to jurisdiction and proceedings), during  
9 the 60-day period beginning on the date on which the  
10 applicant is notified of the test results, petition to the  
11 court for postconviction relief pursuant to section  
12 9543(a)(2)(vi) (relating to eligibility for relief).

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

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

22 (G) EFFECT OF MOTION.--THE FILING OF A MOTION FOR FORENSIC <—  
23 DNA TESTING PURSUANT TO SUBSECTION (A) SHALL HAVE THE FOLLOWING  
24 EFFECT:

25 (1) THE FILING OF THE MOTION SHALL CONSTITUTE THE  
26 APPLICANT'S CONSENT TO PROVIDE SAMPLES OF BODILY FLUID FOR  
27 USE IN THE DNA TESTING.

28 (2) THE DATA FROM ANY DNA SAMPLES OR TEST RESULTS  
29 OBTAINED AS A RESULT OF THE MOTION MAY BE ENTERED INTO LAW  
30 ENFORCEMENT DATABASES, MAY BE USED IN THE INVESTIGATION OF

1     OTHER CRIMES AND MAY BE USED AS EVIDENCE AGAINST THE  
2     APPLICANT IN OTHER CASES.

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

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

8     "DNA." Deoxyribonucleic acid.

9     Section 2. This act shall take effect in 60 days.