

DNA DETECTION OF SEXUAL AND VIOLENT OFFENDERS ACT - REPEALED
Act of May. 28, 1995, Special Session 1, P.L. 1009, No. Cl. 44

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AN ACT

Providing for DNA testing of certain offenders; establishing the State DNA Data Base and the State DNA Data Bank; further providing for duties of the Pennsylvania State Police; imposing costs on certain offenders; and establishing the DNA Detection Fund.

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

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 in 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 Police.

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

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

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

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

"FBI." The Federal Bureau of Investigation.

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

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

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

"Fund." The DNA Detection Fund established in section 505.

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

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

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

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

"State Police." The Pennsylvania State Police.

CHAPTER 3 GENERAL PROVISIONS

Section 301. Powers and duties of State Police.

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

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

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

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

Section 302. State DNA Data Base.

There is hereby established the State DNA Data Base. It shall be administered by the State Police and provide DNA records to the FBI for storage and maintenance by CODIS. The State DNA Data Base shall have the capability provided by computer software and procedures administered by the State Police to store and maintain DNA records related to:

(1) forensic casework;

(2) convicted offenders required to provide a DNA sample under this act; and

(3) anonymous DNA records used for research or quality control.

Section 303. State DNA Data Bank.

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

Section 304. State Police recommendation of additional offenses.

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

Section 305. Procedural compatibility with FBI.

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

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

(a) Conviction after effective date.--A person who is convicted or adjudicated delinquent for a felony sex offense or other specified offense on or after the effective date of this section shall have a DNA sample drawn as follows:

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

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

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

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

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

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

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

(e) Definition.--As used in this section, the term "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.--

(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 delivered to 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

force in cases where an individual refuses to submit to DNA testing authorized under this act, and no such employee shall be criminally or civilly liable for the use of reasonable force. Section 308. Procedures for conduct, disposition and use of DNA analysis.

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

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

(c) Use of tests.-- Except as otherwise provided in section 309(c), the tests to be performed on each DNA sample shall be used only for law enforcement identification purposes or to assist in the recovery or identification of human remains from disasters or for other humanitarian identification purposes, including identification of missing persons.

(d) Restrictions and requirements on contracting party.--Any other party contracting to carry out the functions of this act shall be subject to the same restrictions and requirements of this act, insofar as applicable, as the State Police, as well as any additional restrictions imposed by the State Police. Section 309. DNA data base exchange.

(a) Receipt of DNA samples by State Police.--It shall be the duty of the State Police to receive DNA samples, to store, to perform analysis or to contract for DNA typing analysis with a qualified DNA laboratory that meets the guidelines as established by the State Police, to classify and to file the DNA record of identification characteristic profiles of DNA samples submitted under this act and to make such information available as provided in this section. The State Police may contract out the storage of DNA typing analysis and may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the State Police. The results of the DNA profile of individuals in the State DNA Data Base shall be made available:

(1) to criminal justice agencies or approved crime laboratories which serve these agencies; or

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

(b) Methods of obtaining information.--The State Police shall adopt guidelines governing the methods of obtaining information from the State DNA Data Base and CODIS and procedures for verification of the identity and authority of the 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 that person's 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 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.

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

CHAPTER 5 ENFORCEMENT AND OTHER PROVISIONS

Section 501. Prohibition on disclosure.

(a) Disclosure.--Any person who, by virtue of employment or official position, or any person contracting to carry out any functions under this act, including any officers, employees and agents of such contractor, who has possession of or access to individually identifiable DNA information contained in the State DNA Data Base or in the State DNA Data Bank shall not disclose it in any manner to any person or agency not authorized to receive it knowing that such person or agency is not authorized to receive it.

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

Section 502. Criminal penalties.

(a) Disclosure.--Any person who, by virtue of employment or official position, or any person contracting to carry out any functions under this act, including any officers, employees and agents of such contractor, who has possession of or access to individually identifiable DNA information contained in the State DNA Data Base or in the State DNA Data Bank and who for pecuniary gain for such person or for any other person discloses it in any manner to any person or agency not authorized to receive it commits a misdemeanor of the first degree.

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

Section 503. Civil actions.

(a) Injunctions.--The State Police or any other aggrieved individual or agency may institute an action in a court of proper jurisdiction against any person, agency or organization to enjoin any criminal justice agency, noncriminal justice

agency, organization or individual from violating the provisions of this act or to compel such agency, organization or person to comply with the provisions of this act.

(b) Action for damages.--

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

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

Section 504. Confidentiality of records.

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

Section 505. DNA Detection Fund.

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

Section 506. Authority of law enforcement officers.

Nothing in this act shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store and utilize DNA samples for law enforcement purposes.

CHAPTER 11 MISCELLANEOUS PROVISIONS

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

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

Section 1102. Effective date.

This act shall take effect as follows:

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

(2) This chapter shall take effect immediately.

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