
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 775 Session of
2011

INTRODUCED BY PILEGGI, GREENLEAF, FOLMER, RAFFERTY, ERICKSON,
YAW, PIPPY, LEACH, VANCE, SOLOBAY, WARD, FARNESE AND BROWNE,
MARCH 15, 2011

REFERRED TO JUDICIARY, MARCH 15, 2011

AN ACT

1 Amending Title 44 (Law and Justice) of the Pennsylvania
2 Consolidated Statutes, in DNA data and testing, further
3 providing for policy, for definitions, for State DNA Data
4 Base, for procedural compatibility with FBI and for DNA
5 sample required upon conviction, delinquency adjudication and
6 certain ARD cases; providing for collection from persons
7 accepted from other jurisdictions; further providing for
8 procedures for withdrawal, collection and transmission of DNA
9 samples, for procedures for conduct, disposition and use of
10 DNA analysis; providing for request for modified DNA search;
11 further providing for DNA data base exchange and for
12 expungement; and providing for severability.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Sections 2302, 2303, 2312 and 2315 of Title 44 of
16 the Pennsylvania Consolidated Statutes are amended to read:

17 § 2302. Policy.

18 The General Assembly finds and declares that:

19 (1) DNA data banks are an important tool in criminal
20 investigations, in [the exclusion of] excluding innocent
21 individuals who are the subject of criminal investigations or
22 prosecutions and in [deterring and detecting recidivist acts]

1 detecting and deterring repeated crimes by the same
2 individual.

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

6 (2.1) Several states have authorized the use of DNA
7 analysis to identify crime scene DNA profiles by establishing
8 that the source of a crime scene DNA profile is likely to be
9 a close relative of a specific individual whose DNA record is
10 on file.

11 (3) Moreover, it is the policy of the Commonwealth to
12 assist Federal, State and local criminal justice and law
13 enforcement agencies in the identification and detection of
14 individuals in criminal investigations.

15 (4) It is therefore in the best interest of the
16 Commonwealth to establish a DNA data base and a DNA data bank
17 containing DNA samples submitted by individuals arrested for,
18 charged with, convicted of, adjudicated delinquent for or
19 accepted into ARD for felony sex offenses and other specified
20 offenses.

21 (5) It is in the best interest of the Commonwealth to
22 authorize the State Police to use DNA analysis and to
23 identify these individuals to a criminal justice agency in
24 certain cases.

25 § 2303. Definitions.

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

29 "Accredited forensic DNA laboratory." A forensic DNA
30 laboratory that has received accreditation by an accrediting

1 body nationally recognized within the forensic science community
2 in accordance with the FBI Quality Assurance Standards to
3 perform forensic DNA testing and is in compliance with FBI
4 quality assurance standards.

5 "ARD." Accelerated Rehabilitative Disposition.

6 "CODIS." The [term is derived from] Combined DNA Index
7 System, the Federal Bureau of Investigation's national DNA
8 identification index system that allows the storage and exchange
9 of DNA records submitted by state and local forensic DNA
10 laboratories.

11 "Commissioner." The Commissioner of the Pennsylvania State
12 Police.

13 "Crime scene DNA profile." A DNA profile that characterizes
14 the sample of DNA found on a victim or originating from and
15 associated with the scene of a crime.

16 "Criminal justice agency." A criminal justice agency as
17 defined in 18 Pa.C.S. § 9102 (relating to definitions).

18 "DNA." Deoxyribonucleic acid. DNA is located in the cells
19 and provides an individual's personal genetic blueprint. DNA
20 encodes genetic information that is the basis of human heredity
21 and forensic identification.

22 "DNA record." DNA identification information stored in the
23 State DNA Data Base or the Combined DNA Index System for the
24 purpose of generating investigative leads or supporting
25 statistical interpretation of DNA test results. The term
26 includes nuclear and mitochondrial typing. The DNA record is the
27 result obtained from the DNA typing tests. The DNA record is
28 comprised of the characteristics of a DNA sample which are of
29 value in establishing the identity of individuals or the source
30 of a crime scene DNA profile. The results of all DNA

1 identification tests on an individual's DNA sample are also
2 collectively referred to as the DNA profile of an individual.

3 "DNA sample." A [blood or tissue] bodily sample:

4 (1) provided by any person with respect to offenses
5 covered by this chapter or submitted to the Pennsylvania
6 State Police laboratory pursuant to the former act of May 28,
7 1995 (1st Sp.Sess., P.L.1009, No.14), known as the DNA
8 Detection of Sexual and Violent Offenders Act, to the former
9 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or to
10 this chapter for analysis or storage, or both[.]; or

11 (2) found at a crime scene that might have come from a
12 possible offender.

13 "FBI." The Federal Bureau of Investigation.

14 "Felony sex offense." A felony offense or an attempt,
15 conspiracy or solicitation to commit a felony offense under any
16 of the following:

17 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

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

19 18 Pa.C.S. § 5902(c)(1)(iii) and (iv) (relating to
20 prostitution and related offenses).

21 18 Pa.C.S. § 5903(a) (relating to obscene and other
22 sexual materials and performances) where the offense
23 constitutes a felony.

24 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

25 18 Pa.C.S. § 6318 (relating to unlawful contact with
26 minor) where the most serious underlying offense for which
27 the defendant contacted the minor is graded as a felony.

28 18 Pa.C.S. § 6320 (relating to sexual exploitation of
29 children).

30 "Forensic DNA laboratory." A laboratory that performs

1 forensic DNA testing for the purposes of identification.

2 "Forensic DNA testing." A test that applies techniques from
3 molecular biology to deoxyribonucleic acid (DNA) to help resolve
4 issues of identification.

5 "Former DNA Act." The former act of May 28, 1995 (1st
6 Sp.Sess., P.L.1009, No.14), known as the DNA Detection of Sexual
7 and Violent Offenders Act.

8 "Fund." The DNA Detection Fund reestablished in section 2335
9 (relating to DNA Detection Fund).

10 "Human behavioral genetic research." The study of the
11 possible genetic underpinnings of behaviors, including, but not
12 limited to, aggression, substance abuse, social attitudes,
13 mental abilities, sexual activity and eating habits.

14 "Judicial determination." A determination by a court of
15 competent jurisdiction, including a settlement approved by such
16 court.

17 "Law enforcement identification purposes." Assisting in the
18 determination of the identity of an individual whose DNA is
19 contained in a biological sample.

20 "Mitochondrial DNA analysis." A method that applies
21 techniques from molecular biology to analyze DNA found in the
22 mitochondria of cells.

23 "Modified DNA search." A search of a crime scene DNA profile
24 against the State DNA Data Base by the State Police that is
25 conducted using the procedure and methods set forth in the
26 regulations published under section 2318.1(d)(3) (relating to
27 request for modified DNA search).

28 "Other specified offense." [A felony offense or an offense
29 under 18 Pa.C.S. § 2910 (relating to luring a child into a motor
30 vehicle) or 3126 (relating to indecent assault) or an attempt to

1 commit such an offense.] Any of the following:

2 A felony offense.

3 18 Pa.C.S. § 2701(b)(2) (relating to simple assault).

4 18 Pa.C.S. § 2902(a) (relating to unlawful restraint).

5 18 Pa.C.S. § 2910 (relating to luring a child into a
6 motor vehicle or structure.

7 18 Pa.C.S. § 3126 (relating to indecent assault).

8 18 Pa.C.S. § 3503(b)(1)(v) (relating to criminal
9 trespass).

10 18 Pa.C.S. § 4303 (relating to concealing death of
11 child).

12 18 Pa.C.S. § 4304 (relating to endangering welfare of
13 children).

14 18 Pa.C.S. § 4305 (relating to dealing in infant
15 children).

16 An attempt, conspiracy or solicitation to commit a felony
17 offense or other offense specified in this definition.

18 "State Police." The Pennsylvania State Police.

19 "Y chromosome analysis." A method that applies techniques
20 from molecular biology to examine DNA found on the Y chromosome.

21 § 2312. State DNA Data Base.

22 [The State DNA Data Base is reestablished. It shall be
23 administered by the State Police and provide DNA records to the
24 FBI for storage and maintenance by CODIS.] A Statewide DNA Data
25 Base is established within the State Police to provide DNA
26 records to CODIS. The State DNA Data Base shall have the
27 capability provided by computer software and procedures
28 administered by the State Police to store and maintain DNA
29 records related to:

30 (1) forensic casework;

1 (2) arrested, charged and convicted offenders required
2 to provide a DNA sample under this chapter; and
3 (3) anonymous DNA records used for statistical research
4 [or] on the frequency of DNA genotypes, quality control or
5 the development of new DNA identification methods.

6 § 2315. Procedural compatibility with FBI.

7 The DNA identification system [as] established by the State
8 Police shall be compatible with the procedures [specified]
9 established by the FBI quality assurance standards for forensic
10 DNA testing laboratories and DNA data basing laboratories and
11 CODIS policies and procedures, including use of comparable test
12 procedures, laboratory equipment, supplies and computer
13 software.

14 Section 2. Section 2316 heading and subsections (a) and (b)
15 (3) of Title 44 are amended and the section is amended by adding
16 a subsection to read:

17 § 2316. DNA sample required upon arrest, criminal charge,
18 conviction, delinquency adjudication and certain ARD
19 cases.

20 (a) [General rule] Conviction or adjudication.--A person who
21 is convicted or adjudicated delinquent for a felony sex offense
22 or other specified offense or who is or remains incarcerated for
23 a felony sex offense or other specified offense on or after the
24 effective date of this chapter shall have a DNA sample [drawn]
25 collected as follows:

26 (1) A person who is sentenced or receives a delinquency
27 disposition to a term of confinement for an offense covered
28 by this subsection shall have a DNA sample [drawn] collected
29 upon intake to a prison, jail or juvenile detention facility
30 or any other detention facility or institution. If the person

1 is already confined at the time of sentencing or
2 adjudication, the person shall have a DNA sample [drawn]
3 collected immediately after the sentencing or adjudication.
4 If a DNA sample is not timely [drawn] collected in accordance
5 with this section, the DNA sample may be [drawn] collected
6 any time thereafter by the prison, jail, juvenile detention
7 facility, detention facility or institution.

8 (2) A person who is convicted or adjudicated delinquent
9 for an offense covered by this subsection shall have a DNA
10 sample [drawn] collected as a condition for any sentence or
11 adjudication which disposition will not involve an intake
12 into a prison, jail, juvenile detention facility or any other
13 detention facility or institution.

14 (3) Under no circumstances shall a person who is
15 convicted or adjudicated delinquent for an offense covered by
16 this subsection be released in any manner after such
17 disposition unless and until a DNA sample has been
18 [withdrawn] collected.

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

20 * * *

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

28 * * *

29 (c.1) Criminal charge or arrest.--

30 (1) A person who is charged or arrested as an adult for

1 a felony sex offense or other specified offense shall have a
2 DNA sample collected immediately following:

3 (i) a judicial determination at a preliminary
4 hearing that probable cause exists for the arrest or
5 criminal charge; or

6 (ii) the waiver of the right to a preliminary
7 hearing.

8 (2) If for any reason a person does not provide a DNA
9 sample and fingerprints under this chapter, the court shall
10 order the person to report within five calendar days of
11 arrest or charge to a prison, jail unit, juvenile facility or
12 other facility to be specified by the court to provide DNA
13 samples and fingerprints in accordance with this chapter.

14 (3) The State Police shall create a separate category
15 within the data base to store DNA samples and records
16 collected under this subsection, and the DNA records and
17 samples contained therein shall not be subject to any
18 modified DNA search authorized under section 2318.1 (relating
19 to request for modified DNA search).

20 * * *

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

22 § 2316.1. Collection from other jurisdictions.

23 (a) Conditional acceptance.--When a person is accepted into
24 this Commonwealth for supervision from another jurisdiction
25 under the Interstate Compact for Supervision of Adult Offenders,
26 other reciprocal agreement with a Federal, state or county
27 agency, or a provision of law, whether or not the person is
28 confined or released, the acceptance shall be conditioned on the
29 offender's providing DNA samples under this chapter if the
30 offender has a past or present Federal, state or military court

1 conviction or adjudication that is equivalent to a felony sex
2 offense or other specified offense as determined by the
3 Pennsylvania Board of Probation and Parole. Additional DNA
4 samples shall not be required if a DNA sample is currently on
5 file with CODIS or the State DNA Data Base.

6 (b) Time period.--

7 (1) If the person accepted under subsection (a) is not
8 confined, the DNA sample and fingerprints required under this
9 chapter shall be provided within five calendar days after the
10 person reports to the supervising agent or within five
11 calendar days of notice to the person, whichever occurs
12 first. The person shall appear and the DNA samples shall be
13 collected in accordance with the provisions of this chapter.

14 (2) If the person accepted under subsection (a) is
15 confined, the person shall provide the DNA sample and
16 fingerprints required by this chapter within five calendar
17 days after the person is received at a place of incarceration
18 or confinement.

19 Section 4. Sections 2317(a)(1) and 2318(a) and (c) of Title
20 44 are amended to read:

21 § 2317. Procedures for withdrawal, collection and transmission
22 of DNA samples.

23 (a) [Drawing] Collection of DNA samples.--

24 (1) Each DNA sample required to be [drawn] collected
25 pursuant to [section] sections 2316 (relating to DNA sample
26 required upon arrest, criminal charge, conviction,
27 delinquency adjudication and certain ARD cases) and 2316.1
28 (relating to collection from persons accepted from other
29 jurisdictions) from persons who are incarcerated or confined
30 shall be [drawn] collected at the place of incarceration or

1 confinement as provided for in section 2316. DNA samples from
2 persons who are not ordered or sentenced to a term of
3 confinement shall be [drawn] collected at a prison, jail
4 unit, juvenile facility or other facility to be specified by
5 the court. Only those individuals qualified to draw DNA blood
6 samples in a medically approved manner shall draw a DNA blood
7 sample to be submitted for DNA analysis. Such sample and the
8 set of fingerprints provided for in paragraph (2) shall be
9 delivered to the State Police within 48 hours of [drawing]
10 collecting the sample.

11 * * *

12 § 2318. Procedures for conduct, disposition and use of DNA
13 analysis.

14 (a) Procedures.--

15 (1) The State Police shall [prescribe] promulgate
16 regulations to implement this chapter, including procedures
17 to be used in the collection, submission, identification,
18 analysis, storage and disposition of DNA samples and typing
19 results of DNA samples submitted under the former DNA Act,
20 former 42 Pa.C.S. Ch. 47 (relating to DNA data and testing)
21 or this chapter.

22 (2) The DNA sample typing results shall be securely
23 stored in the State DNA Data Base, and records of testing
24 shall be retained on file with the State Police consistent
25 with the procedures established by the FBI quality assurance
26 standards for forensic DNA testing laboratories and DNA data
27 basing laboratories and CODIS policies and procedures.

28 (3) These procedures shall also include quality
29 assurance guidelines to ensure that DNA identification
30 records meet standards for accredited forensic DNA

1 laboratories which submit DNA records to the State DNA Data
2 Base.

3 (4) The regulations shall address the following:

4 (i) Verification of accreditation.

5 (ii) Compliance with FBI quality assurance standards
6 including continuing education requirements for the
7 personnel of forensics DNA testing laboratories.

8 * * *

9 (c) Use of tests.--

10 (1) Except as otherwise provided in section 2319(c)
11 (relating to DNA data base exchange), the tests to be
12 performed on each DNA sample shall be used only for law
13 enforcement identification purposes or to assist in the
14 recovery or identification of human remains from disasters or
15 for other humanitarian identification purposes, including
16 identification of missing persons.

17 (2) No DNA sample or DNA record shall be used for human
18 behavioral genetic research.

19 * * *

20 Section 5. Title 44 is amended by adding a section to read:

21 § 2318.1. Request for modified DNA search.

22 (a) General rule.--

23 (1) A criminal justice agency may request in writing
24 that the State Police perform a modified DNA search in an
25 unsolved case and shall provide information as required by
26 the State Police.

27 (2) The State Police shall grant a request to conduct a
28 modified DNA search if the State Police determine that the
29 request complies with subsection (d)(2).

30 (b) Modified DNA search.--

1 (1) The State Police shall conduct a modified DNA search
2 if it grants a request under subsection (a) (2).

3 (2) The State Police may conduct a modified DNA search
4 in unsolved cases without the request of a criminal justice
5 agency only if the State Police determine that they would
6 have granted a request had a request been made by a criminal
7 justice agency.

8 (3) In all cases, the State Police shall use procedures
9 for conducting a modified DNA search that are consistent with
10 the regulations published under subsection (d) (3).

11 (c) Release of information from a modified DNA search.--The
12 State Police shall provide the requesting criminal justice
13 agency with personally identifying information on individuals
14 whose DNA records were identified through a modified DNA search.

15 (d) Requirements.--

16 (1) The State Police shall require a criminal justice
17 agency to provide assurances and information in support of
18 its request for a modified DNA search, including:

19 (i) A representation that a modified DNA search is
20 necessary for law enforcement identification purposes in
21 an unsolved case.

22 (ii) A representation that all other investigative
23 leads have been pursued.

24 (iii) A commitment to further investigate the case
25 if personal identifying information from a modified DNA
26 search is provided.

27 (iv) Any other information the State Police deem
28 necessary.

29 (2) The regulations shall require the State Police to
30 consider the following when determining whether to grant a

1 modified DNA search request:

2 (i) The sufficiency of the size, quality or
3 integrity of the crime scene DNA profile.

4 (ii) Whether the crime scene DNA profile has
5 previously been subjected to a routine DNA search against
6 the State DNA Data Base.

7 (iii) Whether the modified DNA search is necessary
8 for law enforcement identification purposes in an
9 unsolved case.

10 (iv) Whether the criminal justice agency has pursued
11 all other investigative leads.

12 (v) Any other consideration the State Police deem
13 relevant, including factors or requirements considered by
14 any other jurisdiction.

15 (3) The State Police shall adopt a procedure to conduct
16 modified DNA searches based on scientifically valid and
17 reliable methods to determine that a crime scene DNA profile
18 is sufficiently likely to have originated from a close
19 relative of an individual whose DNA profile is recorded in
20 the State DNA Data Base. The State Police may require the
21 following:

22 (i) An analysis of the rarity in the relevant
23 population of each shared DNA characteristic.

24 (ii) An analysis of the pattern of shared DNA
25 characteristics.

26 (iii) Y chromosome analysis.

27 (iv) Mitochondrial DNA analysis.

28 (v) Any other suitable method designed to determine
29 that a crime scene DNA profile originated from a close
30 relative of an individual in the State DNA Data Base.

1 The State Police shall not be limited to procedures or
2 methods used by the FBI in conducting moderate or low
3 stringency CODIS searches.

4 Section 6. Sections 2319(a) and (c) and 2321(a) and (b) of
5 Title 44 are amended to read:

6 § 2319. DNA data base exchange.

7 (a) Receipt of DNA samples by State Police.--It shall be the
8 duty of the State Police to receive DNA samples, to store, to
9 perform analysis or to contract for DNA typing analysis with [a
10 qualified] an accredited forensic DNA laboratory that meets the
11 guidelines and regulations under section 2318 (relating to
12 procedures for conduct, disposition and use of DNA analysis) as
13 established by the State Police, to classify and to file the DNA
14 record of identification characteristic profiles of DNA samples
15 submitted under the former DNA Act, former 42 Pa.C.S. Ch. 47
16 (relating to DNA data and testing) or this chapter and to make
17 such information available as provided in this section. The
18 State Police may contract [out] for the storage of DNA typing
19 analysis [and may contract out] or DNA typing analysis to [a
20 qualified] an accredited forensic DNA laboratory that meets
21 guidelines and regulations as established by the State Police
22 under section 2318. The results of the DNA profile of
23 individuals in the State DNA Data Base shall be made available:

24 (1) to criminal justice agencies or [approved crime]
25 CODIS-participating DNA laboratories which serve these
26 agencies; or

27 (2) upon written or electronic request and in
28 furtherance of an official investigation of a criminal
29 offense or offender or suspected offender.

30 * * *

1 (c) Population data base.--

2 (1) The State Police may establish a separate population
3 data base comprised of DNA samples obtained under this
4 chapter after all personal identification is removed.

5 (2) The State Police may share or disseminate the
6 population data base with other criminal justice agencies or
7 [crime] CODIS-participating DNA laboratories that serve to
8 assist the State Police with statistical data bases.

9 (3) The population data base may be made available to
10 and searched by other agencies participating in the CODIS
11 system.

12 § 2321. Expungement.

13 (a) General rule.--A person whose DNA sample, record or
14 profile has been included in the State DNA Data Bank or the
15 State DNA Data Base pursuant to the former DNA Act, former 42
16 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this
17 chapter may request expungement on the grounds that:

18 (1) the arrest, charge, conviction or delinquency
19 adjudication on which the authority for including that
20 person's DNA sample, record or profile was based has been
21 reversed and the case dismissed; [or that]

22 (2) the charge has been dismissed;

23 (3) there has been a judgment of acquittal;

24 (4) no charge was filed within the applicable time
25 period; or

26 (5) the DNA sample, record or profile was included in
27 the State DNA Data Bank or the State DNA Data Base by
28 mistake.

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

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

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

7 (1.1) receipt of a certified copy of a final court order
8 establishing that the charge has been dismissed or has
9 resulted in an acquittal or that no charge was filed within
10 the applicable time period; or

11 (2) clear and convincing proof that the sample record or
12 profile was included by mistake.

13 * * *

14 Section 7. Title 44 is amended by adding a section to read:
15 § 2337. Severability.

16 The provisions of this chapter are severable. If any
17 provision of this chapter or its application to any person or
18 circumstance is held invalid, the invalidity shall not affect
19 other provisions or applications of this chapter which can be
20 given effect without the invalid provision or application.

21 Section 8. This act shall take effect in 270 days.