
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE RESOLUTION

No. 312 Session of
2018

INTRODUCED BY GREENLEAF, SCHWANK, MENSCH, VULAKOVICH AND LEACH,
APRIL 13, 2018

REFERRED TO JUDICIARY, APRIL 13, 2018

A RESOLUTION

1 Urging the Supreme Court of Pennsylvania to adopt rules to
2 clarify the duty of a prosecuting attorney to provide the
3 defendant with pretrial discovery and access to the
4 investigative case file and related non-work product
5 materials and the duty of a prosecuting attorney to disclose
6 exculpatory information and materials at any time when the
7 information and materials bear on the innocence of the
8 defendant.

9 WHEREAS, More than 250 individuals have been exonerated in
10 the United States on the strength of DNA evidence after serving
11 an average of 12 years in prison for crimes they did not commit;
12 and

13 WHEREAS, Twelve of those documented DNA exonerations involved
14 Pennsylvania inmates; and

15 WHEREAS, The number of exonerations since 1989 exceeds 2,000
16 nationally when cases with and without DNA evidence are combined
17 and 68 of those exonerations occurred in Pennsylvania; and

18 WHEREAS, The Commonwealth does not condone the punishment of
19 the innocent, and it is the public policy of the Commonwealth to
20 correct systemic causes of wrongful convictions such as
21 eyewitness misidentifications, false confessions to law

1 enforcement, jailhouse informant testimony, flawed forensic
2 science and misconduct or mistakes made in good faith by law
3 enforcement or prosecutors; and

4 WHEREAS, The American Bar Association overwhelmingly approved
5 changes to Rule 3.8 of the Model Rules of Professional Conduct
6 and the House of Delegates of the Pennsylvania Bar Association
7 has endorsed changes to the correlative rule in Pennsylvania;
8 and

9 WHEREAS, The changes to Rule 3.8 set forth the role of
10 prosecuting attorneys who learn of new credible evidence that
11 makes it reasonably likely that a convicted individual was not
12 in fact guilty of the crime; and

13 WHEREAS, The changes to Rule 3.8 would clarify that a
14 prosecuting attorney should remedy the conviction by making a
15 "disclosure of the evidence to the defendant, requesting that
16 the court appoint counsel for an unrepresented indigent
17 defendant, and, where appropriate, notifying the court that the
18 prosecutor has knowledge that the defendant did not commit the
19 offense of which the defendant was convicted"; and

20 WHEREAS, The changes to Rule 3.8 recognize that "a prosecutor
21 has the responsibility of a minister of justice and not simply
22 that of an advocate"; and

23 WHEREAS, The changes to Rule 3.8 do not impose new
24 requirements on prosecutors, rather the changes dispel vagueness
25 and uncertainty; therefore be it

26 RESOLVED, That the Senate urge the Supreme Court of
27 Pennsylvania to promulgate and enforce changes in the Rules of
28 Professional Conduct and the Rules of Criminal Procedure to
29 ensure a prosecuting attorney make available to the defendant
30 the complete files of the law enforcement agencies,

1 investigative agencies and the prosecutor's office involved in
2 the investigation of the crime alleged to have been committed,
3 including the statements of the defendant, the statement of the
4 codefendant, witness statements, the investigating officer's
5 notes and the results of tests and examinations; and be it
6 further

7 RESOLVED, That the Senate urge the Supreme Court of
8 Pennsylvania to promulgate and enforce changes in the Rules of
9 Professional Conduct and the Rules of Criminal Procedure to
10 ensure a prosecuting attorney act not only as an advocate but
11 also as a minister of justice by disclosing to the defendant
12 materials and information, whether or not admissible in court,
13 and take other appropriate steps to remedy a conviction when the
14 prosecutor has knowledge that the defendant was wrongfully
15 convicted of the offense.