

## 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,  
WOZNIAK AND BRIGHTBILL, MARCH 9, 2001

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, MAY 22, 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 THAT IS RELATED TO THE INVESTIGATION OR PROSECUTION THAT  
16 RESULTED IN THE JUDGMENT OF CONVICTION.

17 (2) The evidence may have been discovered either prior

1 to or after the applicant's conviction. The evidence shall be  
2 available for testing as of the date of the motion. If the  
3 evidence was discovered prior to the applicant's conviction,  
4 the evidence shall not have been subject to the DNA testing  
5 requested because the technology for testing was not in  
6 existence at the time of the trial, or the applicant's  
7 counsel did not seek testing at the time of the trial IN A <—  
8 CASE WHERE A VERDICT WAS RENDERED ON OR BEFORE JANUARY 1,  
9 1995, or the applicant's counsel sought funds from the court  
10 to pay for the testing because his client was indigent and  
11 the court refused the request DESPITE THE CLIENT'S INDIGENCE. <—

12 (b) Notice to the Commonwealth.--

13 (1) Upon receipt of a motion under subsection (a), the  
14 court shall notify the Commonwealth and shall afford the  
15 Commonwealth an opportunity to respond to the motion.

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

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

24 ~~(1) (i) assert the applicant's actual innocence of the~~ <—  
25 ~~offense for which the applicant was convicted;~~

26 ~~(ii)~~

27 (1) (I) SPECIFY THE EVIDENCE TO BE TESTED; <—

28 (II) ASSERT THE APPLICANT'S ACTUAL INNOCENCE OF THE  
29 OFFENSE FOR WHICH THE APPLICANT WAS CONVICTED;

30 (III) in a capital case, assert the applicant's

1 actual innocence of the charged or uncharged conduct  
2 constituting an aggravating circumstance under section  
3 9711(d) (relating to sentencing procedure for murder of  
4 the first degree), if the applicant's exoneration of the  
5 conduct would result in vacating a sentence of death; or  
6 ~~(iii)~~ (IV) in a capital case, assert that the outcome <—  
7 of the DNA testing would establish a mitigating  
8 circumstance under section ~~9711(e)~~ 9711(E)(7) WHEN THAT <—  
9 MITIGATING CIRCUMSTANCE WAS PRESENTED TO THE SENTENCING  
10 JUDGE OR JURY AND FACTS AS TO THAT ISSUE WERE IN DISPUTE  
11 AT THE SENTENCING HEARING.

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

13 (i) identity of or the participation in the crime by  
14 the perpetrator was at issue in the proceedings that  
15 resulted in the applicant's conviction and sentencing;  
16 and

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

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

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

27 (C) in a capital case, a mitigating circumstance  
28 under section ~~9711(e)~~ 9711(E)(7) UNDER THE <—  
29 CIRCUMSTANCES SET FORTH IN SUBSECTION (C)(1)(IV).

30 (d) Order.--

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

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

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

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

15       (2) The court shall not order the testing requested in a  
16       motion under subsection (a), if after review of the record of  
17       the applicant's trial, the court determines that there is no  
18       reasonable possibility that the testing would produce  
19       exculpatory evidence that:

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

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

27              (iii) in a capital case, would establish a  
28       mitigating circumstance under ~~section 9711(e)~~ SECTION  
29       9711(E)(7) UNDER THE CIRCUMSTANCES SET FORTH IN  
30       SUBSECTION (C)(1)(IV).

<—

1     (e) Testing procedures.--

2             (1) Any DNA testing ordered under this section shall be  
3     conducted by:

4                 (i) a laboratory mutually selected by the  
5             Commonwealth and the applicant; or

6                 (ii) if the Commonwealth and the applicant are  
7             unable to agree on a laboratory, a laboratory selected by  
8             the court that ordered the testing.

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

11                 (i) by the applicant; or

12                 (ii) in the case of an applicant who is indigent, by  
13             the Commonwealth WITH MONEYS APPROPRIATED TO THE     <—  
14             PENNSYLVANIA STATE POLICE.

15     (f) Posttesting procedures.--

16             (1) ~~Based on the results of~~ AFTER the DNA testing     <—  
17     conducted under this section, ~~the court shall make a written~~     <—  
18     ~~finding that:~~

19                 ~~(i) the testing produced inconclusive evidence or~~  
20             ~~evidence implicating the applicant in the criminal~~  
21             ~~offense; or~~

22                 ~~(ii) that the DNA testing provided exculpatory~~  
23             ~~evidence.~~

24             ~~(2) The applicant may appeal the finding of the court~~  
25     ~~under paragraph (1).~~

26             ~~(3) If the court makes a finding that the DNA testing~~  
27     ~~provided exculpatory evidence:~~

28                 ~~(i)~~ HAS BEEN COMPLETED the applicant may, pursuant to     <—  
29             section 955(b)(2) (relating to jurisdiction and  
30             proceedings), during the 60-day period beginning on the

1 date on which the court makes its finding APPLICANT IS <—  
2 NOTIFIED OF THE TEST RESULTS, petition to the court that <—  
3 ordered the testing for postconviction relief pursuant to  
4 section 9543(a)(2)(vi) (relating to eligibility for  
5 relief)); and <—

6 (ii) upon receipt of a motion under subparagraph  
7 (i), the court that ordered the testing shall consider  
8 the motion, along with any answer filed by the RELIEF). <—

9 (2) UPON RECEIPT OF A PETITION FILED UNDER PARAGRAPH  
10 (1), THE COURT SHALL CONSIDER THE PETITION, ALONG WITH ANY  
11 ANSWER FILED BY THE Commonwealth, and shall conduct a hearing  
12 thereon.

13 (4) (3) In any hearing on a motion PETITION for <—  
14 postconviction relief filed pursuant to paragraph (3) UNDER <—  
15 PARAGRAPH (1), the court shall determine whether the  
16 exculpatory evidence resulting from the DNA testing conducted  
17 under this section would have changed the outcome of the  
18 trial as required by section 9543(a)(2)(vi).

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

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

24 "DNA." Deoxyribonucleic acid.

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