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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 1265** Session of  
2008

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INTRODUCED BY BOSCOLA, FONTANA, WASHINGTON, O'PAKE, RAFFERTY,  
STOUT, ORIE, ERICKSON, KITCHEN, C. WILLIAMS, KASUNIC, EARLL,  
ROBBINS, GREENLEAF, COSTA AND PILEGGI, FEBRUARY 4, 2008

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REFERRED TO JUDICIARY, FEBRUARY 4, 2008

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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) are amended  
19 and the section is amended by adding a subsection to read:

1 § 2316. DNA sample required upon arrest, conviction,  
2 delinquency adjudication and certain ARD cases.

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

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

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

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30 [withdrawn] drawn.

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

2 \* \* \*

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

10 \* \* \*

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

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

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

29 \* \* \*

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

1 § 2316.1. Collection from persons accepted from other  
2 jurisdictions.

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

16 (b) Time period.--

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

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

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

30 § 2317. Procedures for withdrawal, collection and transmission

1 of DNA samples.

2 (a) Drawing of DNA samples.--

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

18 \* \* \*

19 § 2321. Expungement.

20 (a) General rule.--

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

1 request in writing with the State Police and any of the  
2 following apply:

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

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

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

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

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

30 (1) receipt of a written request for expungement

1 pursuant to this section and a certified copy of the final  
2 court order reversing and dismissing the conviction; or

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

6 \* \* \*

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