

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 1995 Session of  
2009

INTRODUCED BY MATZIE, D. COSTA, BELFANTI, KORTZ, SIPTROTH AND  
WAGNER, SEPTEMBER 22, 2009

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 22, 2009

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, providing for preservation of  
3 biological evidence, for violations, for standards and  
4 training programs and for tracking system.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Title 18 of the Pennsylvania Consolidated  
8 Statutes is amended by adding a chapter to read:

9 CHAPTER 95

10 CRIME LABS

11 § 9501. Definitions.

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

15 "Biological evidence." Evidence collected in connection with  
16 a criminal investigation which may contain biological material  
17 from a victim or a suspect in an offense that was the subject of  
18 a criminal investigation, or may reasonably be used to  
19 incriminate or exculpate a person for the offense.

1 "Custody." Actual or constructive control of:

2 (1) a person under sentence of imprisonment;

3 (2) a probationer, parolee or person on extended  
4 supervision of the Department of Corrections; or

5 (3) a person under a dispositional order, in  
6 institutional care, on conditional release or on supervised  
7 release under a commitment order.

8 "DNA." Deoxyribonucleic acid.

9 "Inmate." A person convicted, on probation or parole,  
10 civilly committed or subject to registration as a sex offender  
11 in connection with a case.

12 "Profile." A unique identifier of an individual derived from  
13 DNA.

14 "State." A governmental or public entity within the  
15 Commonwealth, its officials or employees, including, but not  
16 limited to:

17 (1) Law enforcement agencies.

18 (2) Prosecutor's offices.

19 (3) Courts.

20 (4) Public hospitals.

21 (5) Crime laboratories.

22 (6) Other entities or individuals charged with the  
23 collection, storage or retrieval of biological evidence.

24 § 9502. Preservation of biological evidence.

25 (a) Duty.--The State shall preserve biological evidence  
26 secured in relation to an investigation or prosecution of a  
27 felony for the period of time an inmate remains under State  
28 jurisdiction. This includes evidence:

29 (1) In possession of the State during the investigation  
30 and prosecution of the case.

1       (2) Likely to contain biological material at the time of  
2       conviction.

3       (b) Prohibition.--The State shall not destroy biological  
4       evidence so long as a codefendant is an inmate in connection  
5       with the case.

6       (c) Retention of evidence.--The State shall retain evidence  
7       in an amount and manner sufficient to develop a DNA profile from  
8       the biological material contained in, or included on, the  
9       evidence.

10       (d) Inventory.--The State shall prepare an inventory of the  
11       biological evidence that has been preserved in connection with  
12       the case.

13       (e) Destruction of evidence.--The State may destroy evidence  
14       before the expiration of the time specified in subsection (a) if  
15       all of the following apply:

16               (1) No other provision of Federal or State law requires  
17               the State to preserve the evidence.

18               (2) The State sends a notice of an intent to destroy,  
19               with an affidavit of service, to:

20                       (i) The inmate.

21                       (ii) The attorney of record for each inmate.

22                       (iii) The public defender.

23                       (iv) The district attorney.

24                       (v) The Attorney General.

25               (3) No person notified under paragraph (2) does either  
26               of the following within 180 days of the date of service:

27                       (i) files a motion for testing of the evidence under  
28                       42 Pa.C.S. § 9543.1 (relating to postconviction DNA  
29                       testing); or

30                       (ii) submits a written request for retention of

evidence to the State.

(f) Duty to retain evidence.--If, after providing a notice of intent to destroy under subsection (e)(2), the State receives a written request for retention of the evidence, the State shall retain the evidence until the inmate is no longer in custody.

(g) Evidence to be returned to its owner.--The State shall not be required to preserve evidence that must be returned to its rightful owner, or is of such size, bulk or physical character as to render retention impracticable, if practical. The State shall remove and preserve portions of this material evidence sufficient to permit future DNA testing before returning or disposing of it.

(h) Missing biological evidence.--Should the State be called upon to produce biological evidence that could not be located, and whose preservation was required under the provisions of this chapter, the chief evidence custodian assigned to the entity charged with the preservation of the evidence shall provide an affidavit in which the chief evidence custodian stipulates, under penalty of perjury, the efforts taken to locate the evidence and that the evidence could not be located.

§ 9503. Violations.

The court may impose appropriate sanctions or remedies, such as contempt, granting a new trial, dismissal of charges, sentence reduction or sentence modification if the court determines that evidence was destroyed in violation of the provisions of this chapter.

§ 9504. Standards and training programs.

(a) Standards.--The State shall devise standards for the proper collection and retention of biological evidence.

(b) Training programs.--The Attorney General shall

1 administer and conduct training programs for law enforcement  
2 officers and other relevant employees who are charged with  
3 preserving biological evidence regarding the methods and  
4 procedures referenced in this chapter.

5 § 9505. Tracking system.

6 (a) Duty to develop.--The State shall develop a centralized  
7 tracking system for biological evidence in its control.

8 (b) Functioning.--The system shall allow evidence connected  
9 to either open cases or postconviction DNA testing cases to be  
10 located expeditiously.

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