

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 713 Session of 2011

INTRODUCED BY D. O'BRIEN, BOBACK, B. BOYLE, V. BROWN, CLYMER, DENLINGER, GEIST, HARHAI, HESS, HICKERNELL, HORNAMAN, KAUFFMAN, W. KELLER, KORTZ, MCGEEHAN, MILLARD, PASHINSKI, REICHLEY, SONNEY, TRUITT AND VULAKOVICH, FEBRUARY 16, 2011

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 16, 2011

AN ACT

1 Amending Title 44 (Law and Justice) of the Pennsylvania
2 Consolidated Statutes, further providing for policy and for
3 DNA sample; providing for collection from persons accepted
4 from other jurisdictions; and further providing for
5 procedures for withdrawal, collection and transmission of DNA
6 samples and for expungement.

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

9 Section 1. Section 2302(2) of Title 44 of the Pennsylvania
10 Consolidated Statutes is amended to read:

11 § 2302. Policy.

12 The General Assembly finds and declares that:

13 * * *

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

17 * * *

18 Section 2. Section 2316 heading, (a) and (b)(3) of Title 44
19 are amended and the section is amended by adding a subsection to

1 read:

2 § 2316. DNA sample required upon arrest, conviction,
3 delinquency adjudication and certain ARD cases.

4 (a) [General rule] Conviction or adjudication.--A person who
5 is convicted or adjudicated delinquent for a felony sex offense
6 or other specified offense or who is or remains incarcerated for
7 a felony sex offense or other specified offense on or after the
8 effective date of this chapter shall have a DNA sample drawn as
9 follows:

10 (1) A person who is sentenced or receives a delinquency
11 disposition to a term of confinement for an offense covered
12 by this subsection shall have a DNA sample drawn upon intake
13 to a prison, jail or juvenile detention facility or any other
14 detention facility or institution. If the person is already
15 confined at the time of sentencing or adjudication, the
16 person shall have a DNA sample drawn immediately after the
17 sentencing or adjudication. If a DNA sample is not timely
18 drawn in accordance with this section, the DNA sample may be
19 drawn any time thereafter by the prison, jail, juvenile
20 detention facility, detention facility or institution.

21 (2) A person who is convicted or adjudicated delinquent
22 for an offense covered by this subsection shall have a DNA
23 sample drawn as a condition for any sentence or adjudication
24 which disposition will not involve an intake into a prison,
25 jail, juvenile detention facility or any other detention
26 facility or institution.

27 (3) Under no circumstances shall a person who is
28 convicted or adjudicated delinquent for an offense covered by
29 this subsection be released in any manner after such
30 disposition unless and until a DNA sample has been

1 [withdrawn] drawn.

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

3 * * *

4 (3) This chapter shall apply to incarcerated persons and
5 persons on probation or parole who were convicted or
6 adjudicated delinquent for other specified offenses prior to
7 the effective date of this paragraph[.] whether or not the
8 offense for which the person is currently imprisoned or under
9 probation or parole supervision is a felony sex offense or
10 other specified offense.

11 * * *

12 (c.1) Criminal charge or arrest.--Any person who is charged
13 or arrested as an adult for a felony sex offense or other
14 specified offense shall have a DNA sample drawn as follows:

15 (1) Any adult person arrested for a felony sex offense
16 or other specified felony shall provide a DNA sample and
17 fingerprints as required under this chapter immediately
18 following arrest, during booking or intake or as soon as
19 administratively practical after arrest, but no later than
20 prior to release on bail or pending trial or any other
21 physical release from confinement or custody.

22 (2) If for any reason a person subject to this chapter
23 did not have DNA samples and fingerprints taken under
24 paragraph (1) or otherwise bypasses the State or county
25 prison system, the court shall order the person to report
26 within five calendar days to prison, jail unit, juvenile
27 facility or other facility to be specified by the court to
28 provide DNA samples and fingerprints in accordance with this
29 chapter.

30 * * *

1 Section 3. Title 44 is amended by adding a section to read:
2 § 2316.1. Collection from persons accepted from other
3 jurisdictions.

4 (a) Conditional acceptance.--When a person is accepted into
5 this Commonwealth for supervision from another jurisdiction
6 through the Interstate Compact for Supervision of Adult
7 Offenders or under any other reciprocal agreement with any
8 Federal, state or county agency, or any other provision of law,
9 whether or not the person is confined or released, the
10 acceptance shall be conditioned on the offender's providing DNA
11 samples under this chapter if the offender has a record of any
12 past or present conviction or adjudication that is substantially
13 similar to a felony sex offense or other specified offense from
14 any Federal, state or military court. Additional DNA samples
15 shall not be required if a DNA sample is currently on file with
16 CODIS or the DNA record.

17 (b) Time period.--

18 (1) If the person accepted under subsection (a) is not
19 confined, the DNA sample and fingerprints required by this
20 chapter shall be provided within five calendar days after the
21 person reports to the supervising agent or within five
22 calendar days of notice to the person, whichever occurs
23 first. The person shall appear and the DNA samples shall be
24 collected in accordance with the provisions of this chapter.

25 (2) If the person accepted under subsection (a) is
26 confined, the person shall provide the DNA sample and
27 fingerprints required by this chapter as soon as practical
28 after receipt in a facility in this Commonwealth.

29 Section 4. Sections 2317(a)(1) and 2321(a) and (b) of Title
30 44 are amended to read:

1 § 2317. Procedures for withdrawal, collection and transmission
2 of DNA samples.

3 (a) Drawing of DNA samples.--

4 (1) Each DNA sample required to be drawn pursuant to
5 [section] sections 2316 (relating to DNA sample required upon
6 arrest, conviction, delinquency adjudication and certain ARD
7 cases) and 2316.1 (relating to collection from persons
8 accepted from other jurisdictions) from persons who are
9 incarcerated or confined shall be drawn at the place of
10 incarceration or confinement as provided for in section 2316.
11 DNA samples from persons who are not ordered or sentenced to
12 a term of confinement shall be drawn at a prison, jail unit,
13 juvenile facility or other facility to be specified by the
14 court. Only those individuals qualified to draw DNA samples
15 in a medically approved manner shall draw a DNA sample to be
16 submitted for DNA analysis. Such sample and the set of
17 fingerprints provided for in paragraph (2) shall be delivered
18 to the State Police within 48 hours of drawing the sample.

19 * * *

20 § 2321. Expungement.

21 (a) General rule.--

22 (1) A person whose DNA sample, record or profile has
23 been included in the State DNA Data Bank or the State DNA
24 Data Base pursuant to the former DNA Act, former 42 Pa.C.S.
25 Ch. 47 (relating to DNA data and testing) or this chapter may
26 request expungement [on the grounds that the conviction or
27 delinquency adjudication on which the authority for including
28 that person's DNA sample, record or profile was based has
29 been reversed and the case dismissed or that the DNA sample,
30 record or profile was included in the State DNA Data Bank or

1 the State DNA Data Base by mistake.] if the person files the
2 request in writing with the State Police and any of the
3 following apply:

4 (i) The State Police receive, for each conviction of
5 the person of an offense the basis of which that analysis
6 was or could have been included in the State DNA Data
7 Bank or the State DNA Data Base, a certified copy of a
8 final court order establishing that the conviction has
9 been overturned.

10 (ii) The person has not been convicted of an offense
11 the basis of which that analysis was or could have been
12 included in the State DNA Data Bank or the State DNA Data
13 Base and the State Police receive, for each charge
14 against the person the basis of which the analysis was or
15 could have been included in the State DNA Data Bank or
16 the State DNA Data Base, a certified copy of a final
17 court order establishing that the charge has been
18 dismissed or has resulted in an acquittal or that no
19 charge was filed within the applicable time period.

20 (iii) The State Police receive clear and convincing
21 proof that the DNA sample, record or profile was included
22 in the State DNA Data Bank or the State DNA Data Base by
23 mistake.

24 (2) For purposes of this section, a court order is not
25 "final" if time remains for an appeal or application for
26 discretionary review with respect to the order.

27 (b) Duty of State Police.--The State Police shall purge all
28 records and identifiable information in the State DNA Data Bank
29 or State DNA Data Base pertaining to the person and destroy each
30 sample, record and profile from the person upon[:

1 (1) receipt of a written request for expungement
2 pursuant to this section and a certified copy of the final
3 court order reversing and dismissing the conviction; or

4 (2) clear and convincing proof that the sample record or
5 profile was included by mistake.] receipt of the applicable
6 documents and other materials required in subsection (a).

7 * * *

8 Section 5. This act shall take effect in 60 days.