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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2429 Session of  
2004

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INTRODUCED BY TIGUE, O'BRIEN, BELFANTI, CLYMER, CORRIGAN,  
CREIGHTON, CURRY, DeLUCA, DENLINGER, GEIST, GODSHALL, KELLER,  
LEH, MARKOSEK, MILLARD, MYERS, REICHLEY, SOLOBAY, THOMAS AND  
WILT, MARCH 15, 2004

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REFERRED TO COMMITTEE ON JUDICIARY, MARCH 15, 2004

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, further providing for DNA  
3 sample required upon conviction, for delinquency  
4 adjudication, for certain ARD cases and for expungement; and  
5 providing for good faith in collection of DNA sample.

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

8 Section 1. Section 4716 of Title 42 of the Pennsylvania  
9 Consolidated Statutes is amended by adding a subsection to read:

10 § 4716. DNA sample required upon conviction, delinquency  
11 adjudication and certain ARD cases.

12 \* \* \*

13 (d.1) Mandatory submission.--The requirements of this  
14 chapter are mandatory and apply regardless of whether a court  
15 advises a person that a DNA sample must be provided to the State  
16 DNA Data Base and State DNA Data Bank as a result of a  
17 conviction or adjudication of delinquency. A person who has been  
18 sentenced to death or life imprisonment without the possibility

1 of parole, or to any life or indeterminate term of  
2 incarceration, is not exempt from the requirements of this  
3 chapter. Any person subject to this chapter, who has not  
4 provided a DNA sample for any reason, including because of an  
5 oversight or error, shall provide a DNA sample for inclusion in  
6 the State DNA Data Base and State DNA Data Bank after being  
7 notified by duly authorized law enforcement or corrections  
8 personnel. In the event that a person provides a DNA sample that  
9 is not adequate for any reason, the person shall provide another  
10 DNA sample for inclusion in the State DNA Data Base and State  
11 DNA Data Bank after being notified by duly authorized law  
12 enforcement or corrections personnel.

13 Section 2. Section 4721 of Title 42 is amended to read:

14 § 4721. Expungement.

15 (a) General rule.--A person whose DNA sample, record or  
16 profile has been included in the [data bank] State DNA Data Bank  
17 or State DNA Data Base pursuant to the former DNA Act or this  
18 chapter may request expungement on the grounds that the  
19 conviction or delinquency adjudication on which the authority  
20 for including that person's DNA sample, record or profile was  
21 based has been reversed and the case dismissed or that the DNA  
22 sample, record or profile was included in the State DNA Data  
23 Bank or State DNA Data Base by mistake.

24 (b) Duty of State Police.--The State Police shall purge all  
25 records and identifiable information in the [data base] State  
26 DNA Data Base and State DNA Data Bank pertaining to the person  
27 and destroy all samples from the person upon receipt of a  
28 written request for expungement pursuant to this section and a  
29 certified copy of the final court order reversing and dismissing  
30 the conviction.

1 (c) Limitation.--An incarcerated or previously incarcerated  
2 person may not seek expungement of a DNA sample, record or  
3 profile on the grounds that that person was convicted or  
4 adjudicated delinquent for a felony sex offense prior to the  
5 effective date of the former DNA Act or prior to the effective  
6 date of this chapter.

7 (d) Effect of expungement.--The expungement of a DNA sample,  
8 record or profile pursuant to this section shall have no effect  
9 on any data bank or data base match occurring prior to the  
10 expungement of the sample, profile or record.

11 Section 3. Title 42 is amended by adding a section to read:  
12 § 4723. Good faith.

13 (a) Use of samples.--A DNA sample obtained in good faith  
14 pursuant to this subchapter shall be deemed to have been  
15 obtained in accordance with the requirements of this subchapter  
16 and its use in accordance with this chapter is hereby authorized  
17 until an expungement is obtained pursuant to section 4721  
18 (relating to expungement).

19 (b) Effect of mistake.--The detention, arrest, search or  
20 conviction of a person based upon good faith reliance on any  
21 data bank or data base match is not invalidated if it is  
22 subsequently determined that the sample was obtained or placed  
23 in a data bank or data base by mistake.

24 Section 4. This act shall take effect in 60 days.