

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL****No. 775**      Session of  
2011

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INTRODUCED BY PILEGGI, GREENLEAF, RAFFERTY, ERICKSON, YAW,  
PIPPY, LEACH, VANCE, SOLOBAY, WARD AND BROWNE, MARCH 15, 2011

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AS AMENDED ON THIRD CONSIDERATION, DECEMBER 5, 2011

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## AN ACT

1 Amending Title 44 (Law and Justice) of the Pennsylvania  
2 Consolidated Statutes, in DNA data and testing, further  
3 providing for policy, for definitions, for State DNA Data  
4 Base, for procedural compatibility with FBI and for DNA  
5 sample required upon conviction, delinquency adjudication and  
6 certain ARD cases; providing for collection from persons  
7 accepted from other jurisdictions; further providing for  
8 procedures for withdrawal, collection and transmission of DNA  
9 samples, for procedures for conduct, disposition and use of  
10 DNA analysis; providing for request for modified DNA search;  
11 further providing for DNA data base exchange and for  
12 expungement; and providing for severability.

13 The General Assembly of the Commonwealth of Pennsylvania  
14 hereby enacts as follows:

15 Section 1. Sections 2302, 2303, 2312 and 2315 of Title 44 of  
16 the Pennsylvania Consolidated Statutes are amended to read:

17 § 2302. Policy.

18 The General Assembly finds and declares that:

19 (1) DNA data banks are an important tool in criminal  
20 investigations, in [the exclusion of] excluding innocent  
21 individuals who are the subject of criminal investigations or  
22 prosecutions and in [deterring and detecting recidivist acts]  
23 detecting and deterring repeated crimes by the same

1 individual.

2 (2) Several states have enacted laws requiring persons  
3 arrested, charged or convicted of certain crimes, especially  
4 sex offenses, to provide genetic samples for DNA profiling.

5 (2.1) Several states have authorized the use of DNA  
6 analysis to identify crime scene DNA profiles by establishing  
7 that the source of a crime scene DNA profile is likely to be  
8 a close relative of a specific individual whose DNA record is  
9 on file.

10 (3) Moreover, it is the policy of the Commonwealth to  
11 assist Federal, State and local criminal justice and law  
12 enforcement agencies in the identification and detection of  
13 individuals in criminal investigations.

14 (4) It is therefore in the best interest of the  
15 Commonwealth to establish a DNA data base and a DNA data bank  
16 containing DNA samples submitted by individuals arrested for,  
17 charged with, convicted of, adjudicated delinquent for or  
18 accepted into ARD for felony sex offenses and other specified  
19 offenses.

20 (5) It is in the best interest of the Commonwealth to  
21 authorize the State Police to use DNA analysis and to  
22 identify these individuals to a criminal justice agency in  
23 certain cases.

24 § 2303. Definitions.

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

28 "Accredited forensic DNA laboratory." A forensic DNA  
29 laboratory that has received accreditation by an accrediting  
30 body nationally recognized within the forensic science community

1 in accordance with the FBI Quality Assurance Standards to  
2 perform forensic DNA testing and is in compliance with FBI  
3 quality assurance standards.

4 "ARD." Accelerated Rehabilitative Disposition.

5 "CODIS." The [term is derived from] Combined DNA Index  
6 System, the Federal Bureau of Investigation's national DNA  
7 identification index system that allows the storage and exchange  
8 of DNA records submitted by state and local forensic DNA  
9 laboratories.

10 "Commissioner." The Commissioner of the Pennsylvania State  
11 Police.

12 "Crime scene DNA profile." A DNA profile that characterizes  
13 the sample of DNA found on a victim or originating from and  
14 associated with the scene of a crime.

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

17 "DNA." Deoxyribonucleic acid. DNA is located in the cells  
18 and provides an individual's personal genetic blueprint. DNA  
19 encodes genetic information that is the basis of human heredity  
20 and forensic identification.

21 "DNA record." DNA identification information stored in the  
22 State DNA Data Base or the Combined DNA Index System for the  
23 purpose of generating investigative leads or supporting  
24 statistical interpretation of DNA test results. The term  
25 includes nuclear and mitochondrial typing. The DNA record is the  
26 result obtained from the DNA typing tests. The DNA record is  
27 comprised of the characteristics of a DNA sample which are of  
28 value in establishing the identity of individuals or the source  
29 of a crime scene DNA profile. The results of all DNA  
30 identification tests on an individual's DNA sample are also

1 collectively referred to as the DNA profile of an individual.

2 "DNA sample." A [blood or tissue] bodily sample;

3 (1) provided by any person with respect to offenses  
4 covered by this chapter or submitted to the Pennsylvania  
5 State Police laboratory pursuant to the former act of May 28,  
6 1995 (1st Sp.Sess., P.L.1009, No.14), known as the DNA  
7 Detection of Sexual and Violent Offenders Act, to the former  
8 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or to  
9 this chapter for analysis or storage, or both[.]; or

10 (2) found at a crime scene that might have come from a  
11 possible offender.

12 "FBI." The Federal Bureau of Investigation.

13 "Felony sex offense." A felony offense or an attempt,  
14 conspiracy or solicitation to commit a felony offense under any  
15 of the following:

16 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

17 18 Pa.C.S. § 4302 (relating to incest).

18 18 Pa.C.S. § 5902(c)(1)(iii) and (iv) (relating to  
19 prostitution and related offenses).

20 18 Pa.C.S. § 5903(a) (relating to obscene and other  
21 sexual materials and performances) where the offense  
22 constitutes a felony.

23 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

24 18 Pa.C.S. § 6318 (relating to unlawful contact with  
25 minor) where the most serious underlying offense for which  
26 the defendant contacted the minor is graded as a felony.

27 18 Pa.C.S. § 6320 (relating to sexual exploitation of  
28 children).

29 "Forensic DNA laboratory." A laboratory that performs  
30 forensic DNA testing for the purposes of identification.

1 "Forensic DNA testing." A test that applies techniques from  
2 molecular biology to deoxyribonucleic acid (DNA) to help resolve  
3 issues of identification.

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

7 "Fund." The DNA Detection Fund reestablished in section 2335  
8 (relating to DNA Detection Fund).

9 "Human behavioral genetic research." The study of the  
10 possible genetic underpinnings of behaviors, including, but not  
11 limited to, aggression, substance abuse, social attitudes,  
12 mental abilities, sexual activity and eating habits.

13 "Judicial determination." A determination by a court of  
14 competent jurisdiction, including a settlement approved by such  
15 court.

16 "Law enforcement identification purposes." Assisting in the  
17 determination of the identity of an individual whose DNA is  
18 contained in a biological sample.

19 "Mitochondrial DNA analysis." A method that applies  
20 techniques from molecular biology to analyze DNA found in the  
21 mitochondria of cells.

22 "Modified DNA search." A search of a crime scene DNA profile  
23 against the State DNA Data Base by the State Police that is  
24 conducted using the procedure and methods set forth in the  
25 regulations published under section 2318.1(d)(3) (relating to  
26 request for modified DNA search).

27 "Other specified offense." [A felony offense or an offense  
28 under 18 Pa.C.S. § 2910 (relating to luring a child into a motor  
29 vehicle) or 3126 (relating to indecent assault) or an attempt to  
30 commit such an offense.] Any of the following:

1           A felony offense.  
2           18 Pa.C.S. § 2701(b)(2) (relating to simple assault).  
3           18 Pa.C.S. § 2902(a) (relating to unlawful restraint).  
4           18 Pa.C.S. § 2910 (relating to luring a child into a  
5           motor vehicle or structure.  
6           18 Pa.C.S. § 3126 (relating to indecent assault).  
7           18 Pa.C.S. § 3503(b)(1)(v) (relating to criminal  
8           trespass).  
9           18 Pa.C.S. § 4303 (relating to concealing death of  
10           child).  
11           18 Pa.C.S. § 4304 (relating to endangering welfare of  
12           children).  
13           18 Pa.C.S. § 4305 (relating to dealing in infant  
14           children).

15           An attempt, conspiracy or solicitation to commit a felony  
16           offense or other offense specified in this definition.

17           "State Police."   The Pennsylvania State Police.

18           "Y chromosome analysis." A method that applies techniques  
19           from molecular biology to examine DNA found on the Y chromosome.

20           § 2312.   State DNA Data Base.

21           [The State DNA Data Base is reestablished. It shall be  
22           administered by the State Police and provide DNA records to the  
23           FBI for storage and maintenance by CODIS.] A Statewide DNA Data  
24           Base is established within the State Police to provide DNA  
25           records to CODIS. The State DNA Data Base shall have the  
26           capability provided by computer software and procedures  
27           administered by the State Police to store and maintain DNA  
28           records related to:

29           (1)   forensic casework;

30           (2)   arrested, charged and convicted offenders required

1 to provide a DNA sample under this chapter; and  
2 (3) anonymous DNA records used for statistical research  
3 [or] on the frequency of DNA genotypes, quality control or  
4 the development of new DNA identification methods.

5 § 2315. Procedural compatibility with FBI.

6 The DNA identification system [as] established by the State  
7 Police shall be compatible with the procedures [specified]  
8 established by the FBI quality assurance standards for forensic  
9 DNA testing laboratories and DNA data basing laboratories and  
10 CODIS policies and procedures, including use of comparable test  
11 procedures, laboratory equipment, supplies and computer  
12 software.

13 Section 2. Section 2316 heading and subsections (a) and (b)  
14 (3) of Title 44 are amended and the section is amended by adding  
15 a subsection to read:

16 § 2316. DNA sample required upon arrest, criminal charge,  
17 conviction, delinquency adjudication and certain ARD  
18 cases.

19 (a) [General rule] Conviction or adjudication.--A person who  
20 is convicted or adjudicated delinquent for a felony sex offense  
21 or other specified offense or who is or remains incarcerated for  
22 a felony sex offense or other specified offense on or after the  
23 effective date of this chapter shall have a DNA sample [drawn]  
24 collected as follows:

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

1 adjudication, the person shall have a DNA sample [drawn]  
2 collected immediately after the sentencing or adjudication.  
3 If a DNA sample is not timely [drawn] collected in accordance  
4 with this section, the DNA sample may be [drawn] collected  
5 any time thereafter by the prison, jail, juvenile detention  
6 facility, detention facility or institution.

7 (2) A person who is convicted or adjudicated delinquent  
8 for an offense covered by this subsection shall have a DNA  
9 sample [drawn] collected as a condition for any sentence or  
10 adjudication which disposition will not involve an intake  
11 into a prison, jail, juvenile detention facility or any other  
12 detention facility or institution.

13 (3) Under no circumstances shall a person who is  
14 convicted or adjudicated delinquent for an offense covered by  
15 this subsection be released in any manner after such  
16 disposition unless and until a DNA sample has been  
17 [withdrawn] collected.

18 (b) Condition of release, probation or parole.--

19 \* \* \*

20 (3) This chapter shall apply to incarcerated persons and  
21 persons on probation or parole who were convicted or  
22 adjudicated delinquent for other specified offenses prior to  
23 the effective date of this paragraph whether or not the  
24 offense for which the person is currently imprisoned or under  
25 probation or parole supervision is a felony sex offense or  
26 other specified offense.

27 \* \* \*

28 (c.1) Criminal charge or arrest.--

29 (1) A person who is charged or arrested as an adult for  
30 a felony sex offense or other specified offense shall have a

1 DNA sample collected immediately following arrest, during  
2 booking or intake or as soon as administratively practical  
3 after arrest but not later than prior to release on bail or  
4 pending trial or any other physical release from confinement  
5 or custody.

6 (2) If for any reason a person does not provide a DNA  
7 sample and fingerprints under this chapter, the court shall  
8 order the person to report within five calendar days of  
9 arrest or charge to a prison, jail unit, juvenile facility or  
10 other facility to be specified by the court to provide DNA  
11 samples and fingerprints in accordance with this chapter.

12 (3) The State Police shall create a separate category  
13 within the data base to store DNA samples and records  
14 collected under this subsection, and the DNA records and  
15 samples contained therein shall not be subject to any  
16 modified DNA search authorized under section 2318.1 (relating  
17 to request for modified DNA search).

18 (4) This subsection shall apply as follows:

19 (i) Beginning 90 days after the effective date of  
20 this subsection, any person required to provide a DNA  
21 sample under this subsection for an arrest or charge  
22 under 18 Pa.C.S. Chs. 25 (relating to criminal homicide),  
23 26 (relating to crimes against unborn child) and 31  
24 (relating to sexual offenses) and §§ 6312 (relating to  
25 sexual abuse of children) and 6320 (relating to sexual  
26 exploitation of children) shall have a DNA sample  
27 collected pursuant to this chapter.

28 (ii) Beginning one year after the effective date of  
29 this subsection, any person required to provide a DNA  
30 sample under this subsection for an arrest or charge

1 under 18 Pa.C.S. Chs. 27 (relating to assault), 33  
2 (relating to arson, criminal mischief and other property  
3 destruction), 35 (relating to burglary and other criminal  
4 intrusion), 37 (relating to robbery) and 43 (relating to  
5 offenses against the family) shall have a DNA sample  
6 collected pursuant to this chapter.

7 (iii) Beginning two years after the effective date  
8 of this subsection, any person required to provide a DNA  
9 sample under this subsection for an arrest or charge for  
10 any other felony sex offense or other specified offense  
11 shall have a sample collected pursuant to this chapter.

12 \* \* \*

13 Section 3. Title 44 is amended by adding a section to read:  
14 § 2316.1. Collection from other jurisdictions.

15 (a) Conditional acceptance.--When a person is accepted into  
16 this Commonwealth for supervision from another jurisdiction  
17 under the Interstate Compact for Supervision of Adult Offenders,  
18 other reciprocal agreement with a Federal, state or county  
19 agency, or a provision of law, whether or not the person is  
20 confined or released, the acceptance shall be conditioned on the  
21 offender's providing DNA samples under this chapter if the  
22 offender has a past or present Federal, state or military court  
23 conviction or adjudication that is equivalent to a felony sex  
24 offense or other specified offense as determined by the  
25 Pennsylvania Board of Probation and Parole. Additional DNA  
26 samples shall not be required if a DNA sample is currently on  
27 file with CODIS or the State DNA Data Base.

28 (b) Time period.--

29 (1) If the person accepted under subsection (a) is not  
30 confined, the DNA sample and fingerprints required under this

1 chapter shall be provided within five calendar days after the  
2 person reports to the supervising agent or within five  
3 calendar days of notice to the person, whichever occurs  
4 first. The person shall appear and the DNA samples shall be  
5 collected in accordance with the provisions of this chapter.

6 (2) If the person accepted under subsection (a) is  
7 confined, the person shall provide the DNA sample and  
8 fingerprints required by this chapter within five calendar  
9 days after the person is received at a place of incarceration  
10 or confinement.

11 Section 4. Sections 2317(a) (1) and 2318(a) and (c) of Title  
12 44 are amended to read:

13 § 2317. Procedures for withdrawal, collection and transmission  
14 of DNA samples.

15 (a) [Drawing] Collection of DNA samples.--

16 (1) Each DNA sample required to be [drawn] collected  
17 pursuant to [section] sections 2316 (relating to DNA sample  
18 required upon arrest, criminal charge, conviction,  
19 delinquency adjudication and certain ARD cases) and 2316.1  
20 (relating to collection from persons accepted from other  
21 jurisdictions) from persons who are incarcerated or confined  
22 shall be [drawn] collected at the place of incarceration or  
23 confinement as provided for in section 2316. DNA samples from  
24 persons who are not ordered or sentenced to a term of  
25 confinement shall be [drawn] collected at a prison, jail  
26 unit, juvenile facility or other facility to be specified by  
27 the court. Only those individuals qualified to draw DNA blood  
28 samples in a medically approved manner shall draw a DNA blood  
29 sample to be submitted for DNA analysis. Such sample and the  
30 set of fingerprints provided for in paragraph (2) shall be

1 delivered to the State Police within 48 hours of [drawing]  
2 collecting the sample.

3 \* \* \*

4 § 2318. Procedures for conduct, disposition and use of DNA  
5 analysis.

6 (a) Procedures.--

7 (1) The State Police shall [prescribe] develop  
8 guidelines to implement this chapter, including procedures to  
9 be used in the collection, submission, identification,  
10 analysis, storage and disposition of DNA samples and typing  
11 results of DNA samples submitted under the former DNA Act,  
12 former 42 Pa.C.S. Ch. 47 (relating to DNA data and testing)  
13 or this chapter.

14 (2) The DNA sample typing results shall be securely  
15 stored in the State DNA Data Base, and records of testing  
16 shall be retained on file with the State Police consistent  
17 with the procedures established by the FBI quality assurance  
18 standards for forensic DNA testing laboratories and DNA data  
19 basing laboratories and CODIS policies and procedures.

20 (3) These procedures shall also include quality  
21 assurance guidelines to ensure that DNA identification  
22 records meet standards for accredited forensic DNA  
23 laboratories which submit DNA records to the State DNA Data  
24 Base.

25 (4) The guidelines shall address the following:  
26 (i) Verification of accreditation.  
27 (ii) Compliance with FBI quality assurance standards  
28 including continuing education requirements for the  
29 personnel of forensics DNA testing laboratories.

30 \* \* \*

1 (c) Use of tests.--

2 (1) Except as otherwise provided in section 2319(c)  
3 (relating to DNA data base exchange), the tests to be  
4 performed on each DNA sample shall be used only for law  
5 enforcement identification purposes or to assist in the  
6 recovery or identification of human remains from disasters or  
7 for other humanitarian identification purposes, including  
8 identification of missing persons.

9 (2) No DNA sample or DNA record shall be used for human  
10 behavioral genetic research.

11 \* \* \*

12 Section 5. Title 44 is amended by adding a section to read:

13 § 2318.1. Request for modified DNA search.

14 (a) General rule.--

15 (1) A criminal justice agency may request in writing  
16 that the State Police perform a modified DNA search in an  
17 unsolved case and shall provide information as required by  
18 the State Police.

19 (2) The State Police shall grant a request to conduct a  
20 modified DNA search if the State Police determine that the  
21 request complies with subsection (d)(2).

22 (b) Modified DNA search.--

23 (1) The State Police shall conduct a modified DNA search  
24 if it grants a request under subsection (a)(2).

25 (2) The State Police may conduct a modified DNA search  
26 in unsolved cases without the request of a criminal justice  
27 agency only if the State Police determine that they would  
28 have granted a request had a request been made by a criminal  
29 justice agency.

30 (3) In all cases, the State Police shall use procedures

1 for conducting a modified DNA search that are consistent with  
2 the regulations published under subsection (d) (3).

3 (c) Release of information from a modified DNA search.--The  
4 State Police shall provide the requesting criminal justice  
5 agency with personally identifying information on individuals  
6 whose DNA records were identified through a modified DNA search.

7 (d) Requirements.--

8 (1) The State Police shall require a criminal justice  
9 agency to provide assurances and information in support of  
10 its request for a modified DNA search, including:

11 (i) A representation that a modified DNA search is  
12 necessary for law enforcement identification purposes in  
13 an unsolved case.

14 (ii) A representation that all other investigative  
15 leads have been pursued.

16 (iii) A commitment to further investigate the case  
17 if personal identifying information from a modified DNA  
18 search is provided.

19 (iv) Any other information the State Police deem  
20 necessary.

21 (2) The State Police shall grant a modified DNA search  
22 request so long as the State Police determine that:

23 (i) The crime scene DNA profile has sufficient size,  
24 quality and integrity.

25 (ii) The crime scene DNA profile has previously been  
26 subjected to a routine DNA search against the State DNA  
27 Data Base.

28 (iii) The modified DNA search is necessary for law  
29 enforcement identification purposes in an unsolved case.

30 (iv) The criminal justice agency has pursued all

1 other investigative leads.

2 (v) Any relevant consideration, including factors or  
3 requirements considered by any other jurisdiction that, ←  
4 supports granting the request.

5 (3) The State Police shall adopt a procedure to conduct  
6 modified DNA searches based on scientifically valid and  
7 reliable methods to determine that a crime scene DNA profile  
8 is sufficiently likely to have originated from a close  
9 relative of an individual whose DNA profile is recorded in  
10 the State DNA Data Base. The State Police may require the  
11 following:

12 (i) An analysis of the rarity in the relevant  
13 population of each shared DNA characteristic.

14 (ii) An analysis of the pattern of shared DNA  
15 characteristics.

16 (iii) Y chromosome analysis.

17 (iv) Mitochondrial DNA analysis.

18 (v) Any other suitable method designed to determine  
19 that a crime scene DNA profile originated from a close  
20 relative of an individual in the State DNA Data Base.

21 The State Police shall not be limited to procedures or  
22 methods used by the FBI in conducting moderate or low  
23 stringency CODIS searches.

24 Section 6. Sections 2319(a) and (c) and 2321(a) and (b) of  
25 Title 44 are amended to read:

26 § 2319. DNA data base exchange.

27 (a) Receipt of DNA samples by State Police.--It shall be the  
28 duty of the State Police to receive DNA samples, to store, to  
29 perform analysis or to contract for DNA typing analysis with [a  
30 qualified] an accredited forensic DNA laboratory that meets the

1 guidelines and regulations under section 2318 (relating to  
2 procedures for conduct, disposition and use of DNA analysis) 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, former 42 Pa.C.S. Ch. 47  
6 (relating to DNA data and testing) or this chapter and to make  
7 such information available as provided in this section. The  
8 State Police may contract [out] for the storage of DNA typing  
9 analysis [and may contract out] or DNA typing analysis to [a  
10 qualified] an accredited forensic DNA laboratory that meets  
11 guidelines and regulations as established by the State Police  
12 under section 2318. The results of the DNA profile of  
13 individuals in the State DNA Data Base shall be made available:

14 (1) to criminal justice agencies or [approved crime]  
15 CODIS-participating DNA laboratories which serve these  
16 agencies; or

17 (2) upon written or electronic request and in  
18 furtherance of an official investigation of a criminal  
19 offense or offender or suspected offender.

20 \* \* \*

21 (c) Population data base.--

22 (1) The State Police may establish a separate population  
23 data base comprised of DNA samples obtained under this  
24 chapter after all personal identification is removed.

25 (2) The State Police may share or disseminate the  
26 population data base with other criminal justice agencies or  
27 [crime] CODIS-participating DNA laboratories that serve to  
28 assist the State Police with statistical data bases.

29 (3) The population data base may be made available to  
30 and searched by other agencies participating in the CODIS

1 system.

2 § 2321. Expungement.

3 [(a) General rule.--A person whose DNA sample, record or ←  
4 profile has been included in the State DNA Data Bank or the  
5 State DNA Data Base pursuant to the former DNA Act, former 42  
6 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this  
7 chapter may request expungement on the grounds that: ←

8 ~~(1) the arrest, charge, conviction or delinquency ←~~  
9 adjudication on which the authority for including that  
10 person's DNA sample, record or profile was based has been  
11 reversed and the case dismissed; ← for that ←

12 ~~(2) the charge has been dismissed;~~

13 ~~(3) there has been a judgment of acquittal;~~

14 ~~(4) no charge was filed within the statute of ←~~  
15 ~~limitations; or~~

16 ~~(5) the DNA sample, record or profile was included in~~  
17 ~~the State DNA Data Bank or the State DNA Data Base by~~  
18 ~~mistake.~~

19 (b) Duty of State Police.--The State Police shall  
20 ~~immediately~~ purge all records and identifiable information in ←  
21 the State DNA Data Bank or State DNA Data Base pertaining to the  
22 person and destroy each sample, record and profile from the  
23 person upon:

24 (1) receipt of a {written request for expungement ←  
25 pursuant to this section and a} certified copy of the final ←  
26 court order reversing and dismissing the conviction; {or} ←

27 ~~(1.1) receipt of a certified copy of a final court order ←~~  
28 ~~establishing that the charge has been dismissed or has ←~~  
29 ~~resulted in an acquittal or that no charge was filed within ←~~  
30 ~~the statute of limitations; or~~

1 (2) clear and convincing proof that the sample record or  
2 profile was included by mistake.] ←

3 (A) GENERAL RULE.--A PERSON WHOSE DNA SAMPLE, RECORD OR  
4 PROFILE HAS BEEN INCLUDED IN THE STATE DNA DATA BANK OR THE  
5 STATE DNA DATA BASE UNDER THE FORMER DNA ACT, FORMER PROVISIONS  
6 OF 42 PA.C.S. CH. 47 (RELATING TO DNA DATA AND TESTING) OR THIS  
7 CHAPTER MAY HAVE THE DNA SAMPLE, RECORD OR PROFILE EXPUNGED IN  
8 ACCORDANCE WITH THIS SECTION.

9 (B) EXPUNGEMENT BY REQUEST.--A PERSON WHOSE DNA SAMPLE,  
10 RECORD OR PROFILE HAS BEEN INCLUDED IN THE STATE DNA DATA BANK  
11 OR THE STATE DNA DATE BASE UNDER THE FORMER DNA ACT, FORMER  
12 PROVISIONS OF 42 PA.C.S. CH. 47 (RELATING TO DNA DATA AND  
13 TESTING) OR THIS CHAPTER MAY FILE AN EXPUNGEMENT REQUEST WITH  
14 THE STATE POLICE ON THE GROUNDS THAT THE DNA SAMPLE, RECORD OR  
15 PROFILE WAS INCLUDED IN THE STATE DNA DATA BANK OR THE STATE DNA  
16 DATA BASE BY MISTAKE. A PERSON REQUESTING EXPUNGEMENT UNDER THIS  
17 SUBSECTION SHALL BE REQUIRED TO PROVE THAT THE DNA SAMPLE,  
18 RECORD OR PROFILE HAS BEEN INCLUDED IN THE STATE DNA DATA BANK  
19 OR THE STATE DNA DATA BASE BY CLEAR AND CONVINCING EVIDENCE.

20 (C) MANDATORY EXPUNGEMENT.--THE FOLLOWING SHALL APPLY:

21 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2), ALL RECORDS AND  
22 IDENTIFIABLE INFORMATION, INCLUDING ANY SAMPLE, RECORD OR  
23 PROFILE, IN THE STATE DNA DATA BANK OR THE STATE DNA DATA  
24 BASE PERTAINING TO A PERSON SHALL BE DESTROYED IN THE  
25 FOLLOWING INSTANCES:

26 (I) THE ARREST, CHARGE, CONVICTION OR DELINQUENCY  
27 ADJUDICATION ON WHICH THE AUTHORITY FOR INCLUDING THE  
28 PERSON'S DNA SAMPLE, RECORD OR PROFILE WAS BASED HAS BEEN  
29 REVERSED AND THE CASE DISMISSED;

30 (II) THE CHARGE ON WHICH THE AUTHORITY FOR INCLUDING

1 THE PERSON'S DNA SAMPLE, RECORD OR PROFILE HAS BEEN  
2 DISMISSED AND THE PROSECUTING AUTHORITY IS BARRED FROM  
3 SEEKING A RETRIAL;

4 (III) THERE HAS BEEN A JUDGMENT OF ACQUITTAL ON THE  
5 CHARGE ON WHICH THE AUTHORITY FOR INCLUDING THE PERSON'S  
6 DNA SAMPLE, RECORD OR PROFILE WAS BASED;

7 (IV) THE PERSON FROM WHOM THE SAMPLE WAS TAKEN WAS  
8 NOT CHARGED WITH THE CRIME ON WHICH THE AUTHORITY FOR  
9 INCLUDING THE PERSON'S DNA SAMPLE, RECORD OR PROFILE WAS  
10 BASED;

11 (V) THE PROSECUTING AUTHORITY HAS ELECTED NOT TO  
12 COMMENCE CRIMINAL PROCEEDING AGAINST THE PERSON FOR THE  
13 CRIME ON WHICH THE AUTHORITY FOR INCLUDING THE PERSON'S  
14 DNA SAMPLE, RECORD OR PROFILE WAS BASED;

15 (VI) CHARGES FOR THE CRIME ON WHICH THE AUTHORITY  
16 FOR INCLUDING THE PERSON'S DNA SAMPLE, RECORD OR PROFILE  
17 WAS BASED WERE NOT FILED WITHIN THE STATUTE OF  
18 LIMITATIONS; AND

19 (VII) THE PERSON IS GRANTED AN UNCONDITIONAL PARDON  
20 FOR THE CRIME ON WHICH THE AUTHORITY FOR INCLUDING THE  
21 PERSON'S DNA SAMPLE, RECORD OR PROFILE WAS BASED.

22 (2) THE PROVISIONS OF PARAGRAPH (1) SHALL NOT APPLY IF  
23 THE PERSON HAS BEEN ARRESTED, CHARGED, CONVICTED OR  
24 ADJUDICATED DELINQUENT FOR ANY OTHER CRIME FOR WHICH A DNA  
25 SAMPLE, RECORD OR PROFILE IS REQUIRED UNDER THIS CHAPTER.

26 (D) DISPOSITION REPORTING.--ALL CRIMINAL JUSTICE AGENCIES,  
27 INCLUDING LAW ENFORCEMENT AGENCIES, DISTRICT ATTORNEYS AND  
28 COURTS SHALL SUBMIT REPORTS OF DISPOSITIONS THAT REQUIRE  
29 MANDATORY EXPUNGEMENT UNDER SUBSECTION (C) (1) TO THE STATE  
30 POLICE WITHIN 60 DAYS OF THE DATE OF SUCH DISPOSITION. COURTS

1 SHALL COLLECT AND SUBMIT CRIMINAL COURT DISPOSITIONS AS REQUIRED  
2 BY THE ADMINISTRATIVE OFFICE OF PENNSYLVANIA COURTS.

3 (E) DUTIES OF STATE POLICE.--THE FOLLOWING SHALL APPLY:

4 (1) UPON RECEIPT OF ANY REPORT OF DISPOSITION UNDER  
5 SUBSECTION (D), THE STATE POLICE SHALL IMMEDIATELY PURGE ALL  
6 RECORDS AND IDENTIFIABLE INFORMATION IN THE STATE DNA DATA  
7 BANK OR THE STATE DNA DATA BASE PERTAINING TO A PERSON AND  
8 DESTROY EACH SAMPLE, RECORD AND PROFILE OF THE PERSON.

9 (2) THE EXPUNGEMENT SHALL BE PROCESSED AT NO COST TO THE  
10 PERSON FROM WHOM THE DNA SAMPLE WAS TAKEN.

11 (3) THE STATE POLICE SHALL PROVIDE WRITTEN NOTICE OF THE  
12 EXPUNGEMENT TO THE PERSON AND HIS ATTORNEY OF RECORD, IF ANY,  
13 WITHIN 45 DAYS AFTER EXPUNGING AND DESTROYING THE SAMPLE,  
14 RECORD AND PROFILE.

15 (4) THE STATE POLICE SHALL PROVIDE THE CODIS EXPUNGEMENT  
16 POLICY TO ANY PERSON WHOSE SAMPLE, RECORD AND PROFILE HAS  
17 BEEN EXPUNGED AND DESTROYED UNDER THIS SECTION IF SUCH  
18 INFORMATION HAS BEEN TRANSFERRED TO CODIS.

19 \* \* \*

20 Section 7. Title 44 is amended by adding a section to read:  
21 § 2337. Severability.

22 The provisions of this chapter are severable. If any  
23 provision of this chapter or its application to any person or  
24 circumstance is held invalid, the invalidity shall not affect  
25 other provisions or applications of this chapter which can be  
26 given effect without the invalid provision or application.

27 Section 8. This act shall take effect in 270 days.