

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

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 25, 2002

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 A SECTION 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~~

~~appropriate award for all past and future economic or noneconomic damages or both economic and noneconomic damages claimed to be recoverable.~~

~~(2) May, on behalf of a defendant, argue to the judge, jury or other tribunal that an award of zero damages is appropriate, even if there is a finding of liability against the defendant.~~

~~(b) Prior disclosure required.~~

~~(1) No party may argue a specific sum as provided in subsection (a) unless the party first discloses to the court and opposing counsel that the party intends to argue the specific damages listed in subsection (a) prior to the presentation of closing arguments.~~

~~(2) Nothing in this subsection shall be construed to prevent a defendant from arguing in any case that the facts and evidence support a finding of no liability.~~

~~(3) Notwithstanding paragraph (1), arguments as to appropriate amount of economic damages may be made without notice to opposing counsel if evidence supporting economic damages has been introduced at trial.~~

~~(c) Jury instruction. Whenever, in a civil action tried before a jury, specific lump sums or mathematical formulae are argued during closing arguments as provided for in subsection (a), the trial court shall instruct the jury that the sums or mathematical formulae argued are not evidence but only arguments and that the determination of the amount of appropriate damages to be awarded, if any, is solely for the jury's determination.~~

§ 9543.1. Postconviction DNA testing.

(a) Motion.--

(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.