

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2398

Session of
2004

INTRODUCED BY GABIG, STERN, LEDERER, CAPPELLI, DENLINGER,
HENNESSEY, KOTIK, GOOD, BELFANTI, SCHRODER, CRAHALLA,
BENNINGHOFF, BAKER, KELLER, SAYLOR, GEIST, CORRIGAN, PICKETT,
WILT, GINGRICH, GEORGE, MARSICO, TIGUE, THOMAS, B. SMITH,
BLAUM AND YOUNGBLOOD, MARCH 8, 2004

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
APRIL 13, 2004

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for missing children
3 and other missing persons.

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

6 Section 1. Section 2908 of Title 18 of the Pennsylvania
7 Consolidated Statutes is amended to read:

8 § 2908. Missing children and other missing persons.

9 (a) Duties of law enforcement agencies.--Law enforcement
10 agencies shall have the following duties with respect to missing
11 children:

12 (1) To investigate a report of a missing child
13 immediately upon receipt of the report regardless of the age
14 of the missing child or the circumstances surrounding the
15 disappearance of the child. In no case shall law enforcement
16 agencies impose a mandatory waiting period prior to

commencing the investigation of a missing child.

(2) When conducting a missing child investigation, to record all information relevant to the missing child and the circumstances surrounding the disappearance of the missing child on the appropriate law enforcement investigative report.

(3) To make an entry into the Missing Persons File through the Commonwealth Law Enforcement Assistance Network (CLEAN) in accord with Pennsylvania State Police policy and procedures immediately upon receipt of sufficient identification information on the missing child.

(3.1) To make an entry into the Unidentified Persons File through Commonwealth Law Enforcement Assistance Network (CLEAN) in accord with Pennsylvania State Police policy and procedures immediately upon:

(i) taking custody of an unidentified living child, such as an infant, or a physically or mentally disabled child; or

(ii) discovering an unidentified deceased child.

(4) To insure timely cancellation of any entry made pursuant to this section where the missing child has returned or is located.

(a.1) Unidentified deceased [children] persons.--Law enforcement agencies [and], coroners and medical examiners shall, with respect to unidentified deceased [children] persons, have the duty to make an entry into the Unidentified Deceased Person File through the Commonwealth Law Enforcement Assistance Network (CLEAN) in accordance with Pennsylvania State Police policy and procedures immediately upon observing or receiving any descriptive information on an unidentified deceased [child]

1 person.

2 [(b) Definition.--As used in this section the term "child"
3 means a person under 18 years of age.]

4 (b) DNA submissions.--Law enforcement agencies shall have
5 the following duties with respect to missing persons:

6 (1) To inform the person making the missing person
7 report within 30 days of the receipt of the report of all of
8 the following:

9 (i) Any person making a missing person report may
10 provide an appropriate personal item belonging to the
11 missing person.

12 (ii) A parent or other appropriate person may submit
13 a DNA sample for forensic analysis.

14 (2) To provide any person notified pursuant to paragraph
15 (1)(ii) with a copy of a release form prepared and
16 distributed by the Pennsylvania State Police that authorizes
17 a parent or other appropriate person to voluntarily provide a
18 DNA sample or an appropriate personal article belonging to
19 the missing person for purposes of DNA sampling. The release
20 form shall explain that the results of any DNA analysis will
21 be used solely for the purpose of identifying the missing
22 person.

23 (3) To submit any sample or item obtained pursuant to
24 paragraph (1), as soon as practicable after receipt and
25 verification of the status of the missing person, along with
26 a copy of the missing person report, an executed release form
27 and any supplemental information, to the Pennsylvania State
28 Police in accord with Pennsylvania State Police policy and
29 procedures.

30 (4) To immediately notify the Pennsylvania State Police

1 when any missing person on whose behalf a submission was made
2 pursuant to paragraph (3) is located or identified.

3 (c) Specific duties of the Pennsylvania State Police.--In
4 addition to the duties set forth in subsections (a), (a.1) and
5 (b), the Pennsylvania State Police shall have the following
6 duties with respect to missing persons:

7 (1) To establish policy and procedures to implement the
8 requirements of this section.

9 (2) To develop a model kit to be used by law enforcement
10 to take DNA samples from parents or other appropriate
11 persons.

12 (3) To receive DNA samples and items submitted pursuant
13 to subsection (b).

14 (4) To conduct forensic DNA analysis of samples and
15 items submitted pursuant to subsection (b) utilizing
16 appropriate DNA typing tests, which include nuclear and
17 mitochondrial DNA typing, and to include the results in any
18 appropriate missing person or unidentified human remains
19 database in accord with established policy and procedures.

20 (5) To notify the submitting law enforcement agency when
21 a missing person is located or identified utilizing DNA.

22 (6) Except as provided in subsection ~~(d)~~ (E), to <—
23 maintain the confidentiality of the results of forensic DNA
24 analysis conducted pursuant to this section.

25 ~~(d) Confidentiality.~~ <—

26 ~~(1) All DNA samples received pursuant to subsection (b)~~
27 ~~and the results of any forensic DNA analysis performed~~
28 ~~thereon shall be destroyed after the missing person is~~
29 ~~returned, located or a positive identification is made and a~~
30 ~~report is issued.~~

1 (D) USE OF DNA SAMPLES FOLLOWING A MISSING PERSON'S RETURN, <—
2 LOCATION OR POSITIVE IDENTIFICATION.--

3 (1) UNLESS, WITHIN 90 DAYS AFTER A MISSING PERSON IS
4 RETURNED, LOCATED OR POSITIVELY IDENTIFIED, A DISTRICT
5 ATTORNEY PROVIDED NOTICE TO THE PENNSYLVANIA STATE POLICE
6 THAT GOOD CAUSE EXISTS TO BELIEVE THAT A CRIMINAL OFFENSE HAS
7 OCCURRED RELATING TO THE DISAPPEARANCE OF THE MISSING PERSON
8 AND THAT A SUBMITTED DNA SAMPLE OR THE RESULTS OF ANY
9 FORENSIC DNA ANALYSIS CONDUCTED THEREON MAY BE EVIDENCE IN
10 THE PROSECUTION OF THE OFFENSE, ALL DNA SAMPLES RECEIVED
11 UNDER SUBSECTION (B) AND THE RESULTS OF ANY FORENSIC ANALYSIS
12 PERFORMED ON THE SAMPLES SHALL BE DESTROYED WITHIN 30 DAYS
13 AFTER THE TIME FOR PROVIDING NOTICE HAS EXPIRED.

14 (2) NOTICE FROM THE DISTRICT ATTORNEY SHALL SPECIFICALLY
15 STATE THE OFFENSE WHICH HE HAS GOOD CAUSE TO BELIEVE HAS
16 OCCURRED.

17 (3) IF A PROSECUTION OF THE STATED OFFENSE IS NOT
18 COMMENCED DURING THE APPLICABLE PERIOD OF LIMITATIONS SET
19 FORTH IN 42 PA.C.S. CH. 55 (RELATING TO LIMITATION OF TIME),
20 THE DNA SAMPLES RECEIVED UNDER SUBSECTION (B) AND THE RESULTS
21 OF ANY FORENSIC DNA ANALYSIS PERFORMED THEREON SHALL BE
22 DESTROYED.

23 (E) CONFIDENTIALITY.--

24 ~~(2)~~ (1) Except as provided in paragraph ~~(3)~~ (2), the <—
25 results of a forensic DNA analysis performed on a sample or
26 item submitted pursuant to subsection (b) are confidential.

27 ~~(3)~~ (2) The Pennsylvania State Police may only disclose <—
28 the results of a forensic DNA analysis performed pursuant to
29 this section to:

30 (i) Law enforcement agencies.

1 (ii) Coroners and medical examiners.

2 (iii) A parent or other appropriate person
3 voluntarily providing a DNA sample or an article,
4 pursuant to subsection (b).

5 ~~(4)~~ (3) Any person who collects, processes or stores a <—
6 DNA sample from a living person for forensic DNA analysis
7 pursuant to this section and who intentionally violates this
8 subsection is liable to the living person who donated the DNA
9 sample for civil damages in the amount of \$5,000 for each
10 violation.

11 ~~(e)~~ (F) Other forensic identification evidence.--In addition <—
12 to any other action taken, law enforcement agencies shall inform
13 the person making the missing person report that the person may
14 provide copies of the missing person's dental records or X-rays
15 or both, for inclusion in the law enforcement agency's missing
16 person investigative file. No report need be made pursuant to
17 this subsection if the missing person's dental records or X-rays
18 have previously been obtained.

19 ~~(f)~~ (G) Definitions.--As used in this section, the following <—
20 words and phrases shall have the meanings given to them in this
21 subsection:

22 "Appropriate personal item." An item of personal property
23 belonging to a missing person that is likely to contain the
24 missing person's DNA.

25 "Child." A person under 18 years of age.

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

30 "DNA sample." A blood or tissue sample provided by a parent

- 1 or other appropriate person pursuant to this section for
- 2 analysis or storage, or both.
- 3 Section 2. This act shall take effect in 180 days.