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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - POST CONVICTION REMEDY

Introduced By: Senators McCaffrey, and Lynch

Date Introduced: March 03, 2015

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 10-9.1-11 of the General Laws in Chapter 10-9.1 entitled "Post
2 Conviction Remedy" is hereby amended to read as follows:

3 **10-9.1-11. Innocence protection -- Mandatory preservation of biological evidence. --**

4 (a) Mandatory preservation. - During the term of the defendant's incarceration resulting from his
5 or her conviction after trial, the Rhode Island state police and each and every municipal police
6 department in the state of Rhode Island, their agents, and any person to whom biological evidence
7 has been transferred shall be obligated to preserve all biological evidence that comes into its
8 possession during the course of a criminal investigation.

9 (b) Petition to destroy evidence. - A police department or agent may be relieved of the
10 obligation of mandatory preservation by applying to a justice of the superior court for permission
11 to destroy biological evidence. Upon receipt of the petition, a justice of the superior court shall
12 hold a hearing, and after giving notice to all defendants charged in connection with the
13 prosecution, the justice shall grant the petition upon finding that:

14 (1) The Rhode Island Supreme Court has decided the defendant's appeal; and

15 (2) The defendant does not seek further preservation of the biological evidence.

16 (c) Petition by defendant requesting testing. - Notwithstanding any other provision of
17 law governing postconviction relief, any person who was convicted of and sentenced for a crime
18 ~~and who is currently serving an actual term of imprisonment and incarceration pursuant to that~~
19 ~~sentence~~ may, at any time, file a petition with the superior court requesting the forensic DNA

1 testing of any evidence that is in the possession or control of the prosecution, law enforcement,
2 laboratory, or court. A person filing a petition under this section must certify under the pains and
3 penalties of perjury that the requested testing is related to the investigation or prosecution that
4 resulted in the judgment of conviction and that the evidence sought to be tested contains
5 biological evidence.

6 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO COURTS AND CIVIL PROCEDURE - POST CONVICTION REMEDY

1 This act would remove the requirement that a person convicted of and sentenced for a
2 crime be presently serving an initial term of imprisonment prior to requesting forensic DNA
3 testing.

4 This act would take effect upon passage.

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