

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 770 Session of 2009

INTRODUCED BY BOSCOLA, BROWNE, WONDERLING, WOZNIAK, COSTA,
STOUT, ORIE, WILLIAMS, RAFFERTY, STACK, LOGAN, FONTANA,
O'PAKE, WAUGH AND EARLL, APRIL 6, 2009

REFERRED TO JUDICIARY, APRIL 6, 2009

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.