

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 754 Session of 2011

INTRODUCED BY BOSCOLA, RAFFERTY, BROWNE, WAUGH, FONTANA,  
WASHINGTON, WOZNIAK AND ERICKSON, MARCH 7, 2011

REFERRED TO JUDICIARY, MARCH 7, 2011

AN ACT

1 Amending Title 44 (Law and Justice) of the Pennsylvania  
2 Consolidated Statutes, further providing for policy, for  
3 definitions and for DNA sample; providing for collection from  
4 persons accepted from other jurisdictions; and further  
5 providing for procedures for withdrawal, collection and  
6 transmission of DNA samples and for expungement.

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

9 Section 1. Section 2302 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 (1) DNA data banks are an important tool in criminal  
14 investigations, in the exclusion of individuals who are the  
15 subject of criminal investigations or prosecutions and in  
16 deterring and detecting recidivist acts.

17 (2) Several states have enacted laws requiring persons  
18 arrested, charged or convicted of certain crimes, especially  
19 sex offenses, to provide genetic samples for DNA profiling.

20 (3) Moreover, it is the policy of the Commonwealth to

1 assist Federal, State and local criminal justice and law  
2 enforcement agencies in the identification and detection of  
3 individuals in criminal investigations.

4 (4) It is therefore in the best interest of the  
5 Commonwealth to establish a DNA data base and a DNA data bank  
6 containing DNA samples submitted by individuals arrested,  
7 charged, convicted of, adjudicated delinquent for or accepted  
8 into ARD for felony [sex] offenses and other specified  
9 offenses.

10 Section 2. The definitions of "felony sex offense" and  
11 "other specified offense" in section 2303 of Title 44 are  
12 amended to read:

13 § 2303. Definitions.

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

17 \* \* \*

18 ["Felony sex offense." A felony offense or an attempt,  
19 conspiracy or solicitation to commit a felony offense under any  
20 of the following:

21 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

22 18 Pa.C.S. § 4302 (relating to incest).

23 18 Pa.C.S. § 5902(c)(1)(iii) and (iv) (relating to  
24 prostitution and related offenses).

25 18 Pa.C.S. § 5903(a) (relating to obscene and other  
26 sexual materials and performances) where the offense  
27 constitutes a felony.

28 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

29 18 Pa.C.S. § 6318 (relating to unlawful contact with  
30 minor) where the most serious underlying offense for which

1 the defendant contacted the minor is graded as a felony.

2 18 Pa.C.S. § 6320 (relating to sexual exploitation of  
3 children).]

4 \* \* \*

5 "Other specified offense." [A felony offense or an] An  
6 offense under 18 Pa.C.S. § 2910 (relating to luring a child into  
7 a motor vehicle) or 3126 (relating to indecent assault) or an  
8 attempt to commit such an offense.

9 \* \* \*

10 Section 3. Section 2316 of Title 44 is amended to read:

11 § 2316. DNA sample required upon arrest, conviction,  
12 delinquency adjudication and certain ARD cases.

13 (a) [General rule] Conviction or adjudication.--A person who  
14 is convicted or adjudicated delinquent for a felony [sex]  
15 offense or other specified offense or who is or remains  
16 incarcerated for a felony [sex] offense or other specified  
17 offense on or after the effective date of this chapter shall  
18 have a DNA sample drawn as follows:

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

30 (2) A person who is convicted or adjudicated delinquent

1 for an offense covered by this subsection shall have a DNA  
2 sample drawn as a condition for any sentence or adjudication  
3 which disposition will not involve an intake into a prison,  
4 jail, juvenile detention facility or any other detention  
5 facility or institution.

6 (3) Under no circumstances shall a person who is  
7 convicted or adjudicated delinquent for an offense covered by  
8 this subsection be released in any manner after such  
9 disposition unless and until a DNA sample has been withdrawn.

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

11 (1) A person who has been convicted or adjudicated  
12 delinquent for a felony [sex] offense or other specified  
13 offense and who serves a term of confinement in connection  
14 therewith after June 18, 2002, shall not be released in any  
15 manner unless and until a DNA sample has been withdrawn.

16 (2) This chapter shall apply to incarcerated persons  
17 convicted or adjudicated delinquent for a felony [sex]  
18 offense prior to June 19, 2002.

19 (3) This chapter shall apply to incarcerated persons and  
20 persons on probation or parole who were convicted or  
21 adjudicated delinquent for other specified offenses prior to  
22 the effective date of this paragraph[.] whether or not the  
23 offense for which the person is currently imprisoned or under  
24 probation or parole supervision is a felony offense or other  
25 specified offense.

26 (c) Certain ARD cases.--Acceptance into ARD as a result of a  
27 criminal charge for a felony [sex] offense or other specified  
28 offense filed after June 18, 2002, may be conditioned upon the  
29 giving of a DNA sample.

30 (c.1) Criminal charge or arrest.--A person who is charged or

1 arrested as an adult for a felony offense or other specified  
2 offense shall have a DNA sample drawn as follows:

3 (1) An adult person arrested for a felony offense or  
4 other specified felony shall provide a DNA sample and  
5 fingerprints as required under this chapter immediately  
6 following arrest, during booking or intake or as soon as  
7 administratively practical after arrest but no later than  
8 prior to release on bail or pending trial or any other  
9 physical release from confinement or custody.

10 (2) If for any reason a person subject to this chapter  
11 did not have DNA samples and fingerprints taken under  
12 paragraph (1) or otherwise bypasses the State or county  
13 prison system, the court shall order the person to report  
14 within five calendar days to prison, jail unit, juvenile  
15 facility or other facility to be specified by the court to  
16 provide DNA samples and fingerprints in accordance with this  
17 chapter.

18 (d) Supervision of DNA samples.--All DNA samples taken  
19 pursuant to this section shall be taken in accordance with  
20 regulations promulgated by the State Police in consultation with  
21 the Department of Corrections.

22 (d.1) Mandatory submission.--The requirements of this  
23 chapter are mandatory and apply regardless of whether a court  
24 advises a person that a DNA sample must be provided to the State  
25 DNA Data Base and the State DNA Data Bank as a result of a  
26 conviction or adjudication of delinquency. A person who has been  
27 sentenced to death or life imprisonment without the possibility  
28 of parole or to any term of incarceration is not exempt from the  
29 requirements of this chapter. Any person subject to this chapter  
30 who has not provided a DNA sample for any reason, including

1 because of an oversight or error, shall provide a DNA sample for  
2 inclusion in the State DNA Data Base and the State DNA Data Bank  
3 after being notified by authorized law enforcement or  
4 corrections personnel. If a person provides a DNA sample which  
5 is not adequate for any reason, the person shall provide another  
6 DNA sample for inclusion in the State DNA Data Base and the  
7 State DNA Data Bank after being notified by authorized law  
8 enforcement or corrections personnel.

9 (e) Definition.--As used in this section, the term  
10 "released" means any release, parole, furlough, work release,  
11 prerelease or release in any other manner from a prison, jail,  
12 juvenile detention facility or any other place of confinement.

13 Section 4. Title 44 is amended by adding a section to read:  
14 § 2316.1. Collection from persons accepted from other  
15 jurisdictions.

16 (a) Conditional acceptance.--When a person is accepted into  
17 this Commonwealth for supervision from another jurisdiction  
18 through the Interstate Compact for Supervision of Adult  
19 Offenders or under any other reciprocal agreement with any  
20 Federal, state or county agency, or any other provision of law,  
21 whether or not the person is confined or released, the  
22 acceptance shall be conditioned on the offender providing DNA  
23 samples under this chapter if the offender has a record of any  
24 past or present conviction or adjudication that is substantially  
25 similar to a felony offense or other specified offense from any  
26 Federal, state or military court. Additional DNA samples shall  
27 not be required if a DNA sample is currently on file with CODIS  
28 or the DNA record.

29 (b) Time period.--

30 (1) If the person accepted under subsection (a) is not

1 confined, the DNA sample and fingerprints required by this  
2 chapter shall be provided within five calendar days after the  
3 person reports to the supervising agent or within five  
4 calendar days of notice to the person, whichever occurs  
5 first. The person shall appear and the DNA samples shall be  
6 collected in accordance with the provisions of this chapter.

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

11 Section 5. Sections 2317(a) (1) and 2321(a) and (b) of Title  
12 44 are amended to read:

13 § 2317. Procedures for withdrawal, collection and transmission  
14 of DNA samples.

15 (a) Drawing of DNA samples.--

16 (1) Each DNA sample required to be drawn pursuant to  
17 [section] sections 2316 (relating to DNA sample required upon  
18 arrest, conviction, delinquency adjudication and certain ARD  
19 cases) and 2326.1 (relating to collection from persons  
20 accepted from other jurisdictions), from persons who are  
21 incarcerated or confined shall be drawn at the place of  
22 incarceration or confinement as provided for in section 2316.  
23 DNA samples from persons who are not ordered or sentenced to  
24 a term of confinement shall be drawn at a prison, jail unit,  
25 juvenile facility or other facility to be specified by the  
26 court. Only those individuals qualified to draw DNA samples  
27 in a medically approved manner shall draw a DNA sample to be  
28 submitted for DNA analysis. Such sample and the set of  
29 fingerprints provided for in paragraph (2) shall be delivered  
30 to the State Police within 48 hours of drawing the sample.

1 \* \* \*

2 § 2321. Expungement.

3 (a) General rule.--

4 (1) A person whose DNA sample, record or profile has  
5 been included in the State DNA Data Bank or the State DNA  
6 Data Base pursuant to the former DNA Act, former 42 Pa.C.S.  
7 Ch. 47 (relating to DNA data and testing) or this chapter may  
8 request expungement [on the grounds that the conviction or  
9 delinquency adjudication on which the authority for including  
10 that person's DNA sample, record or profile was based has  
11 been reversed and the case dismissed or that the DNA sample,  
12 record or profile was included in the State DNA Data Bank or  
13 the State DNA Data Base by mistake.] if the person files the  
14 request in writing with the State Police and any of the  
15 following apply:

16 (i) The State Police receive, for each conviction of  
17 the person of an offense the basis of which that analysis  
18 was or could have been included in the State DNA Data  
19 Bank or the State DNA Data Base, a certified copy of a  
20 final court order establishing that the conviction has  
21 been overturned.

22 (ii) The person has not been convicted of an offense  
23 the basis of which that analysis was or could have been  
24 included in the State DNA Data Bank or the State DNA Data  
25 Base and the State Police receive, for each charge  
26 against the person the basis of which the analysis was or  
27 could have been included in the State DNA Data Bank or  
28 the State DNA Data Base, a certified copy of a final  
29 court order establishing that the charge has been  
30 dismissed or has resulted in an acquittal or that no



1 charge was filed within the applicable time period.

2 (iii) The State Police receive clear and convincing  
3 proof that the DNA sample, record or profile was included  
4 in the State DNA Data Bank or the State DNA Data Base by  
5 mistake.

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

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

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

16 (2) clear and convincing proof that the sample record or  
17 profile was included by mistake.] receipt of the applicable  
18 documents and other materials required under subsection (a).

19 \* \* \*

20 Section 6. This act shall take effect in 60 days.