

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 8

Session of
2008

INTRODUCED BY D. O'BRIEN, SONNEY, ARGALL, BAKER, BELFANTI,
BENNINGHOFF, BENNINGTON, BRENNAN, CAPPELLI, CARROLL, CASORIO,
CLYMER, CONKLIN, CREIGHTON, DALLY, EVERETT, FAIRCHILD,
GEORGE, GIBBONS, GINGRICH, GOODMAN, GRUCELA, HALUSKA, HARHAI,
HARKINS, HELM, HERSHEY, HESS, JAMES, W. KELLER, KENNEY,
KORTZ, KULA, MAHONEY, MAJOR, MANN, MARSHALL, McGEEHAN,
McILHATTAN, R. MILLER, MILNE, MOYER, MURT, NAILOR, O'NEILL,
PAYNE, PHILLIPS, PICKETT, PYLE, SABATINA, SOLOBAY, TRUE,
WALKO, WATSON, J. WHITE AND YOUNGBLOOD, JANUARY 23, 2008

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 23, 2008

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.

1 * * *

2 Section 2. Section 2316 heading, (a) and (b)(3) are amended
3 and the section is amended by adding a subsection to read:

4 § 2316. DNA sample required upon arrest, conviction,
5 delinquency adjudication and certain ARD cases.

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

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

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

29 (3) Under no circumstances shall a person who is
30 convicted or adjudicated delinquent for an offense covered by

1 this subsection be released in any manner after such
2 disposition unless and until a DNA sample has been
3 [withdrawn] drawn.

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

5 * * *

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

13 * * *

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

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

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

1 chapter.

2 * * *

3 Section 3. Title 44 is amended by adding a section to read:

4 § 2316.1. Collection from persons accepted from other
5 jurisdictions.

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

19 (b) Time period.--

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

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

1 Section 4. Sections 2317(a)(1) and 2321(a) and (b) are
2 amended to read:

3 § 2317. Procedures for withdrawal, collection and transmission
4 of DNA samples.

5 (a) Drawing of DNA samples.--

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

21 * * *

22 § 2321. Expungement.

23 (a) General rule.--

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

1 been reversed and the case dismissed or that the DNA sample,
2 record or profile was included in the State DNA Data Bank or
3 the State DNA Data Base by mistake.] if the person files the
4 request in writing with the State Police and any of the
5 following apply:

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

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

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

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

29 (b) Duty of State Police.--The State Police shall purge all
30 records and identifiable information in the State DNA Data Bank

1 or State DNA Data Base pertaining to the person and destroy each
2 sample, record and profile from the person upon[:

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

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

9 * * *

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