**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 11 TO CHAPTER 3, TITLE 23 SO AS TO ENACT THE “INNOCENCE PROTECTION ACT”, TO PROVIDE THAT A PERSON IN CUSTODY AFTER CONVICTION MAY APPLY TO THE COURT FOR CERTAIN FORENSIC DNA TESTING, TO PROVIDE FOR THE DUTIES AND RESPONSIBILITIES OF A COURT UPON RECEIPT OF AN APPLICATION FOR DNA TESTING, AND TO PROVIDE FOR PRESERVATION OF BIOLOGICAL MATERIAL SECURED IN CONNECTION WITH A CRIMINAL CASE FOR AS LONG AS THE MATERIAL MAY HAVE PROBATIVE VALUE AS EVIDENCE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. (A) The General Assembly finds that:

(1) over the past decade, deoxyribonucleic acid testing (DNA) has emerged as the most reliable forensic technique for identifying criminals when biological materials are left at a crime scene;

(2) because of its scientific precision, DNA testing can, in some cases, conclusively establish the guilt or innocence of a criminal defendant. In other cases, DNA testing may not conclusively establish guilt or innocence, but may have significant probative value to a judge or jury;

(3) while DNA testing is increasingly commonplace in pretrial investigations today, it was not widely available in cases tried before 1994. Moreover, new forensic DNA testing procedures have made it possible to obtain results from minute samples that could not previously be tested, and to obtain more informative and accurate results than earlier forms of forensic DNA testing could produce. Consequently, convicted inmates have been exonerated by new DNA tests after earlier tests had failed to produce definitive results;

(4) since DNA testing is often feasible on relevant biological material that is decades old, it can, in some circumstances, prove that a conviction that predated the development of DNA testing was based upon incorrect factual findings. Uniquely, DNA evidence showing innocence, produced decades after a conviction, provides a more reliable basis for establishing a correct verdict than any evidence proffered at the original trial. DNA testing, therefore, can and has resulted in the post‑conviction exoneration of innocent Americans;

(5) in the past decade, there have been more than one hundred post‑conviction exonerations in the United States and Canada based upon DNA testing. At least eleven individuals sentenced to death have been exonerated through post‑conviction DNA testing, some of whom came within days of being executed;

(6) the advent of DNA testing raises serious concerns regarding the prevalence of wrongful convictions, especially wrongful convictions arising out of mistaken eyewitness identification testimony. According to a 1996 Department of Justice study titled ‘Convicted by Juries, Exonerated by Science: Case Studies of Post‑Conviction DNA Exonerations’, in approximately twenty to thirty percent of the cases referred for DNA testing, the results excluded the primary suspect. Without DNA testing, many of these individuals might have been wrongfully convicted;

(7) if biological material is not subjected to DNA testing in appropriate cases, a significant risk exists that persuasive evidence of innocence will not be detected and, accordingly, that innocent persons will be unconstitutionally incarcerated or executed;

(8) there is also a compelling need to ensure the preservation of biological material for post‑conviction DNA testing. Since 1992, the Innocence Project at the Benjamin N. Cardozo School of Law has studied inmates’ claims that DNA testing could prove them innocent. In over seventy percent of those cases in which DNA testing could have been dispositive if the biological material were available, the material had been destroyed or lost. In two‑thirds of the cases in which the evidence was found, and DNA testing conducted, the results have exonerated the inmate; and

(9) in at least fourteen cases, post‑conviction DNA testing that exonerated a wrongly convicted person also provided evidence leading to the apprehension of the actual perpetrator, thereby enhancing public safety. This would not have been possible if the biological evidence had been destroyed.

(B) The purpose of Article 11, Chapter 3, Title 23 is to ensure the availability of DNA testing in appropriate cases and ensure that wrongfully convicted persons have an opportunity to establish their innocence through DNA testing, by requiring the preservation of DNA evidence.

SECTION 2. Chapter 3, Title 23 of the 1976 Code is amended by adding:

“Article 11

Innocence Protection Act

Section 23‑3‑910. This article may be cited as the ‘Innocence Protection Act’.

Section 23‑3‑920. As used in this article, ‘DNA’ means deoxyribonucleic acid.

Section 23‑3‑930. (A) Notwithstanding another provision of law, a person in custody pursuant to the judgment of a court of this State, at any time after conviction, may apply to the court that entered the judgment for forensic DNA testing of:

(1) biological material related to the investigation or prosecution that resulted in the judgment;

(2) biological material in the actual or constructive possession of the State; or

(3) biological material not previously subjected to DNA testing, or which may be subjected to retesting with new DNA techniques that provide a reasonable likelihood of more accurate and probative results.

(B)(1) The court shall notify the State of an application made pursuant to the provisions of subsection (A), and shall afford the State an opportunity to respond.

(2) Upon receiving notice of an application for DNA testing, the State shall ensure that any remaining biological material secured in connection with the case is preserved pending the completion of proceedings pursuant to the provisions of this section.

(3) The court shall order DNA testing upon a determination that an applicant’s testing may produce noncumulative, exculpatory evidence relevant to the applicant’s claim of wrongful conviction or sentence.

(C) The cost of DNA testing ordered pursuant to the provisions of subsection (B)(3) is borne by the State or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the means to pay.

(D) The court, at any time, may appoint counsel for an indigent applicant.

(E)(1) If the results of DNA testing conducted pursuant to the provisions of this section are unfavorable to the applicant, the court shall:

(a) dismiss the application; and

(b) in the case of an applicant who is not indigent, may assess the applicant for the cost of testing.

(2) If the results of DNA testing conducted pursuant to the provisions of this section are favorable to the applicant, the court shall:

(a) order a hearing, notwithstanding another provision of law, that bars such a hearing; and

(b) enter an order that serves the interests of justice, including an order vacating and setting aside a judgment or conviction, discharging the applicant if the applicant is in custody, resentencing the applicant, or granting a new trial.

Section 23‑3‑940. Nothing in this article limits the circumstances under which a person may obtain DNA testing or other post‑conviction relief pursuant to the provisions of another law.

Section 23‑3‑950. Notwithstanding another provision of law, the State shall preserve all biological material secured in connection with a criminal case while a person is incarcerated in connection with that case, and for so long thereafter as the material may be used or have probative value as evidence in a civil or criminal case in a state or federal court in this or another state.”

SECTION 3. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑