

THE GENERAL ASSEMBLY OF PENNSYLVANIA

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BELFANTI, HERSHEY, STEIL AND L. I. COHEN, MARCH 6, 1995

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 6, 1995

AN ACT

1 Providing for DNA testing of certain offenders; establishing the
2 State DNA Data Base and the State DNA Data Bank; further
3 providing for duties of the Pennsylvania State Police;
4 imposing costs on certain offenders; and establishing the DNA
5 Detection Fund.

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26 The General Assembly of the Commonwealth of Pennsylvania
27 hereby enacts as follows:

28 CHAPTER 1

29 PRELIMINARY PROVISIONS

1 Section 101. Short title.

2 This act shall be known and may be cited as the DNA Detection
3 of Sexual and Violent Offenders Act.

4 Section 102. Policy.

5 The General Assembly finds and declares that DNA data banks
6 are an important tool in criminal investigations and in
7 deterring and detecting recidivist acts. Several states have
8 enacted laws requiring persons convicted of certain crimes,
9 especially sex offenses, to provide genetic samples for DNA
10 profiling. Moreover, it is the policy of this Commonwealth to
11 assist Federal, State and local criminal justice and law
12 enforcement agencies in the identification and detection of
13 individuals who are the subjects of criminal investigations. It
14 is therefore in the best interest of the Commonwealth to
15 establish a DNA data base and a DNA data bank containing DNA
16 samples submitted by individuals convicted of felony sex
17 offenses and other specified offenses.

18 Section 103. Definitions.

19 The following words and phrases when used in this act shall
20 have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "ARD." Accelerated Rehabilitative Disposition or a
23 disposition under section 17 or 18 of the act of April 14, 1972
24 (P.L.233, No.64), known as The Controlled Substance, Drug,
25 Device and Cosmetic Act.

26 "CODIS." The term is derived from Combined DNA Index System,
27 the Federal Bureau of Investigation's national DNA
28 identification index system that allows the storage and exchange
29 of DNA records submitted by State and local forensic DNA
30 laboratories.

1 "Commissioner." The Commissioner of the Pennsylvania State
2 Police.

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

5 "DNA." Deoxyribonucleic acid. DNA is located in the cells
6 and provides an individual's personal genetic blueprint. DNA
7 encodes genetic information that is the basis of human heredity
8 and forensic identification.

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

19 "DNA sample." A blood or tissue sample provided by any
20 person with respect to offenses covered by this act or submitted
21 to the Pennsylvania State Police laboratory pursuant to this act
22 for analysis or storage, or both.

23 "FBI." The Federal Bureau of Investigation.

24 "Felony sex offense." A felony offense, or an attempt,
25 conspiracy or solicitation to commit a felony offense, under any
26 of the following:

27 18 Pa.C.S. Ch. 31 (relating to sexual offenses)

28 18 Pa.C.S. § 6312 (relating to sexual abuse of children)

29 "Fund." The DNA Detection Fund established in section 504.

30 "Other specified offense." An offense, or an attempt,

1 conspiracy or solicitation to commit an offense, under any of
2 the following:

3 18 Pa.C.S. § 2502 (relating to murder)

4 18 Pa.C.S. § 2709(c)(2)(ii) (relating to harassment and
5 stalking)

6 18 Pa.C.S. § 3126 (relating to indecent assault)

7 "State Police." The Pennsylvania State Police.

8 CHAPTER 3

9 GENERAL PROVISIONS

10 Section 301. Powers and duties of State Police.

11 In addition to any other powers and duties conferred by this
12 act, the State Police shall:

13 (1) Be responsible for the policy management and
14 administration of the State DNA identification record system
15 to support law enforcement agencies and other criminal
16 justice agencies.

17 (2) Promulgate rules and regulations to carry out the
18 provisions of this act.

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

23 Section 302. State DNA Data Base.

24 There is hereby established the State DNA Data Base. It shall
25 be administered by the State Police and provide DNA records to
26 the FBI for storage and maintenance of CODIS. The State DNA Data
27 Base shall have the capability provided by computer software and
28 procedures administered by the State Police to store and
29 maintain DNA records related to forensic casework, to convicted
30 offenders required to provide a DNA sample under this act and to

1 anonymous DNA records used for research or quality control.

2 Section 303. State DNA Data Bank.

3 There is hereby established the State DNA Data Bank. It shall
4 serve as the repository of DNA samples collected under this act.

5 Section 304. State Police recommendation of additional
6 offenses.

7 The State Police may recommend to the General Assembly that
8 it enact legislation for the inclusion of additional offenses
9 for which DNA samples shall be taken and otherwise subjected to
10 the provisions of this act. In determining whether to recommend
11 additional offenses, the State Police shall consider those
12 offenses for which DNA testing will have a substantial impact on
13 the detection and identification of sex offenders and violent
14 offenders.

15 Section 305. Procedural compatibility with FBI.

16 The DNA identification system as established by the State
17 Police shall be compatible with the procedures specified by the
18 FBI, including use of comparable test procedures, laboratory
19 equipment, supplies and computer software.

20 Section 306. DNA sample required upon conviction, delinquency
21 adjudication or ARD.

22 (a) Conviction after effective date.--A person who is
23 convicted, adjudicated delinquent or granted ARD for a felony
24 sex offense or other specified offense on or after the effective
25 date of this section shall have a DNA sample drawn as follows:

26 (1) A person who is sentenced or receives a delinquency
27 disposition to a term of confinement for an offense covered
28 by this subsection shall have a DNA sample drawn upon intake
29 to a prison, jail or juvenile detention facility or any other
30 detention facility or institution. If the person is already

1 confined at the time of sentencing or adjudication, the
2 person shall have a DNA sample drawn immediately after the
3 sentencing or adjudication.

4 (2) A person who is convicted, adjudicated delinquent or
5 granted ARD for an offense covered by this subsection shall
6 have a DNA sample drawn as a condition for any sentence,
7 adjudication or grant of ARD which disposition will not
8 involve an intake into a prison, jail, juvenile detention
9 facility or any other detention facility or institution.

10 (3) Under no circumstances shall a person who is
11 convicted, adjudicated delinquent or granted ARD for an
12 offense covered by this subsection be released in any manner
13 after such disposition unless and until a DNA sample has been
14 withdrawn.

15 (b) Conviction before effective date.--A person who is
16 convicted, adjudicated delinquent or granted ARD for a felony
17 sex offense or other specified offense before the effective date
18 of this section shall have a DNA sample drawn as follows:

19 (1) A person who has been convicted or adjudicated
20 delinquent for an offense covered by this subsection and who
21 is still serving a term of confinement in connection
22 therewith on the effective date of this section shall have a
23 DNA sample drawn prior to release.

24 (2) A person who is convicted, adjudicated delinquent or
25 granted ARD for an offense covered by this subsection shall
26 not be released in any manner after such disposition prior to
27 the expiration of his maximum term of confinement unless and
28 until a DNA sample has been withdrawn.

29 (c) Court supervision of DNA samples.--All DNA samples taken
30 pursuant to this section shall be taken in accordance with

1 regulations promulgated by the State Police in consultation with
2 the Department of Corrections.

3 (d) Definition.--As used in this section, the term
4 "released" means any release, parole, furlough, work release,
5 prerelease or release in any other manner from a prison, jail,
6 juvenile detention facility or any other place of confinement.
7 Section 307. Procedures for withdrawal, collection and
8 transmission of DNA samples.

9 (a) Drawing of DNA samples.--Each DNA sample required to be
10 drawn pursuant to section 306 from persons who are incarcerated
11 or confined shall be drawn at the place of incarceration or
12 confinement as provided for in section 306. DNA samples from
13 persons who are not ordered or sentenced to a term of
14 confinement shall be drawn at a prison, jail unit, juvenile
15 facility or other facility to be specified by the court. Only
16 those individuals qualified to draw DNA samples in a medically
17 approved manner shall draw a DNA sample to be submitted for DNA
18 analysis. Such sample shall be received by the State Police
19 within 48 hours of drawing the sample.

20 (b) No liability.--Persons authorized to draw DNA samples
21 under this section shall not be civilly liable or criminally
22 liable for withdrawing a DNA sample and reporting test results
23 pursuant to this act if they perform these activities in good
24 faith.

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

30 Section 308. 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 this act. The DNA sample
6 typing results shall be securely stored in the State DNA Data
7 Base and records of testing shall be retained on file with the
8 State Police consistent with the procedures established by the
9 FBI. These procedures shall also include quality assurance
10 guidelines to insure that DNA identification records meet
11 standards for laboratories which submit DNA records to the State
12 DNA Data Base.

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

15 (c) Use of tests.--The tests to be performed on each DNA
16 sample shall be used only for law enforcement purposes or to
17 assist in the recovery or identification of human remains from
18 disasters or for other humanitarian purposes, including
19 identification of missing persons.

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

25 Section 309. DNA data base exchange.

26 (a) Receipt of DNA samples by State Police.--It shall be the
27 duty of the State Police to receive DNA samples, to store, to
28 perform analysis or to contract for DNA typing analysis with a
29 qualified DNA laboratory that meets the guidelines as
30 established by the State Police, to classify and to file the DNA

1 record of identification characteristic profiles of DNA samples
2 submitted under this act and to make such information available
3 as provided in this section. The State Police may contract out
4 the storage of DNA typing analysis and may contract out DNA
5 typing analysis to a qualified DNA laboratory that meets
6 guidelines as established by the State Police. The results of
7 the DNA profile of individuals in the State DNA Data Base shall
8 be made available to criminal justice agencies or approved crime
9 laboratories which serve these agencies or upon written or
10 electronic request and in furtherance of an official
11 investigation of a criminal offense or offender or suspected
12 offender.

13 (b) Methods of obtaining information.--The State Police
14 shall adopt guidelines governing the methods of obtaining
15 information from the State DNA Data Base and CODIS and
16 procedures for verification of the identity and authority of the
17 requester.

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

26 Section 310. Cancellation of authority to access or exchange
27 DNA records.

28 The State Police shall be authorized, for good cause shown,
29 to revoke or suspend the right of a forensic DNA laboratory
30 within this Commonwealth to access or exchange DNA

1 identification records with criminal justice agencies.

2 Section 311. Expungement.

3 A person whose DNA record or profile has been included in the
4 data bank pursuant to this act may request expungement on the
5 grounds that the conviction on which the authority for including
6 his DNA record or profile was based has been reversed and the
7 case dismissed. The State Police shall purge all records and
8 identifiable information in the data bank pertaining to the
9 person and destroy all samples from the person upon receipt of a
10 written request for expungement pursuant to this section and a
11 certified copy of the final court order reversing and dismissing
12 the conviction.

13 Section 312. Mandatory cost.

14 A mandatory cost of \$250, which shall be in addition to any
15 other costs imposed pursuant to statutory authority, shall
16 automatically be assessed on any person convicted, adjudicated
17 delinquent or granted ARD for a felony sex offense or other
18 specified offense, and all proceeds derived from this section
19 shall be transmitted to the fund.

20 CHAPTER 5

21 ENFORCEMENT AND OTHER PROVISIONS

22 Section 501. Criminal penalties.

23 (a) Disclosure.--Any person who, by virtue of employment or
24 official position, or any person contracting to carry out any
25 functions under this act, including any officers, employees and
26 agents of such contractor, who has possession of or access to
27 individually identifiable DNA information contained in the State
28 DNA Data Base or in the State DNA Data Bank and who for
29 pecuniary gain for such person or for any other person willfully
30 discloses it in any manner to any person or agency not entitled

1 to receive it commits a misdemeanor of the first degree.

2 (b) Obtaining information.--Any person who, without
3 authorization, willfully obtains individually identifiable DNA
4 information from the State DNA Data Base or the State DNA Data
5 Bank commits a misdemeanor of the first degree.

6 Section 502. Civil actions.

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

16 (b) Action for damages.--

17 (1) Any person aggrieved by a violation of the
18 provisions of this act or of the rules and regulations
19 promulgated under this act shall have the substantive right
20 to bring an action for damages by reason of such violation in
21 a court of competent jurisdiction.

22 (2) A person found by the court to have been aggrieved
23 by a violation of this act or the rules or regulations
24 promulgated under this act shall be entitled to actual and
25 real damages of not less than \$100 for each violation and to
26 reasonable costs of litigation and attorney fees. Exemplary
27 and punitive damages of not less than \$1,000 nor more than
28 \$10,000 shall be imposed for any violation of this act or the
29 rules or regulations adopted under this act found to be
30 willful.

1 Section 503. Confidentiality of records.

2 All DNA profiles and samples submitted to the State Police
3 pursuant to this act shall be treated as confidential except as
4 otherwise provided in this act.

5 Section 504. DNA Detection Fund.

6 There is hereby established in the State Treasury a
7 restricted fund to be known as the DNA Detection Fund. All costs
8 collected under section 312 shall be paid into the fund. All
9 moneys in the fund and the interest accruing thereon are hereby
10 appropriated to the Pennsylvania State Police, on a continuing
11 basis, to carry out the provisions of this act, upon
12 authorization of the Governor for each fiscal year.

13 Section 505. Authority of law enforcement officers.

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

17 CHAPTER 11

18 MISCELLANEOUS PROVISIONS

19 Section 1101. State Police notice of capability to carry out
20 act.

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

25 Section 1102. Effective date.

26 This act shall take effect as follows:

27 (1) Section 306 and those provisions of this act which
28 provide for the collection, submission, identification,
29 analysis, storage and disposition of DNA samples shall take
30 effect 60 days after the date the notice specified in section

1 1101 is published in the Pennsylvania Bulletin or 18 months
2 after the date of final enactment of this act, whichever is
3 earlier.

4 (2) This chapter shall take effect immediately.

5 (3) The remainder of this act shall take effect in 60
6 days or on July 1, 1995, whichever is later.