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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 3

Special Session No. 1 of  
1995

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MARCH 6, 1995

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SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,  
MARCH 21, 1995

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### 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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25 Section 1101. State Police notice of capability to carry out  
26 act.  
27 Section 1102. Effective date.  
28 The General Assembly of the Commonwealth of Pennsylvania  
29 hereby enacts as follows:

30 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, IN THE  
EXCLUSION OF INDIVIDUALS WHO ARE THE SUBJECT OF CRIMINAL INVESTIGATIONS OR PROSECUTIONS, 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.

"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 laboratories.

"Commissioner." The Commissioner of the Pennsylvania State

1 Police.

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

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

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

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

22 "FBI." The Federal Bureau of Investigation.

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

26 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

27 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

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

29 "Other specified offense." An offense, or an attempt,  
30 conspiracy or solicitation to commit an offense, under any of

1 the following:

2 18 Pa.C.S. § 2502 (relating to murder).

3 18 Pa.C.S. § 2709(c)(2)(ii) (relating to harassment and  
4 stalking).

5 18 Pa.C.S. § 3126 (relating to indecent assault).

6 "State Police." The Pennsylvania State Police.

7 CHAPTER 3

8 GENERAL PROVISIONS

9 Section 301. Powers and duties of State Police.

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

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

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

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

22 Section 302. State DNA Data Base.

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

1 Section 303. State DNA Data Bank.

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

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

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

14 Section 305. Procedural compatibility with FBI.

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

19 Section 306. DNA sample required upon conviction, delinquency  
20 adjudication and certain ARD cases.

21 (a) Conviction after effective date.--A person who is  
22 convicted or adjudicated delinquent for a felony sex offense or  
23 other specified offense on or after the effective date of this  
24 section shall have a DNA sample drawn 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 upon intake  
28 to a prison, jail or juvenile detention facility or any other  
29 detention facility or institution. If the person is already  
30 confined at the time of sentencing or adjudication, the

1 person shall have a DNA sample drawn immediately after the  
2 sentencing or adjudication.

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

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

13 (b) Conviction before effective date.--A person who has been  
14 convicted or adjudicated delinquent for a felony sex offense or  
15 other specified offense before the effective date of this  
16 section and who is still serving a term of confinement in  
17 connection therewith on the effective date of this section shall  
18 not be released in any manner prior to the expiration of his  
19 maximum term of confinement unless and until a DNA sample has  
20 been withdrawn.

21 (c) Certain ARD cases.--Acceptance into ARD as a result of a  
22 criminal charge for a felony sex offense or other specified  
23 offense filed on or after the effective date of this section may  
24 be conditioned upon the giving of a DNA sample.

25 (d) Supervision of DNA samples.--All DNA samples taken  
26 pursuant to this section shall be taken in accordance with  
27 regulations promulgated by the State Police in consultation with  
28 the Department of Corrections.

29 (e) Definition.--As used in this section, the term  
30 "released" means any release, parole, furlough, work release,

prerelease or release in any other manner from a prison, jail,  
juvenile detention facility or any other place of confinement.

Section 307. Procedures for withdrawal, collection and  
transmission of DNA samples.

(a) Drawing of DNA samples.--~~Each DNA sample required to be~~ <—

(1) EACH DNA SAMPLE REQUIRED TO BE drawn pursuant to <—  
section 306 from persons who are incarcerated or confined  
shall be drawn at the place of incarceration or confinement  
as provided for in section 306. DNA samples from persons who  
are not ordered or sentenced to a term of confinement shall  
be drawn at a prison, jail unit, juvenile facility or other  
facility to be specified by the court. Only those individuals  
qualified to draw DNA samples in a medically approved manner  
shall draw a DNA sample to be submitted for DNA analysis.

Such sample AND THE SET OF FINGERPRINTS PROVIDED FOR IN <—  
PARAGRAPH (2) shall be received by the State Police within 48  
hours of drawing the sample.

(2) IN ADDITION TO THE DNA SAMPLE, A FULL SET OF <—  
FINGERPRINTS SHALL BE TAKEN FROM THE PERSON FROM WHOM THE DNA  
SAMPLE IS BEING DRAWN FOR THE EXCLUSIVE PURPOSE OF VERIFYING  
THE IDENTITY OF SUCH PERSON.

(b) Limitation on liability.--Persons authorized to draw DNA  
samples under this section shall not be criminally liable for  
withdrawing a DNA sample and transmitting test results pursuant  
to this act if they perform these activities in good faith and  
shall not be civilly liable for such activities when the person  
acted in a reasonable manner according to generally accepted  
medical and other professional practices.

(c) Reasonable use of force.--Duly authorized law  
enforcement and corrections personnel may employ reasonable



1 force in cases where an individual refuses to submit to DNA  
2 testing authorized under this act, and no such employee shall be  
3 criminally or civilly liable for the use of reasonable force.

4 Section 308. Procedures for conduct, disposition and use of DNA  
5 analysis.

6 (a) Procedures.--The State Police shall prescribe procedures  
7 to be used in the collection, submission, identification,  
8 analysis, storage and disposition of DNA samples and typing  
9 results of DNA samples submitted under this act. The DNA sample  
10 typing results shall be securely stored in the State DNA Data  
11 Base and records of testing shall be retained on file with the  
12 State Police consistent with the procedures established by the  
13 FBI. These procedures shall also include quality assurance  
14 guidelines to insure that DNA identification records meet  
15 standards for laboratories which submit DNA records to the State  
16 DNA Data Base.

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

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

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

29 Section 309. DNA data base exchange.

30 (a) Receipt of DNA samples by State Police.--It shall be the

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

17 (b) Methods of obtaining information.--The State Police  
18 shall adopt guidelines governing the methods of obtaining  
19 information from the State DNA Data Base and CODIS and  
20 procedures for verification of the identity and authority of the  
21 requester.

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

30 Section 310. Cancellation of authority to access or exchange

1 DNA records.

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

6 Section 311. Expungement.

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

17 Section 312. Mandatory cost.

18 Unless the court finds that undue hardship would result, a  
19 mandatory cost of \$250, which shall be in addition to any other  
20 costs imposed pursuant to statutory authority, shall  
21 automatically be assessed on any person convicted, adjudicated  
22 delinquent or granted ARD for a felony sex offense or other  
23 specified offense, and all proceeds derived from this section  
24 shall be transmitted to the fund.

25 CHAPTER 5

26 ENFORCEMENT AND OTHER PROVISIONS

27 Section 501. Prohibition on disclosure.

28 (a) Disclosure.--Any person who, by virtue of employment or  
29 official position, or any person contracting to carry out any  
30 functions under this act, including any officers, employees and

1 agents of such contractor, who has possession of or access to  
2 individually identifiable DNA information contained in the State  
3 DNA Data Base or in the State DNA Data Bank shall not disclose  
4 it in any manner to any person or agency not authorized to  
5 receive it knowing that such person or agency is not authorized  
6 to receive it.

7 (b) Obtaining information.--No person shall obtain  
8 individually identifiable DNA information from the State DNA  
9 Data Base or the State DNA Data Bank without authorization to do  
10 so.

#### 11 Section 502. Criminal penalties.

12 (a) Disclosure.--Any person who, by virtue of employment or  
13 official position, or any person contracting to carry out any  
14 functions under this act, including any officers, employees and  
15 agents of such contractor, who has possession of or access to  
16 individually identifiable DNA information contained in the State  
17 DNA Data Base or in the State DNA Data Bank and who for  
18 pecuniary gain for such person or for any other person knowingly  
19 violates section 501(a) commits a misdemeanor of the first  
20 degree.

21 (b) Obtaining information.--Any person who knowingly  
22 violates section 501(b) commits a misdemeanor of the first  
23 degree.

#### 24 Section 503. Civil actions.

25 (a) Injunctions.--The State Police or any other aggrieved  
26 individual or agency may institute an action in a court of  
27 proper jurisdiction against any person, agency or organization  
28 to enjoin any criminal justice agency, noncriminal justice  
29 agency, organization or individual violating the provisions of  
30 this act or to compel such agency, organization or person

1 violating the provisions of this act or to compel such agency,  
2 organization or person to comply with the provisions of this  
3 act.

4 (b) Action for damages.--

5 (1) Any person aggrieved by a knowing violation of  
6 section 501 shall have the substantive right to bring an  
7 action for damages by reason of such violation in a court of  
8 competent jurisdiction.

9 (2) A person found by the court to have been aggrieved  
10 by a knowing violation of section 501 shall be entitled to  
11 actual and real damages of not less than \$100 for each  
12 violation and to reasonable costs of litigation and attorney  
13 fees. Exemplary and punitive damages of not less than \$1,000  
14 nor more than \$10,000 shall be imposed for any violation of  
15 section 501.

16 Section 504. Confidentiality of records.

17 All DNA profiles and samples submitted to the State Police  
18 pursuant to this act shall be treated as confidential except as  
19 otherwise provided in this act.

20 Section 505. DNA Detection Fund.

21 There is hereby established in the State Treasury a  
22 restricted fund to be known as the DNA Detection Fund. All costs  
23 collected under section 312 shall be paid into the fund. All  
24 moneys in the fund and the interest accruing thereon are hereby  
25 appropriated to the Pennsylvania State Police, on a continuing  
26 basis, to carry out the provisions of this act, upon  
27 authorization of the Governor for each fiscal year.

28 Section 506. Authority of law enforcement officers.

29 Nothing in this act shall limit or abrogate any existing  
30 authority of law enforcement officers to take, maintain, store

1 and utilize DNA samples for law enforcement purposes.

2 CHAPTER 11

3 MISCELLANEOUS PROVISIONS

4 Section 1101. State Police notice of capability to carry out  
5 act.

6 When the commissioner determines that the State Police  
7 possess the capabilities to carry out this act, the commissioner  
8 shall publish a notice to this effect in the Pennsylvania  
9 Bulletin.

10 Section 1102. Effective date.

11 This act shall take effect as follows:

12 (1) Section 306 and those provisions of this act which  
13 provide for the collection, submission, identification,  
14 analysis, storage and disposition of DNA samples shall take  
15 effect 60 days after the date the notice specified in section  
16 1101 is published in the Pennsylvania Bulletin or 18 months  
17 after the date of final enactment of this act, whichever is  
18 earlier.

19 (2) This chapter shall take effect immediately.

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