

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 3

Special Session No. 1 of  
1995

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

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,  
MARCH 13, 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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24 Section 1101. State Police notice of capability to carry out  
25 act.

26 Section 1102. Effective date.

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

29 CHAPTER 1

PRELIMINARY PROVISIONS

Section 101. Short title.

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

Section 102. Policy.

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

Section 103. Definitions.

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

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

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

1 laboratories.

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

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

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

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

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

24 "FBI." The Federal Bureau of Investigation.

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

28 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

29 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

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

1 "Other specified offense." An offense, or an attempt,  
2 conspiracy or solicitation to commit an offense, under any of  
3 the following:

4 18 Pa.C.S. § 2502 (relating to murder).

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

7 18 Pa.C.S. § 3126 (relating to indecent assault).

8 "State Police." The Pennsylvania State Police.

9 CHAPTER 3

10 GENERAL PROVISIONS

11 Section 301. Powers and duties of State Police.

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

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

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

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

24 Section 302. State DNA Data Base.

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

1 offenders required to provide a DNA sample under this act and to  
2 anonymous DNA records used for research or quality control.

3 Section 303. State DNA Data Bank.

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

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

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

16 Section 305. Procedural compatibility with FBI.

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

21 Section 306. DNA sample required upon conviction, delinquency  
22 adjudication ~~or ARD~~ AND CERTAIN ARD CASES. <—

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

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

1 detention facility or institution. If the person is already  
2 confined at the time of sentencing or adjudication, the  
3 person shall have a DNA sample drawn immediately after the  
4 sentencing or adjudication.

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

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

17 (b) Conviction before effective date.--A person who ~~is~~ HAS <—  
18 BEEN convicted, OR adjudicated delinquent ~~or granted ARD~~ for a <—  
19 felony sex offense or other specified offense before the  
20 effective date of this section ~~shall have a DNA sample drawn as~~ <—  
21 ~~follows:~~

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

27 ~~(2) A person who is convicted, adjudicated delinquent or~~  
28 ~~granted ARD for an offense covered by this subsection shall~~  
29 AND WHO IS STILL SERVING A TERM OF CONFINEMENT IN CONNECTION <—  
30 THEREWITH ON THE EFFECTIVE DATE OF THIS SECTION SHALL not be

1 released in any manner ~~after such disposition~~ prior to the <—  
2 expiration of his maximum term of confinement unless and  
3 until a DNA sample has been withdrawn.

4 (C) CERTAIN ARD CASES.--ACCEPTANCE INTO ARD AS A RESULT OF A <—  
5 CRIMINAL CHARGE FOR A FELONY SEX OFFENSE OR OTHER SPECIFIED  
6 OFFENSE FILED ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION MAY  
7 BE CONDITIONED UPON THE GIVING OF A DNA SAMPLE.

8 ~~(c) Court supervision~~ (D) SUPERVISION of DNA samples.--All <—  
9 DNA samples taken pursuant to this section shall be taken in  
10 accordance with regulations promulgated by the State Police in  
11 consultation with the Department of Corrections.

12 ~~(d)~~ (E) Definition.--As used in this section, the term <—  
13 "released" means any release, parole, furlough, work release,  
14 prerelease or release in any other manner from a prison, jail,  
15 juvenile detention facility or any other place of confinement.  
16 Section 307. Procedures for withdrawal, collection and  
17 transmission of DNA samples.

18 (a) Drawing of DNA samples.--Each DNA sample required to be  
19 drawn pursuant to section 306 from persons who are incarcerated  
20 or confined shall be drawn at the place of incarceration or  
21 confinement as provided for in section 306. DNA samples from  
22 persons who are not ordered or sentenced to a term of  
23 confinement shall be drawn at a prison, jail unit, juvenile  
24 facility or other facility to be specified by the court. Only  
25 those individuals qualified to draw DNA samples in a medically  
26 approved manner shall draw a DNA sample to be submitted for DNA  
27 analysis. Such sample shall be received by the State Police  
28 within 48 hours of drawing the sample.

29 (b) ~~NO~~ LIMITATION ON liability.--Persons authorized to draw <—  
30 DNA samples under this section shall not be ~~civilly liable or~~ <—



1 criminally liable for withdrawing a DNA sample and ~~reporting~~ <—  
2 TRANSMITTING test results pursuant to this act if they perform <—  
3 these activities in good faith AND SHALL NOT BE CIVILLY LIABLE <—  
4 FOR SUCH ACTIVITIES WHEN THE PERSON ACTED IN A REASONABLE MANNER  
5 ACCORDING TO GENERALLY ACCEPTED MEDICAL AND OTHER PROFESSIONAL  
6 PRACTICES.

7 (c) ~~Use~~ REASONABLE USE of force.--Duly authorized law <—  
8 enforcement and corrections personnel may employ reasonable  
9 force in cases where an individual refuses to submit to DNA  
10 testing authorized under this act, and no such employee shall be  
11 criminally ~~and~~ OR civilly liable for the use of reasonable <—  
12 force.

13 Section 308. Procedures for conduct, disposition and use of DNA  
14 analysis.

15 (a) Procedures.--The State Police shall prescribe procedures  
16 to be used in the collection, submission, identification,  
17 analysis, storage and disposition of DNA samples and typing  
18 results of DNA samples submitted under this act. The DNA sample  
19 typing results shall be securely stored in the State DNA Data  
20 Base and records of testing shall be retained on file with the  
21 State Police consistent with the procedures established by the  
22 FBI. These procedures shall also include quality assurance  
23 guidelines to insure that DNA identification records meet  
24 standards for laboratories which submit DNA records to the State  
25 DNA Data Base.

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

28 (c) Use of tests.--The tests to be performed on each DNA  
29 sample shall be used only for law enforcement purposes or to  
30 assist in the recovery or identification of human remains from

1 disasters or for other humanitarian purposes, including  
2 identification of missing persons.

3 (d) Restrictions and requirements on contracting party.--Any  
4 other party contracting to carry out the functions of this act  
5 shall be subject to the same restrictions and requirements of  
6 this act, insofar as applicable, as the State Police, as well as  
7 any additional restrictions imposed by the State Police.

8 Section 309. DNA data base exchange.

9 (a) Receipt of DNA samples by State Police.--It shall be the  
10 duty of the State Police to receive DNA samples, to store, to  
11 perform analysis or to contract for DNA typing analysis with a  
12 qualified DNA laboratory that meets the guidelines as  
13 established by the State Police, to classify and to file the DNA  
14 record of identification characteristic profiles of DNA samples  
15 submitted under this act and to make such information available  
16 as provided in this section. The State Police may contract out  
17 the storage of DNA typing analysis and may contract out DNA  
18 typing analysis to a qualified DNA laboratory that meets  
19 guidelines as established by the State Police. The results of  
20 the DNA profile of individuals in the State DNA Data Base shall  
21 be made available to criminal justice agencies or approved crime  
22 laboratories which serve these agencies or upon written or  
23 electronic request and in furtherance of an official  
24 investigation of a criminal offense or offender or suspected  
25 offender.

26 (b) Methods of obtaining information.--The State Police  
27 shall adopt guidelines governing the methods of obtaining  
28 information from the State DNA Data Base and CODIS and  
29 procedures for verification of the identity and authority of the  
30 requester.

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

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

The State Police shall be authorized, for good cause shown, to revoke or suspend the right of a forensic DNA laboratory within this Commonwealth to access or exchange DNA identification records with criminal justice agencies.

Section 311. Expungement.

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

Section 312. Mandatory cost.

A UNLESS THE COURT FINDS THAT UNDUE HARDSHIP WOULD RESULT, A mandatory cost of \$250, which shall be in addition to any other costs imposed pursuant to statutory authority, shall automatically be assessed on any person convicted, adjudicated

1 delinquent or granted ARD for a felony sex offense or other  
2 specified offense, and all proceeds derived from this section  
3 shall be transmitted to the fund.

4 CHAPTER 5  
5 ENFORCEMENT AND OTHER PROVISIONS

6 SECTION 501. PROHIBITION ON DISCLOSURE. <—

7 (A) DISCLOSURE.--ANY PERSON WHO, BY VIRTUE OF EMPLOYMENT OR  
8 OFFICIAL POSITION, OR ANY PERSON CONTRACTING TO CARRY OUT ANY  
9 FUNCTIONS UNDER THIS ACT, INCLUDING ANY OFFICERS, EMPLOYEES AND  
10 AGENTS OF SUCH CONTRACTOR, WHO HAS POSSESSION OF OR ACCESS TO  
11 INDIVIDUALLY IDENTIFIABLE DNA INFORMATION CONTAINED IN THE STATE  
12 DNA DATA BASE OR IN THE STATE DNA DATA BANK SHALL NOT DISCLOSE  
13 IT IN ANY MANNER TO ANY PERSON OR AGENCY NOT AUTHORIZED TO  
14 RECEIVE IT KNOWING THAT SUCH PERSON OR AGENCY IS NOT AUTHORIZED  
15 TO RECEIVE IT.

16 (B) OBTAINING INFORMATION.--NO PERSON SHALL OBTAIN  
17 INDIVIDUALLY IDENTIFIABLE DNA INFORMATION FROM THE STATE DNA  
18 DATA BASE OR THE STATE DNA DATA BANK WITHOUT AUTHORIZATION TO DO  
19 SO.

20 Section 501 502. Criminal penalties. <—

21 (a) Disclosure.--Any person who, by virtue of employment or  
22 official position, or any person contracting to carry out any  
23 functions under this act, including any officers, employees and  
24 agents of such contractor, who has possession of or access to  
25 individually identifiable DNA information contained in the State  
26 DNA Data Base or in the State DNA Data Bank and who for  
27 pecuniary gain for such person or for any other person willfully <—  
28 ~~discloses it in any manner to any person or agency not entitled~~  
29 ~~to receive it~~ KNOWINGLY VIOLATES SECTION 501(A) commits a <—  
30 misdemeanor of the first degree.

1 (b) Obtaining information.--Any person who, ~~without~~ <—  
2 ~~authorization, willfully obtains individually identifiable DNA~~  
3 ~~information from the State DNA Data Base or the State DNA Data~~  
4 ~~Bank~~ KNOWINGLY VIOLATES SECTION 501(B) commits a misdemeanor of <—  
5 the first degree.  
6 Section ~~502~~ 503. 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 KNOWING violation of ~~the~~ <—  
18 ~~provisions of this act or of the rules and regulations~~  
19 ~~promulgated under this act~~ SECTION 501 shall have the <—  
20 substantive right to bring an action for damages by reason of  
21 such violation in a court of competent jurisdiction.  
22 (2) A person found by the court to have been aggrieved  
23 by a KNOWING violation of ~~this act or the rules or~~ <—  
24 ~~regulations promulgated under this act~~ SECTION 501 shall be <—  
25 entitled to actual and real damages of not less than \$100 for  
26 each violation and to reasonable costs of litigation and  
27 attorney fees. Exemplary and punitive damages of not less  
28 than \$1,000 nor more than \$10,000 shall be imposed for any  
29 violation of ~~this act or the rules or regulations adopted~~ <—  
30 ~~under this act found to be willful~~ SECTION 501. <—

1 Section ~~503~~ 504. 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~~ 505. 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~~ 506. 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.