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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1801 Session of  
2017

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INTRODUCED BY NESBIT, BRIGGS, D. COSTA, GILLEN, A. HARRIS,  
HEFFLEY, JAMES, McCLINTON, NEILSON, O'NEILL, PICKETT,  
READSHAW, ROZZI, SCHLOSSBERG, SOLOMON AND WARD,  
OCTOBER 3, 2017

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REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 3, 2017

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AN ACT

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

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

6 Section 1. Section 9543.1 of Title 42 of the Pennsylvania  
7 Consolidated Statutes is amended 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  
12 imprisonment or awaiting execution because of a sentence of  
13 death] may apply by making a written motion to the sentencing  
14 court at any time for the performance of forensic DNA testing  
15 on specific evidence that is related to the investigation or  
16 prosecution that 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 counsel  
7 did not seek testing at the time of the trial in a case where  
8 a verdict was rendered on or before January 1, 1995], or the  
9 evidence was subject to the testing, but newer technology  
10 could provide more accurate and probative results, or the  
11 applicant's counsel sought funds from the court to pay for  
12 the testing because his client was indigent and the court  
13 refused the request despite the client's indigency.

14 (3) A request for DNA testing under this section shall  
15 be by written petition and shall be filed with the clerk of  
16 courts of the judicial district where the sentence is  
17 imposed.

18 (4) DNA testing may be sought at any time if the motion  
19 is made in a timely manner and for the purpose of  
20 demonstrating the applicant's actual innocence and not to  
21 delay the execution of sentence or administration of  
22 justice. There shall be a presumption of timeliness whenever  
23 the record does not affirmatively establish that the motion  
24 was filed to delay the execution of sentence or  
25 administration of justice.

26 (5) Notwithstanding any other provision of law, a plea  
27 of guilty or a confession given by an applicant concerning  
28 the offense for which the applicant was convicted shall not  
29 prohibit the applicant from asserting actual innocence under  
30 subsection (c) (2) or the court from making a determination

1 and ordering DNA testing under subsection (d)(2).

2 (b) Notice to the Commonwealth.--

3 (1) Upon receipt of a motion under subsection (a), the  
4 court shall notify the Commonwealth and shall afford the  
5 Commonwealth an opportunity to respond to the motion.

6 (2) Upon receipt of a motion under subsection (a) or  
7 notice of the motion, as applicable, the Commonwealth and the  
8 court shall take the steps reasonably necessary to ensure  
9 that any remaining biological material in the possession of  
10 the Commonwealth or the court is preserved pending the  
11 completion of the proceedings under this section.

12 (3) Upon receipt of a written petition for DNA testing  
13 by an applicant, the Commonwealth and the district attorney  
14 shall prepare an inventory of all evidence and traces of  
15 evidence related to the case and serve a copy of the  
16 inventory to the prosecution, the applicant, the applicant's  
17 attorney, if applicable, and the court. The inventory shall  
18 include all evidence collected, including, but not limited  
19 to, all of the following:

20 (i) Any traces of evidence retained from previous  
21 testing procedures, slides, swabs or other laboratory  
22 samples.

23 (ii) A list of all locations searched.

24 (iii) An accounting of all forensic testing  
25 previously done relating to the evidence and the names of  
26 the individuals who conducted the forensic testing.

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

29 (1) (i) specify the evidence to be tested;

30 (ii) state that the applicant consents to provide

1 samples of bodily fluid for use in the DNA testing; and

2 (iii) acknowledge that the applicant understands  
3 that, if the motion is granted, any data obtained from  
4 any DNA samples or test results may be entered into law  
5 enforcement databases, may be used in the investigation  
6 of other crimes and may be used as evidence against the  
7 applicant in other cases.

8 (2) (i) in a sworn statement subject to the penalties  
9 under 18 Pa.C.S. §§ 4902 (relating to perjury) and 4903  
10 (relating to false swearing), assert the applicant's  
11 actual innocence of the offense for which the applicant  
12 was convicted and that the applicant seeks DNA testing  
13 for the purpose of demonstrating the applicant's actual  
14 innocence; and

15 (ii) in a capital case:

16 (A) assert the applicant's actual innocence of  
17 the charged or uncharged conduct constituting an  
18 aggravating circumstance under section 9711(d)  
19 (relating to sentencing procedure for murder of the  
20 first degree) if the applicant's exoneration of the  
21 conduct would result in vacating a sentence of death;  
22 or

23 (B) assert that the outcome of the DNA testing  
24 would establish a mitigating circumstance under  
25 section 9711(e) (7) if that mitigating circumstance  
26 was presented to the sentencing judge or jury and  
27 facts as to that issue were in dispute at the  
28 sentencing hearing.

29 (3) present a prima facie case demonstrating that the:

30 (i) identity of or the participation in the crime by

1 the perpetrator was at issue in the proceedings that  
2 resulted in the applicant's conviction and sentencing;  
3 and

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

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

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

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

17 (d) Order.--

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

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

25 and

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  
4 a motion under subsection (a) if, after review of the record  
5 of the applicant's trial, the court determines that there is  
6 [no] a reasonable possibility that assuming exculpatory  
7 results the testing would produce [exculpatory] evidence  
8 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)(7) under  
18 the circumstances set forth in subsection (c)(1)(iv).

19 (3) Any DNA testing order under this section shall  
20 constitute a final order. An applicant or the Commonwealth  
21 may appeal a decision denying or granting a DNA testing order  
22 in accordance with the Pennsylvania Rules of Appellate  
23 Procedure.

24 (4) As used in this subsection, the term "exculpatory  
25 results" includes, but is not limited to, DNA testing results  
26 that indicate any of the following:

27 (i) An unidentified DNA profile on the evidence  
28 tested.

29 (ii) A match to another person's DNA profile.

30 (iii) A match to a DNA profile other than the

1 applicant's from an unsolved crime that may be contained  
2 in a DNA database.

3 (e) Testing procedures.--

4 (1) Any DNA testing ordered under this section shall be  
5 conducted by:

6 (i) a laboratory mutually selected by the  
7 Commonwealth and the applicant;

8 (ii) a laboratory selected by the court that ordered  
9 the testing if the Commonwealth and the applicant are  
10 unable to agree on a laboratory[, a laboratory selected  
11 by the court that ordered the testing]; or

12 (iii) if the applicant is indigent, the testing  
13 shall be conducted by the Pennsylvania State Police or,  
14 at the Pennsylvania State Police's sole discretion, by a  
15 laboratory designated by the Pennsylvania State Police.

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

18 (i) by the applicant; or

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

21 (3) [Testing conducted by the Pennsylvania State Police  
22 shall be carried out in accordance with the protocols and  
23 procedures established by the Pennsylvania State Police.] To  
24 the extent possible and not inconsistent with best laboratory  
25 practices, the testing shall be conducted in a manner that  
26 ensures that some portion of the sample is preserved for  
27 replication of testing. If the laboratory determines it may  
28 be necessary to consume the entirety of any sample during  
29 testing, the laboratory shall inform the prosecution, the  
30 applicant and the applicant's attorney, if applicable, of its

1 recommendation and obtain the prosecution and the applicant's  
2 consent before proceeding. If the prosecution and the  
3 applicant do not consent, the court may issue any appropriate  
4 order before testing proceeds.

5 (4) If testing is performed by a private laboratory and  
6 a DNA database search is anticipated, the applicant shall  
7 ensure that the chosen laboratory is accredited and compliant  
8 with Federal Bureau of Investigation quality assurance  
9 standards.

10 (5) When testing is performed by a private laboratory,  
11 the Commonwealth shall take all reasonable measures before  
12 the testing is conducted to ensure that the results of the  
13 testing may be entered into CODIS so that a comparison to  
14 known offender or crime scene profiles may be made if the  
15 laboratory and test results otherwise satisfy the criteria  
16 for database entry.

17 (6) Testing conducted by the Pennsylvania State Police  
18 shall be carried out in accordance with the protocols and  
19 procedures established by the Pennsylvania State Police.

20 (f) Posttesting procedures.--

21 (1) After the DNA testing conducted under this section  
22 has been completed, the applicant may, pursuant to section  
23 9545(b)(2) (relating to jurisdiction and proceedings), during  
24 the 60-day period beginning on the date on which the  
25 applicant is notified of the test results, petition to the  
26 court for postconviction relief pursuant to section 9543(a)  
27 (2)(vi) (relating to eligibility for relief).

28 (2) Upon receipt of a petition filed under paragraph  
29 (1), the court shall consider the petition along with any  
30 answer filed by the Commonwealth and shall conduct a hearing



1 thereon.

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

7 (4) If testing complies with Federal Bureau of  
8 Investigation requirements and the data meets NDIS criteria,  
9 profiles obtained from the testing shall be searched or  
10 uploaded to CODIS.

11 (5) When testing is conducted by a private laboratory, a  
12 court may order a public laboratory with access to CODIS to  
13 take the necessary measures to ensure the DNA profile  
14 obtained from probative biological material from crime scene  
15 evidence can be uploaded to CODIS by the public laboratory.  
16 Necessary measures may include requiring the public  
17 laboratory to conduct a review of the private laboratory's  
18 facilities or records to ensure that the private laboratory  
19 complies with Federal Bureau of Investigation requirements  
20 regarding CODIS. If the private laboratory meets Federal  
21 Bureau of Investigation and CODIS requirements, the court may  
22 order the public laboratory to upload the DNA profile to  
23 determine whether the profile matches a profile of a known  
24 individual or a profile from an unsolved crime. The DNA  
25 profile submitted to the databases must comply with the  
26 Federal Bureau of Investigation requirements for the  
27 uploading of DNA profiles to CODIS, and the Commonwealth  
28 shall take all reasonable measures to ensure that the testing  
29 complies with the requirements.

30 (6) If DNA testing conclusively identifies the DNA

1 profile of the applicant on probative and inculpatory  
2 evidence, the court shall dismiss the petition and may make  
3 any further orders that are appropriate. An order under this  
4 paragraph may:

5 (i) direct that the Pennsylvania Board of Probation  
6 and Parole be notified of the test results; or

7 (ii) mandate that the applicant's DNA profile be  
8 added to the Commonwealth's convicted offender database.

9 (g) Effect of motion.--The filing of a motion for forensic  
10 DNA testing pursuant to subsection (a) shall have the following  
11 effect:

12 (1) The filing of the motion shall constitute the  
13 applicant's consent to provide samples of bodily fluid for  
14 use in the DNA testing.

15 (2) The data from any DNA samples or test results  
16 obtained as a result of the motion may be entered into law  
17 enforcement databases, may be used in the investigation of  
18 other crimes and may be used as evidence against the  
19 applicant in other cases.

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

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

25 "CODIS." The Combined DNA Index System administered by the  
26 Federal Bureau of Investigation that allows for the storage and  
27 exchange of DNA records submitted by Federal, State and local  
28 forensic DNA laboratories.

29 "DNA." Deoxyribonucleic acid.

30 "NDIS." The National DNA Index System which is the national

1 DNA database system of DNA records and meets Federal quality  
2 assurance and privacy standards.

3 "Public laboratory." The Pennsylvania State Police DNA  
4 Laboratory, the Philadelphia Police Department Office of  
5 Forensic Sciences DNA Laboratory, the Allegheny County DNA  
6 Laboratory or any other laboratory maintained by the  
7 Commonwealth with access to CODIS.

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