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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 1089** Session of  
2001

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INTRODUCED BY EARLL, M. WHITE, COSTA, THOMPSON, ORIE, TOMLINSON,  
DENT, ROBBINS, BELL, GREENLEAF, LEMMOND, O'PAKE, LAVALLE,  
BODACK, WAUGH, ERICKSON, HOLL AND BOSCOLA, OCTOBER 9, 2001

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SENATE AMENDMENTS TO HOUSE AMENDMENTS, JUNE 12, 2002

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, providing for DNA testing  
3 of certain offenders; reestablishing the State DNA Data Base  
4 and the State DNA Data Bank; further providing for duties of  
5 the Pennsylvania State Police; imposing costs on certain  
6 offenders; reestablishing the DNA Detection Fund; further  
7 providing for the apportionment of liability and damages;  
8 imposing penalties; and making a repeal.

9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 Section 1. Title 42 of the Pennsylvania Consolidated  
12 Statutes is amended by adding a chapter to read:

13 CHAPTER 47

14 DNA DATA AND TESTING

15 Subchapter

- 16 A. Preliminary Provisions
- 17 B. General Provisions
- 18 C. Enforcement and Other Provisions
- 19 D. Miscellaneous Provisions

20 SUBCHAPTER A

1 Sec.

2 4701. Scope of chapter.

3 4702. Policy.

4 4703. Definitions.

5 § 4701. Scope of chapter.

6 This chapter provides for DNA detection of sexual and violent  
7 offenders.

8 § 4702. Policy.

9 The General Assembly finds and declares that:

10 (1) DNA data banks are an important tool in criminal  
11 investigations, in the exclusion of individuals who are the  
12 subject of criminal investigations or prosecutions and in  
13 deterring and detecting recidivist acts.

14 (2) Several states have enacted laws requiring persons  
15 convicted of certain crimes, especially sex offenses, to  
16 provide genetic samples for DNA profiling.

17 (3) Moreover, it is the policy of this Commonwealth to  
18 assist Federal, State and local criminal justice and law  
19 enforcement agencies in the identification and detection of  
20 individuals in criminal investigations.

21 (4) It is therefore in the best interest of the  
22 Commonwealth to establish a DNA data base and a DNA data bank  
23 containing DNA samples submitted by individuals convicted of  
24 felony sex offenses and other specified offenses.

25 § 4703. Definitions.

26 The following words and phrases when used in this chapter  
27 shall have the meanings given to them in this section unless the  
28 context clearly indicates otherwise:

29 "ARD." Accelerated Rehabilitative Disposition.

30 "CODIS." The term is derived from Combined DNA Index System,

1 the Federal Bureau of Investigation's national DNA  
2 identification index system that allows the storage and exchange  
3 of DNA records submitted by state and local forensic DNA  
4 laboratories.

5 "Commissioner." The Commissioner of the Pennsylvania State  
6 Police.

7 "Criminal justice agency." A criminal justice agency as  
8 defined in 18 Pa.C.S. § 9102 (relating to definitions).

9 "DNA." Deoxyribonucleic acid. DNA is located in the cells  
10 and provides an individual's personal genetic blueprint. DNA  
11 encodes genetic information that is the basis of human heredity  
12 and forensic identification.

13 "DNA record." DNA identification information stored in the  
14 State DNA Data Base or the Combined DNA Index System for the  
15 purpose of generating investigative leads or supporting  
16 statistical interpretation of DNA test results. The DNA record  
17 is the result obtained from the DNA typing tests. The DNA record  
18 is comprised of the characteristics of a DNA sample which are of  
19 value in establishing the identity of individuals. The results  
20 of all DNA identification tests on an individual's DNA sample  
21 are also collectively referred to as the DNA profile of an  
22 individual.

23 "DNA sample." A blood or tissue sample provided by any  
24 person with respect to offenses covered by this chapter or  
25 submitted to the Pennsylvania State Police laboratory pursuant  
26 to the former act of May 28, 1995 (1st Sp.Sess., P.L.1009,  
27 No.14), known as the DNA Detection of Sexual and Violent  
28 Offenders Act, or to this chapter for analysis or storage, or  
29 both.

30 "FBI." The Federal Bureau of Investigation.

1 "Felony sex offense." A felony offense or an attempt,  
2 conspiracy or solicitation to commit a felony offense under any  
3 of the following:

4 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

5 18 Pa.C.S. § 4302 (relating to incest).

6 18 Pa.C.S. § 5902(c)(iii) and (iv) (relating to  
7 prostitution and related offenses).

8 18 Pa.C.S. § 5903(a) (relating to obscene and other  
9 sexual materials and performances) where the offense  
10 constitutes a felony.

11 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

12 18 Pa.C.S. § 6318 (relating to unlawful contact or  
13 communication with minor) where the most serious underlying  
14 offense for which the defendant contacted or communicated  
15 with the minor is graded as a felony.

16 18 Pa.C.S. § 6320 (relating to sexual exploitation of  
17 children).

18 "Former DNA Act." The former act of May 28, 1995 (1st  
19 Sp.Sess., P.L.1009, No.14), known as the DNA Detection of Sexual  
20 and Violent Offenders Act.

21 "Fund." The DNA Detection Fund reestablished in section 4735  
22 (relating to DNA Detection Fund).

23 "Other specified offense." An offense or an attempt,  
24 conspiracy or solicitation to commit an offense under any of the  
25 following:

26 18 Pa.C.S. § 2502 (relating to murder).

27 18 Pa.C.S. § 2709(c)(2)(ii) (relating to harassment and  
28 stalking).

29 18 Pa.C.S. § 2901 (relating to kidnapping).

30 18 Pa.C.S. § 2910 (relating to luring a child into a

1 motor vehicle).

2 18 Pa.C.S. § 3126 (relating to indecent assault).

3 18 Pa.C.S. § 3502 (relating to burglary).

4 18 Pa.C.S. § 3701 (relating to robbery).

5 "State Police." The Pennsylvania State Police.

6 SUBCHAPTER B

7 GENERAL PROVISIONS

8 Sec.

9 4711. Powers and duties of State Police.

10 4712. State DNA Data Base.

11 4713. State DNA Data Bank.

12 4714. State Police recommendations of additional offenses.

13 4715. Procedural compatibility with FBI.

14 4716. DNA sample required upon conviction, delinquency  
15 adjudication and certain ARD cases.

16 4717. Procedures for withdrawal, collection and transmission.  
17 of DNA samples.

18 4718. Procedures for conduct, disposition and use of DNA  
19 analysis.

20 4719. DNA data base exchange.

21 4720. Cancellation of authority to access or exchange DNA  
22 records.

23 4721. Expungement.

24 4722. Mandatory cost.

25 § 4711. Powers and duties of State Police.

26 In addition to any other powers and duties conferred by this  
27 chapter, the State Police shall:

28 (1) Be responsible for the policy management and  
29 administration of the State DNA identification record system  
30 to support law enforcement agencies and other criminal

1 justice agencies.

2 (2) Promulgate rules and regulations to carry out the  
3 provisions of this chapter.

4 (3) Provide for liaison with the FBI and other criminal  
5 justice agencies in regard to the Commonwealth's  
6 participation in CODIS or in any DNA data base designated by  
7 the State Police.

8 § 4712. State DNA Data Base.

9 The State DNA Data Base is reestablished. It shall be  
10 administered by the State Police and provide DNA records to the  
11 FBI for storage and maintenance by CODIS. The State DNA Data  
12 Base shall have the capability provided by computer software and  
13 procedures administered by the State Police to store and  
14 maintain DNA records related to:

15 (1) forensic casework;

16 (2) convicted offenders required to provide a DNA sample  
17 under this chapter; and

18 (3) anonymous DNA records used for research or quality  
19 control.

20 § 4713. State DNA Data Bank.

21 The State DNA Data Bank is reestablished. It shall serve as  
22 the repository of DNA samples collected under this chapter.

23 § 4714. State Police recommendation of additional offenses.

24 The State Police may recommend to the General Assembly that  
25 it enact legislation for the inclusion of additional offenses  
26 for which DNA samples shall be taken and otherwise subjected to  
27 the provisions of this chapter. In determining whether to  
28 recommend additional offenses, the State Police shall consider  
29 those offenses for which DNA testing will have a substantial  
30 impact on the detection and identification of sex offenders and

1 violent offenders.

2 § 4715. Procedural compatibility with FBI.

3 The DNA identification system as established by the State  
4 Police shall be compatible with the procedures specified by the  
5 FBI, including use of comparable test procedures, laboratory  
6 equipment, supplies and computer software.

7 § 4716. DNA sample required upon conviction, delinquency  
8 adjudication and certain ARD cases.

9 (a) General rule.--A person who is convicted or adjudicated  
10 delinquent for a felony sex offense or other specified offense  
11 and is or remains incarcerated on or after the effective date of  
12 this chapter shall have a DNA sample drawn as follows:

13 (1) A person who is sentenced or receives a delinquency  
14 disposition to a term of confinement for an offense covered  
15 by this subsection shall have a DNA sample drawn upon intake  
16 to a prison, jail or juvenile detention facility or any other  
17 detention facility or institution. If the person is already  
18 confined at the time of sentencing or adjudication, the  
19 person shall have a DNA sample drawn immediately after the  
20 sentencing or adjudication. If a DNA sample is not timely  
21 drawn in accordance with this section, the DNA sample may be  
22 drawn any time thereafter by the prison, jail, juvenile  
23 detention facility, detention facility or institution.

24 (2) A person who is convicted or adjudicated delinquent  
25 for an offense covered by this subsection shall have a DNA  
26 sample drawn as a condition for any sentence or adjudication  
27 which disposition will not involve an intake into a prison,  
28 jail, juvenile detention facility or any other detention  
29 facility or institution.

30 (3) Under no circumstances shall a person who is

1 convicted or adjudicated delinquent for an offense covered by  
2 this subsection be released in any manner after such  
3 disposition unless and until a DNA sample has been withdrawn.

4 (b) Condition of release.--

5 (1) A person who has been convicted or adjudicated  
6 delinquent for a felony sex offense or other specified  
7 offense and who serves a term of confinement in connection  
8 therewith on or after the effective date of this chapter  
9 shall not be released in any manner unless and until a DNA  
10 sample has been withdrawn.

11 (2) This act shall apply to incarcerated persons  
12 convicted or adjudicated delinquent for a felony sex offense  
13 prior to the effective date of this chapter.

14 (c) Certain ARD cases.--Acceptance into ARD as a result of a  
15 criminal charge for a felony sex offense or other specified  
16 offense filed on or after the effective date of this section may  
17 be conditioned upon the giving of a DNA sample.

18 (d) Supervision of DNA samples.--All DNA samples taken  
19 pursuant to this section shall be taken in accordance with  
20 regulations promulgated by the State Police in consultation with  
21 the Department of Corrections.

22 (e) Definition.--As used in this section, the term  
23 "released" means any release, parole, furlough, work release,  
24 prerelease or release in any other manner from a prison, jail,  
25 juvenile detention facility or any other place of confinement.

26 § 4717. Procedures for withdrawal, collection and transmission  
27 of DNA samples.

28 (a) Drawing of DNA samples.--

29 (1) Each DNA sample required to be drawn pursuant to  
30 section 4716 (relating to DNA sample required upon

1 conviction, delinquency adjudication and certain ARD cases)  
2 from persons who are incarcerated or confined shall be drawn  
3 at the place of incarceration or confinement as provided for  
4 in section 4716. DNA samples from persons who are not ordered  
5 or sentenced to a term of confinement shall be drawn at a  
6 prison, jail unit, juvenile facility or other facility to be  
7 specified by the court. Only those individuals qualified to  
8 draw DNA samples in a medically approved manner shall draw a  
9 DNA sample to be submitted for DNA analysis. Such sample and  
10 the set of fingerprints provided for in paragraph (2) shall  
11 be delivered to the State Police within 48 hours of drawing  
12 the sample.

13 (2) In addition to the DNA sample, a full set of  
14 fingerprints shall be taken from the person from whom the DNA  
15 sample is being drawn for the exclusive purpose of verifying  
16 the identity of such person.

17 (b) Limitation on liability.--Persons authorized to draw DNA  
18 samples under this section shall not be criminally liable for  
19 withdrawing a DNA sample and transmitting test results pursuant  
20 to this chapter if they perform these activities in good faith  
21 and shall not be civilly liable for such activities when the  
22 person acted in a reasonable manner according to generally  
23 accepted medical and other professional practices.

24 (c) Reasonable use of force.--Duly authorized law  
25 enforcement and corrections personnel may employ reasonable  
26 force in cases where an individual refuses to submit to DNA  
27 testing authorized under this chapter, and no such employee  
28 shall be criminally or civilly liable for the use of reasonable  
29 force.

30 § 4718. Procedures for conduct, disposition and use of DNA

1 analysis.

2 (a) Procedures.--The State Police shall prescribe procedures  
3 to be used in the collection, submission, identification,  
4 analysis, storage and disposition of DNA samples and typing  
5 results of DNA samples submitted under the former DNA Act or  
6 this chapter. The DNA sample typing results shall be securely  
7 stored in the State DNA Data Base, and records of testing shall  
8 be retained on file with the State Police consistent with the  
9 procedures established by the FBI. These procedures shall also  
10 include quality assurance guidelines to insure that DNA  
11 identification records meet standards for laboratories which  
12 submit DNA records to the State DNA Data Base.

13 (b) Contracting.--The State Police are authorized to  
14 contract with third parties for purposes of this chapter.

15 (c) Use of tests.--Except as otherwise provided in section  
16 4719(c) (relating to DNA data base exchange), the tests to be  
17 performed on each DNA sample shall be used only for law  
18 enforcement identification purposes or to assist in the recovery  
19 or identification of human remains from disasters or for other  
20 humanitarian identification purposes, including identification  
21 of missing persons.

22 (d) Restrictions and requirements on contracting party.--Any  
23 other party contracting to carry out the functions of this  
24 chapter shall be subject to the same restrictions and  
25 requirements of this chapter, insofar as applicable, as the  
26 State Police as well as any additional restrictions imposed by  
27 the State Police.

28 § 4719. DNA data base exchange.

29 (a) Receipt of DNA samples by State Police.--It shall be the  
30 duty of the State Police to receive DNA samples, to store, to

1 perform analysis or to contract for DNA typing analysis with a  
2 qualified DNA laboratory that meets the guidelines as  
3 established by the State Police, to classify and to file the DNA  
4 record of identification characteristic profiles of DNA samples  
5 submitted under the former DNA Act or this chapter and to make  
6 such information available as provided in this section. The  
7 State Police may contract out the storage of DNA typing analysis  
8 and may contract out DNA typing analysis to a qualified DNA  
9 laboratory that meets guidelines as established by the State  
10 Police. The results of the DNA profile of individuals in the  
11 State DNA Data Base shall be made available:

12 (1) to criminal justice agencies or approved crime  
13 laboratories which serve these agencies; or

14 (2) upon written or electronic request and in  
15 furtherance of an official investigation of a criminal  
16 offense or offender or suspected offender.

17 (b) Methods of obtaining information.--The State Police  
18 shall adopt guidelines governing the methods of obtaining  
19 information from the State DNA Data Base and CODIS and  
20 procedures for verification of the identity and authority of the  
21 requester.

22 (c) Population data base.--The State Police may establish a  
23 separate population data base comprised of DNA samples obtained  
24 under this chapter after all personal identification is removed.  
25 The State Police may share or disseminate the population data  
26 base with other criminal justice agencies or crime laboratories  
27 that serve to assist the State Police with statistical data  
28 bases. The population data base may be made available to and  
29 searched by other agencies participating in the CODIS system.

30 § 4720. Cancellation of authority to access or exchange DNA

1 records.

2 The State Police shall be authorized, for good cause shown,  
3 to revoke or suspend the right of a forensic DNA laboratory  
4 within this Commonwealth to access or exchange DNA  
5 identification records with criminal justice agencies.

6 § 4721. Expungement.

7 (a) General rule.--A person whose DNA record or profile has  
8 been included in the data bank pursuant to the former DNA Act or  
9 this chapter may request expungement on the grounds that the  
10 conviction or delinquency adjudication on which the authority  
11 for including that person's DNA record or profile was based has  
12 been reversed and the case dismissed.

13 (b) Duty of State Police.--The State Police shall purge all  
14 records and identifiable information in the data base pertaining  
15 to the person and destroy all samples from the person upon  
16 receipt of a written request for expungement pursuant to this  
17 section and a certified copy of the final court order reversing  
18 and dismissing the conviction.

19 (c) Limitation.--An incarcerated or previously incarcerated  
20 person may not seek expungement of a DNA record or profile on  
21 the ground that that person was convicted or adjudicated  
22 delinquent for a felony sex offense prior to the effective date  
23 of the former DNA Act or prior to the effective date of this  
24 chapter.

25 § 4722. Mandatory cost.

26 Unless the court finds that undue hardship would result, a  
27 mandatory cost of \$250, which shall be in addition to any other  
28 costs imposed pursuant to statutory authority, shall  
29 automatically be assessed on any person convicted, adjudicated  
30 delinquent or granted ARD for a felony sex offense or other

1 specified offense, and all proceeds derived from this section  
2 shall be transmitted to the fund.

3 SUBCHAPTER C

4 ENFORCEMENT AND OTHER PROVISIONS

5 Sec.

6 4731. Prohibition on disclosure.

7 4732. Criminal penalties.

8 4733. Civil actions.

9 4734. Confidentiality of records.

10 4735. DNA Detection Fund.

11 4736. Authority of law enforcement officers.

12 § 4731. Prohibition on disclosure.

13 (a) Disclosure.--Any person who by virtue of employment or  
14 official position or any person contracting to carry out any  
15 functions under this chapter, including any officers, employees  
16 and agents of such contractor, who has possession of or access  
17 to individually identifiable DNA information contained in the  
18 State DNA Data Base or in the State DNA Data Bank shall not  
19 disclose it in any manner to any person or agency not authorized  
20 to receive it knowing that such person or agency is not  
21 authorized to receive it.

22 (b) Obtaining information.--No person shall obtain  
23 individually identifiable DNA information from the State DNA  
24 Data Base or the State DNA Data Bank without authorization to do  
25 so.

26 § 4732. Criminal penalties.

27 (a) Disclosure.--Any person who by virtue of employment or  
28 official position or any person contracting to carry out any  
29 functions under this chapter, including any officers, employees  
30 and agents of such contractor, who has possession of or access

1 to individually identifiable DNA information contained in the  
2 State DNA Data Base or in the State DNA Data Bank and who for  
3 pecuniary gain for such person or for any other person discloses  
4 it in any manner to any person or agency not authorized to  
5 receive it commits a misdemeanor of the first degree.

6 (b) Obtaining information.--Any person who knowingly  
7 violates section 4731(b) (relating to prohibition on disclosure)  
8 commits a misdemeanor of the first degree.

9 § 4733. Civil actions.

10 (a) Injunctions.--The State Police or any other aggrieved  
11 individual or agency may institute an action in a court of  
12 proper jurisdiction against any person, agency or organization  
13 to enjoin any criminal justice agency, noncriminal justice  
14 agency, organization or individual from violating the provisions  
15 of this chapter or to compel such agency, organization or person  
16 to comply with the provisions of this chapter.

17 (b) Action for damages.--

18 (1) Any person aggrieved by a knowing violation of  
19 section 4731 (relating to prohibition on disclosure) shall  
20 have the substantive right to bring an action for damages by  
21 reason of such violation in a court of competent  
22 jurisdiction.

23 (2) A person found by the court to have been aggrieved  
24 by a knowing violation of section 4731 shall be entitled to  
25 actual and real damages of not less than \$100 for each  
26 violation and to reasonable costs of litigation and attorney  
27 fees. Exemplary and punitive damages of not less than \$1,000  
28 nor more than \$10,000 shall be imposed for any violation of  
29 section 4731.

30 § 4734. Confidentiality of records.

1 All DNA profiles and samples submitted to the State Police  
2 pursuant to the former DNA Act or this chapter shall be treated  
3 as confidential except as otherwise provided in this chapter.

4 § 4735. DNA Detection Fund.

5 The DNA Detection Fund is reestablished in the State Treasury  
6 as a restricted fund. All costs collected under section 4722  
7 (relating to mandatory cost) shall be paid into the fund. All  
8 moneys in the fund and the interest accruing thereon are hereby  
9 appropriated to the Pennsylvania State Police on a continuing  
10 basis to carry out the provisions of this chapter upon  
11 authorization of the Governor for each fiscal year.

12 § 4736. Authority of law enforcement officers.

13 Nothing in this chapter shall limit or abrogate any existing  
14 authority of law enforcement officers to take, maintain, store  
15 and utilize DNA samples for law enforcement purposes.

16 SUBCHAPTER D

17 MISCELLANEOUS PROVISIONS

18 Sec.

19 4741. State Police notice of capability to carry out chapter.

20 § 4741. State Police notice of capability to carry out chapter.

21 When the commissioner determines that the State Police  
22 possess the capabilities to carry out this chapter, the  
23 commissioner shall publish a notice to this effect in the  
24 Pennsylvania Bulletin.

25 Section 2. Section 7102 of Title 42 is amended to read:

26 § 7102. Comparative negligence.

27 (a) General rule.--In all actions brought to recover damages  
28 for negligence resulting in death or injury to person or  
29 property, the fact that the plaintiff may have been guilty of  
30 contributory negligence shall not bar a recovery by the

1 plaintiff or his legal representative where such negligence was  
2 not greater than the causal negligence of the defendant or  
3 defendants against whom recovery is sought, but any damages  
4 sustained by the plaintiff shall be diminished in proportion to  
5 the amount of negligence attributed to the plaintiff.

6 [(b) Recovery against joint defendant; contribution.--Where  
7 recovery is allowed against more than one defendant, each  
8 defendant shall be liable for that proportion of the total  
9 dollar amount awarded as damages in the ratio of the amount of  
10 his causal negligence to the amount of causal negligence  
11 attributed to all defendants against whom recovery is allowed.  
12 The plaintiff may recover the full amount of the allowed  
13 recovery from any defendant against whom the plaintiff is not  
14 barred from recovery. Any defendant who is so compelled to pay  
15 more than his percentage share may seek contribution.]

16 ~~(b.1) Recovery against joint defendant; contribution. Where~~ <—

17 ~~(B.1) RECOVERY AGAINST JOINT DEFENDANT; CONTRIBUTION.--~~ <—

18 (1) WHERE recovery is allowed against more than one  
19 person, including actions for strict liability, and where  
20 liability is attributed to more than one defendant, each  
21 defendant shall be liable for that proportion of the total  
22 dollar amount awarded as damages in the ratio of the amount  
23 of that defendant's liability to the amount of liability  
24 attributed to all defendants and other persons to whom  
25 liability is apportioned under subsection (b.2). Except where <—  
26 a defendant has been held liable for intentional fraud or an  
27 intentional tort or where a defendant has been held liable  
28 for not less than 60% of the total dollar amount awarded as  
29 damages, a defendant's liability shall be several and not  
30 joint, and the court shall enter a separate and several

~~judgment in favor of the plaintiff and against each defendant  
for the proportionate amount of that defendant's liability.~~

~~Where a~~

(2) EXCEPT AS SET FORTH IN PARAGRAPH (3), A DEFENDANT'S  
LIABILITY SHALL BE SEVERAL AND NOT JOINT; AND THE COURT SHALL  
ENTER A SEPARATE AND SEVERAL JUDGMENT IN FAVOR OF THE  
PLAINTIFF AND AGAINST EACH DEFENDANT FOR THE APPORTIONED  
AMOUNT OF THAT DEFENDANT'S LIABILITY.

(3) A DEFENDANT'S LIABILITY IN ANY OF THE FOLLOWING  
ACTIONS SHALL BE JOINT AND SEVERAL, AND THE COURT SHALL ENTER  
A JOINT AND SEVERAL JUDGMENT IN FAVOR OF THE PLAINTIFF AND  
AGAINST THE DEFENDANT FOR THE TOTAL DOLLAR AMOUNT AWARDED AS  
DAMAGES:

(I) INTENTIONAL MISREPRESENTATION.

(II) AN INTENTIONAL TORT.

(III) WHERE A DEFENDANT HAS BEEN HELD LIABLE FOR NOT  
LESS THAN 60% OF THE TOTAL LIABILITY APPORTIONED TO ALL  
PARTIES.

(IV) A RELEASE OR THREATENED RELEASE OF A HAZARDOUS  
SUBSTANCE UNDER SECTION 702 OF THE ACT OF OCTOBER 18,  
1988 (P.L.756, NO.108), KNOWN AS THE HAZARDOUS SITES  
CLEANUP ACT.

(V) A CIVIL ACTION IN WHICH A DEFENDANT HAS VIOLATED  
SECTION 497 OF THE ACT OF APRIL 12, 1951 (P.L.90, NO.21),  
KNOWN AS THE LIQUOR CODE.

(4) WHERE A defendant has been held jointly and  
severally liable under this subsection and discharges by  
payment more than that defendant's proportionate share of the  
total liability, that defendant is entitled to recover  
contribution from defendants who have paid less than their

1 proportionate share. Further, in any case, any defendant may  
2 recover from any other person all or a portion of the damages  
3 assessed that defendant, pursuant to the terms of a  
4 contractual agreement.

5 (b.2) Apportionment of responsibility among certain  
6 nonparties and effect.--For purposes of apportioning liability  
7 only, the question of liability of any defendant or other person  
8 who has entered into a release with the plaintiff with respect  
9 to the action and who is not a party shall be transmitted to the  
10 trier of fact upon appropriate requests and proofs by any party.

11 A person whose liability may be determined pursuant to this  
12 subsection SECTION does not include an employer to the extent <—  
13 that the employer is granted immunity from liability or suit  
14 pursuant to the act of June 2, 1915 (P.L.736, No.338), known as  
15 the Workers' Compensation Act. An attribution of responsibility  
16 to any person or entity as provided in this subsection shall not  
17 be admissible or relied upon in any other action or proceeding  
18 for any purpose. NOTHING IN THIS SECTION SHALL AFFECT THE <—  
19 ADMISSIBILITY OR NONADMISSIBILITY OF EVIDENCE REGARDING  
20 RELEASES, SETTLEMENTS, OFFERS TO COMPROMISE OR COMPROMISES AS  
21 SET FORTH IN THE PENNSYLVANIA RULES OF EVIDENCE. NOTHING IN THIS  
22 SECTION SHALL AFFECT THE RULES OF JOINDER OF PARTIES AS SET  
23 FORTH IN THE PENNSYLVANIA RULES OF CIVIL PROCEDURE.

24 ~~(b.3) Effect of release, covenant not to sue or similar~~ <—  
25 ~~agreement. A release, covenant not to sue or similar agreement~~  
26 ~~entered into by a plaintiff and a person who is or could be a~~  
27 ~~defendant in an action for damages for death, injury to person~~  
28 ~~or property or economic loss, may discharge that person from all~~  
29 ~~further liability, but does not discharge any other person~~  
30 ~~liable with respect to the same cause of action unless the~~

1 ~~release, covenant not to sue or similar agreement specifically~~  
2 ~~so provides. However, any damages which the plaintiff is~~  
3 ~~entitled to recover shall be reduced by the largest of the~~  
4 ~~following:~~

5 ~~(1) The released person's proportional share of the~~  
6 ~~plaintiff's damages as though the released person were a~~  
7 ~~defendant at the time judgment is entered.~~

8 ~~(2) The amount paid to the plaintiff by the person~~  
9 ~~entering into the release, covenant not to sue or similar~~  
10 ~~agreement.~~

11 ~~(3) The amount or proportion by which the release,~~  
12 ~~covenant not to sue or similar agreement provides that the~~  
13 ~~total damages of the plaintiff shall be reduced.~~

14 (c) Downhill skiing.--

15 (1) The General Assembly finds that the sport of  
16 downhill skiing is practiced by a large number of citizens of  
17 this Commonwealth and also attracts to this Commonwealth  
18 large numbers of nonresidents significantly contributing to  
19 the economy of this Commonwealth. It is recognized that as in  
20 some other sports, there are inherent risks in the sport of  
21 downhill skiing.

22 (2) The doctrine of voluntary assumption of risk as it  
23 applies to downhill skiing injuries and damages is not  
24 modified by subsections (a) and [(b)] (b.1).

25 ~~(c.1) Savings provisions.--Nothing in this section shall be~~  
26 ~~construed in any way to create, abolish or modify a cause of~~  
27 ~~action or to limit a party's right to join another potentially~~  
28 ~~responsible party.~~

29 (d) Definitions.--As used in this section the following  
30 words and phrases shall have the meanings given to them in this

1 subsection:

2 "Defendant or defendants [against whom recovery is sought]."

3 Includes impleaded defendants.

4 "Plaintiff." Includes counter claimants and cross-claimants.

5 Section 3. Nothing in this act shall be construed to  
6 diminish the immunity of an employer to the extent that the  
7 employer is granted immunity from liability or suit pursuant to  
8 the act of June 2, 1915 (P.L.736, No.338), known as the Workers'  
9 Compensation Act.

10 Section 4. Chapter 47 of Title 42 is a continuation of the  
11 act of May 28, 1995 (1st Sp.Sess., P.L.1009, No.14), known as  
12 the DNA Detection of Sexual and Violent Offenders Act.

13 Section 5. The act of May 28, 1995 (1st Sp.Sess., P.L.1009,  
14 No.14), known as the DNA Detection of Sexual and Violent  
15 Offenders Act, is repealed.

16 Section 6. The amendment of 42 Pa.C.S. § 7102 shall apply to  
17 all causes of action that accrue after the effective date of  
18 this section.

19 SECTION 6.1. THE PROVISIONS OF THIS ACT ARE SEVERABLE. IF ←  
20 ANY PROVISION OF THIS ACT OR ITS APPLICATION TO ANY PERSON OR  
21 CIRCUMSTANCE IS HELD INVALID, THE INVALIDITY SHALL NOT AFFECT  
22 OTHER PROVISIONS OR APPLICATIONS OF THIS ACT WHICH CAN BE GIVEN  
23 EFFECT WITHOUT THE INVALID PROVISION OR APPLICATION.

24 Section 7. This act shall take effect as follows:

25 (1) The references to 18 Pa.C.S. §§ 2901, 2910, 3502,  
26 3701, 4302, 5902(c)(iii) and (iv), 5903(a), 6318 and 6320 in  
27 the definitions of "felony sex offense" and "other specified  
28 offenses" of 42 Pa.C.S. § 4703 shall take effect in 180 days.

29 (2) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT IN 60 ←  
30 DAYS:

1 (I) THE AMENDMENT OF 42 PA.C.S. § 7102.

2 (II) SECTION 3 OF THIS ACT.

3 (III) SECTION 6 OF THIS ACT.

4 ~~(2)~~ (3) The remainder of this act shall take effect ←  
5 immediately.