
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 3

Special Session No. 1 of
1995

INTRODUCED BY HECKLER, GREENLEAF, FISHER, O'PAKE, HART,
TOMLINSON, ULIANA, PORTERFIELD, SCHWARTZ, DELP, GERLACH,
STEWART, STAPLETON, CORMAN, HOLL, ROBBINS, LEMMOND, SHAFFER,
MUSTO, WAGNER, TILGHMAN, WENGER, BELL, RHOADES, BRIGHTBILL,
ARMSTRONG, PUNT, STOUT, BELAN, MADIGAN, BAKER, MOWERY,
AFFLERBACH, JONES, JUBELIRER, LOEPER, MELLOW, PETERSON,
SALVATORE, SHUMAKER, FUMO, BODACK, ANDREZESKI, LAVALLE,
KASUNIC AND TARTAGLIONE, JANUARY 24, 1995

REFERRED TO JUDICIARY, JANUARY 24, 1995

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing for DNA testing of certain
3 offenders; establishing a DNA database and databank; further
4 providing for duties of the Pennsylvania State Police;
5 establishing the DNA Detection Fund; and making an
6 appropriation.

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

9 Section 1. Title 18 of the Pennsylvania Consolidated
10 Statutes is amended by adding a chapter to read:

11 CHAPTER 92

12 DNA TESTING

13 Sec.

14 9201. Short title.

15 9202. Policy.

16 9203. Definitions.

17 9204. State Police responsibility for managing DNA system.

- 1 9205. State Police recommendation of other specified offenses.
2 9206. Procedural compatibility with FBI.
3 9207. Blood sample required for DNA analysis upon conviction,
4 delinquency adjudication of ARD.
5 9208. Procedures for withdrawal of blood sample for DNA
6 analysis.
7 9209. Procedures for conduct, disposition and use of DNA
8 analysis.
9 9210. DNA database exchange.
10 9211. Cancellation of authority to access or exchange DNA
11 records.
12 9212. Expungement.
13 9213. Mandatory fine.
14 9214. Criminal penalties.
15 9215. Civil actions.
16 9216. Confidentiality of records.
17 9217. DNA Detection Fund.
18 9218. Authority of law enforcement officers.
19 § 9201. Short title.

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

22 § 9202. Policy.

23 It is the policy of this Commonwealth to assist Federal,
24 State and local criminal justice and law enforcement agencies in
25 the identification, detection or exclusion of individuals who
26 are subjects of the investigation or prosecution of violent
27 crimes against the person. Identification, detection and
28 exclusion are facilitated by the analysis of biological evidence
29 that is often left by the perpetrator or is recovered from the
30 crime scene. The analysis of biological evidence can also be

1 used to identify missing persons and victims of mass disasters.

2 § 9203. Definitions.

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

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

10 "Charged." The filing of an indictment, a bill of
11 information, a petition alleging delinquency or a criminal
12 complaint approved by the district attorney's office.

13 "CODIS." The FBI's national DNA identification index system
14 that allows the storage and exchange of DNA records submitted by
15 State and local forensic DNA laboratories. The term is derived
16 from Combined DNA Index System.

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

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

30 "DNA sample." A blood sample provided by any person with

1 respect to offenses covered by this chapter or submitted to the
2 Pennsylvania State Police laboratory pursuant to this chapter
3 for analysis or storage, or both.

4 "FBI." The Federal Bureau of Investigation.

5 "Felony sex offense." Any felony offense described in
6 Chapter 31 (relating to sexual offenses) or section 6312
7 (relating to sexual abuse of children) or an attempt or
8 conspiracy to commit a felony sex offense.

9 "Fund." The DNA Detection Fund established in section 9219.

10 "Other specified offense." Any offense under section 3126
11 (relating to indecent assault), 6301 (relating to corruption of
12 minors) or 2502 (relating to murder), a felony offense under
13 section 2709 (relating to harassment and stalking) or any
14 attempt or conspiracy to commit such other specified offense.

15 "State DNA Database." The Pennsylvania State Police DNA
16 identification record system to support law enforcement.

17 "State DNA Databank." The repository of DNA samples
18 collected under the provisions of this chapter.

19 "State Police." The Pennsylvania State Police.

20 § 9204. State Police responsibility for managing DNA system.

21 The State Police shall be responsible for the policy
22 management and administration of the State DNA identification
23 record system to support law enforcement, and for liaison with
24 the FBI regarding the State's participation in CODIS.

25 § 9205. State DNA Database.

26 There is hereby established the State DNA Database. It shall
27 be administered by the State Police and provide DNA records to
28 the FBI for storage and maintenance of the CODIS. The State DNA
29 Database shall have the collective capability provided by
30 computer software and procedures administered by the State

1 Police to store and maintain DNA records related to forensic
2 casework, to convicted offenders required to provide a DNA
3 sample under this chapter and to anonymous DNA records used for
4 research or quality control.

5 § 9206. State DNA Databank.

6 There is hereby established the State DNA Databank. It shall
7 serve as the repository of DNA samples collected under the
8 provisions of this chapter.

9 § 9207. State Police recommendation or other specified
10 offenses.

11 The State Police may recommend to the General Assembly that
12 it enact legislation for the inclusion of additional offenses as
13 specified offenses for which DNA samples shall be taken and
14 otherwise subjected to the provisions of this chapter. In
15 determining whether to recommend additional offenses as
16 specified offenses, the State Police shall consider those
17 offenses for which DNA testing will have a substantial impact on
18 the detection and identification of sex offenders and violent
19 offenders and shall consider the cost to the criminal justice
20 system of including these offenses.

21 § 9208. Procedural compatibility with FBI.

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

26 § 9209. Blood sample required for DNA analysis upon conviction,
27 delinquency adjudication or ARD.

28 (a) Conviction after effective date.--A person who has been
29 or is charged with a felony sex offense or other specified
30 offense and, on or after the effective date of this chapter, is

1 convicted, adjudicated delinquent or granted ARD for any such
2 offense or for any other felony or misdemeanor offense arising
3 out of the same episode shall have a DNA sample drawn as
4 follows:

5 (1) A person who is sentenced or receives a delinquency
6 disposition to a term of confinement for an offense covered
7 by this subsection shall have a DNA sample drawn upon intake
8 to a prison, jail or juvenile detention facility or any other
9 detention facility or institution. If the person is already
10 confined at the time of sentencing or adjudication, the
11 person shall have a DNA sample drawn immediately after the
12 sentencing or adjudication.

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

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

24 (b) Conviction before effective date.--A person who has been
25 charged with a felony sex offense or other specified offense and
26 who, before the effective date of this chapter, is convicted,
27 adjudicated delinquent or granted ARD for any such offense or
28 for any other felony or misdemeanor offense arising out of the
29 same episode shall have a DNA sample drawn as follows:

30 (1) A person who has been convicted or adjudicated

1 delinquent for an offense covered by this subsection and who
2 is still serving a term of confinement in connection
3 therewith on the effective date of this chapter shall have a
4 DNA sample drawn prior to release or within 180 days of the
5 effective date of this chapter, whichever is sooner.

6 (2) A person who has been convicted, adjudicated
7 delinquent or granted ARD for an offense covered by this
8 subsection, who is under the supervision of the criminal
9 justice system or juvenile justice system in connection
10 therewith and who is not in confinement on the effective date
11 of this act shall have a DNA sample drawn within 90 days of
12 the effective date of this chapter as a condition of his
13 continued parole, intermediate punishment, probation, ARD or
14 other nonconfinement status.

15 (3) Under no circumstances shall a person who is
16 convicted, adjudicated delinquent or granted ARD for an
17 offense specified in this section be released in any manner
18 after such disposition unless and until a DNA sample has been
19 withdrawn.

20 (c) Definitions.--As used in this section, the term
21 "released" means any release, parole, furlough, work release,
22 prerelease or release in any other manner from a prison, jail,
23 juvenile detention facility or any other place of confinement.

24 § 9210. Procedures for withdrawal of blood sample for DNA
25 analysis.

26 (a) Drawing of blood.--Each DNA sample required to be drawn
27 pursuant to section 9207 (relating to blood sample required for
28 DNA analysis upon conviction, delinquency adjudication or ARD)
29 from persons who are incarcerated or confined shall be drawn at
30 the place of incarceration or confinement as provided for in

1 section 9209. DNA samples from persons who are not ordered or
2 sentenced to a term of confinement shall be drawn at a prison,
3 jail unit, juvenile facility or other facility to be specified
4 by the court. Only a technician, physician, registered
5 professional nurse, licensed practical nurse, laboratory
6 technician, phlebotomist or other health care worker with
7 phlebotomy training shall draw any DNA sample to be submitted
8 for analysis.

9 (b) No liability.--Persons authorized to draw blood under
10 this section shall not be civilly liable or criminally liable
11 for withdrawing blood or obtaining a DNA sample and reporting
12 test results pursuant to this chapter if they perform these
13 activities in good faith.

14 (c) Use of force.--Duly authorized law enforcement and
15 corrections personnel shall employ reasonable force in cases
16 where an individual refuses to submit to DNA testing authorized
17 under this chapter, and no such employee shall be criminally and
18 civilly liable for the good faith use of reasonable force.

19 § 9211. Procedures for conduct, disposition and use of DNA
20 analysis.

21 (a) Procedures.--Consistent with procedures established by
22 the FBI, the State Police shall adopt rules governing the
23 procedures to be used in the submission, identification,
24 analysis, storage and disposition of DNA samples and typing
25 results of DNA samples submitted under this chapter. The DNA
26 sample typing results shall be securely stored in the State DNA
27 Database and records of testing shall be retained on file with
28 the State Police. These procedures shall also include quality
29 assurance guidelines to insure that DNA identification records
30 meet standards and audit standards for laboratories which submit

1 DNA records to the State DNA Database.

2 (b) Contracting.--The State Police shall be authorized to
3 contract with third parties for purposes of this chapter.

4 (c) Use of tests.--The tests to be performed on each blood
5 sample shall be used only for law enforcement purposes or to
6 assist in the recovery or identification of human remains from
7 disasters or for other humanitarian purposes, including
8 identification of missing persons.

9 (d) Restrictions on contracting party.--Any other party
10 contracting to carry out the functions of this chapter shall be
11 subject to the same restrictions of this chapter, insofar as
12 applicable, as the State Police, as well as any additional
13 restrictions imposed by the State Police.

14 § 9212. DNA database exchange.

15 (a) Receipt of DNA samples by State Police.--It shall be the
16 duty of the State Police to receive DNA samples, to store, to
17 contract for DNA typing analysis with a qualified DNA laboratory
18 that meets the guidelines as established by the State Police, to
19 classify and to file the DNA record of identification
20 characteristic profiles of DNA samples submitted under this
21 chapter and to make such information available as provided in
22 this section. The State Police may contract out the storage of
23 DNA typing analysis and may contract out DNA typing analysis to
24 a qualified DNA laboratory that meets guidelines as established
25 by the State Police. The results of the DNA profile of
26 individuals in the State DNA Database shall be made available to
27 Federal, State or local law enforcement agencies, approved crime
28 laboratories which serve these agencies or the district
29 attorney's office upon written or electronic request and in
30 furtherance of an official investigation of a criminal offense

1 or offender or suspected offender. These records shall also be
2 available upon receipt of a valid court order directing the
3 State Police to release these results to appropriate parties not
4 listed above, when the court order is signed by a superior court
5 judge after a hearing. The State Police shall maintain a file of
6 such court orders.

7 (b) Methods of obtaining information.--The State Police
8 shall adopt rules governing the methods of obtaining information
9 from the State DNA Database and CODIS and procedures for
10 verification of the identity and authority of the requester.

11 (c) Population database.--The State Police may create a
12 separate population database comprised of blood samples obtained
13 under this chapter after all personal identification is removed.
14 Nothing shall prohibit the State Police from sharing or
15 disseminating population databases with other law enforcement
16 agencies, crime laboratories that serve them or other third
17 parties the FBI deems necessary to assist the State Police with
18 statistical analysis of the State Police population databases or
19 to assist in the recovery or identification of human remains
20 from major disasters or for other humanitarian purposes,
21 including identification of missing persons. The population
22 database may be made available to and searched by other agencies
23 participating in the CODIS system.

24 § 9213. Cancellation of authority to access or exchange DNA
25 records.

26 The State Police is authorized to revoke the right of a
27 forensic DNA laboratory within the Commonwealth to access or
28 exchange DNA identification records with Federal, State or local
29 criminal justice agencies.

30 § 9214. Expungement.

1 Any person whose DNA record or profile has been included in
2 the State DNA Database and whose DNA sample is stored in the
3 State Databank may apply for expungement in accordance with the
4 same standards and procedures which are applicable to the
5 expungement of fingerprint records.

6 § 9215. Mandatory fine.

7 Unless the court finds that undue hardship would result, a
8 mandatory fine of \$250 shall automatically be imposed on any
9 person convicted, adjudicated delinquent or granted ARD for a
10 felony sex offense or other specified offense.

11 § 9216. 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 chapter, including any officers, employees
15 and agents of such contractor, who has possession of or access
16 to individually identifiable DNA information contained in the
17 State DNA Database or Databank and who for pecuniary gain for
18 such person or for any other person willfully discloses it in
19 any manner to any person or agency not entitled to receive it
20 commits a misdemeanor of the first degree.

21 (b) Obtaining information.--Any person who, without
22 authorization, willfully obtains individually identifiable DNA
23 information from the State DNA Database or Databank for
24 pecuniary gain for such person or for any other person commits a
25 misdemeanor of the first degree.

26 § 9217. Civil actions.

27 (a) Injunctions.--The Attorney General or any other
28 individual or agency may institute an action in a court of
29 proper jurisdiction against any person, agency or organization
30 to enjoin any criminal justice agency, noncriminal justice

1 agency, organization or individual violating the provisions of
2 this chapter or to compel such agency, organization or person
3 violating the provisions of this chapter or to compel such
4 agency, organization or person to comply with the provisions of
5 this chapter.

6 (b) Action for damages.--

7 (1) Any person aggrieved by a violation of the
8 provisions of this chapter or of the rules and regulations
9 promulgated under this chapter shall have the substantive
10 right to bring an action for damages by reason of such
11 violation in a court of competent jurisdiction.

12 (2) A person found by the court to have been aggrieved
13 by a violation of this chapter or the rules or regulations
14 promulgated under this chapter shall be entitled to actual
15 and real damages of not less than \$100 for each violation and
16 to reasonable costs of litigation and attorney fees.
17 Exemplary and punitive damages of not less than \$1,000 nor
18 more than \$10,000 shall be imposed for any violation of this
19 chapter or the rules or regulations adopted under this
20 chapter found to be willful.

21 § 9218. Confidentiality of records.

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

25 § 9219. DNA Detection Fund.

26 There is hereby established in the State Treasury a
27 restricted account to be known as the DNA Detection Fund. All
28 fines and any appropriations under this chapter shall be
29 transmitted to the fund. The moneys in the fund shall be used
30 solely to carry out the purposes of this chapter.

1 § 9220. Authority of law enforcement officers.

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

5 Section 2. The sum of \$1,000,000, or as much thereof as may
6 be necessary, is hereby appropriated to the DNA Detection Fund
7 for the fiscal year July 1, 1996, to June 30, 1997, to carry out
8 the provisions of this act.

9 Section 3. This act shall take effect July 1, 1996.