
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1134 Session of
2015

INTRODUCED BY GREENLEAF, TEPLITZ, LEACH, FARNESE, YUDICHAK,
BARTOLOTTA, FONTANA, VANCE, RESCHENTHALER, HAYWOOD, BROWNE,
VOGEL AND SCARNATI, MARCH 4, 2016

REFERRED TO JUDICIARY, MARCH 4, 2016

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
18 to or after the applicant's conviction. The evidence shall be

1 available for testing as of the date of the motion. If the
2 evidence was discovered prior to the applicant's conviction,
3 the evidence shall not have been subject to the DNA testing
4 requested [because the technology for testing was not in
5 existence at the time of the trial or the applicant's counsel
6 did not seek testing at the time of the trial in a case where
7 a verdict was rendered on or before January 1, 1995], or the
8 evidence was subject to the testing, but newer technology
9 could provide more accurate and probative results, or the
10 applicant's counsel sought funds from the court to pay for
11 the testing because his client was indigent and the court
12 refused the request despite the client's indigency.

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

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

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

1 (b) Notice to the Commonwealth.--

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

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

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

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

22 (ii) A list of all locations searched.

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

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

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

29 (ii) state that the applicant consents to provide
30 samples of bodily fluid for use in the DNA testing; and

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

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

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

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

29 (i) identity of or the participation in the crime by
30 the perpetrator was at issue in the proceedings that

1 resulted in the applicant's conviction and sentencing;

2 and

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

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

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

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

16 (d) Order.--

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

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

24 and

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

28 (iii) motion is made in a timely manner and for the
29 purpose of demonstrating the applicant's actual innocence
30 and not to delay the execution of sentence or

1 administration of justice].

2 (2) The court shall [not] order the testing requested in
3 a motion under subsection (a) if, after review of the record
4 of the applicant's trial, the court determines that there is
5 [no] a reasonable possibility that assuming exculpatory
6 results the testing would produce [exculpatory] evidence
7 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 (3) Any DNA testing order under this section shall
19 constitute a final order. An applicant or the Commonwealth
20 may appeal a decision denying or granting a DNA testing order
21 in accordance with the Pennsylvania Rules of Appellate
22 Procedure.

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

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

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

29 (iii) A match to a DNA profile other than the
30 applicant's from an unsolved crime that may be contained

1 in a DNA database.

2 (e) Testing procedures.--

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

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

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

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

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

17 (i) by the applicant; or

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

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

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

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

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

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

19 (f) Posttesting procedures.--

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

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

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

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

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

29 (6) If DNA testing conclusively identifies the DNA
30 profile of the applicant on probative and inculpatory

1 evidence, the court shall dismiss the petition and may make
2 any further orders that are appropriate. An order under this
3 paragraph may:

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

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

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

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

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

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

28 "DNA." Deoxyribonucleic acid.

29 "NDIS." The National DNA Index System which is the national
30 DNA database system of DNA records and meets Federal quality

1 assurance and privacy standards.

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

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