

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 150 Session of 2013

INTRODUCED BY PILEGGI, GREENLEAF, MENSCH, ERICKSON, SCHWANK, RAFFERTY, ALLOWAY, COSTA, YAW, VULAKOVICH, BOSCOLA, WARD, SOLOBAY, GORDNER, VANCE AND BAKER, JANUARY 16, 2013

REFERRED TO JUDICIARY, JANUARY 16, 2013

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 powers and duties
 4 of State Police, for State DNA Data Base, for State DNA Data
 5 Bank, for State Police recommendation of additional offenses,
 6 for procedural compatibility with FBI and for DNA sample
 7 required upon conviction, delinquency adjudication and
 8 certain ARD cases; providing for collection from persons
 9 accepted from other jurisdictions; further providing for
 10 procedures for withdrawal, collection and transmission of DNA
 11 samples, for procedures for conduct, disposition and use of
 12 DNA analysis; providing for request for modified DNA search;
 13 and further providing for DNA data base exchange, for
 14 expungement and for mandatory cost.

15 The General Assembly of the Commonwealth of Pennsylvania
 16 hereby enacts as follows:

17 Section 1. Sections 2302, 2303, 2311(2), 2312, 2313, 2314,
 18 2315 and 2316 of Title 44 of the Pennsylvania Consolidated
 19 Statutes are amended to read:

20 § 2302. Policy.

21 The General Assembly finds and declares that:

22 (1) DNA data banks are an important tool in criminal
 23 investigations, in [the exclusion of] excluding innocent

1 individuals who are the subject of criminal investigations or
2 prosecutions and in [detering and detecting recidivist acts]
3 detecting and deterring repeated crimes by the same
4 individual.

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

8 (2.1) Several states have authorized the disclosure of
9 DNA profiles in their state's DNA data base where comparison
10 of DNA linked to a crime with the known offender DNA profile
11 in the data base establishes the likelihood of a close
12 familial relationship between the two.

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

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

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

27 § 2303. Definitions.

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

1 "Accredited forensic DNA laboratory." A forensic DNA
2 laboratory that has received accreditation by an accrediting
3 body nationally recognized within the forensic science community
4 in accordance with the FBI Quality Assurance Standards to
5 perform forensic DNA testing and is in compliance with FBI
6 Quality Assurance Standards.

7 "ARD." Accelerated Rehabilitative Disposition.

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

14 "Commissioner." The Commissioner of the Pennsylvania State
15 Police.

16 "Crime scene DNA profile." A DNA profile derived from a DNA
17 sample recovered from a victim, crime scene or item linked to a
18 crime, which may have originated from a perpetrator.

19 "Criminal homicide." Any of the following:

20 (1) 18 Pa.C.S. § 2501 (relating to criminal homicide).

21 (2) 18 Pa.C.S. § 2502 (relating to murder).

22 (3) 18 Pa.C.S. § 2503 (relating to voluntary
23 manslaughter).

24 (4) 18 Pa.C.S. § 2504 (relating to involuntary
25 manslaughter), when the offense is graded as a felony.

26 (5) 18 Pa.C.S. § 2505 (relating to causing or aiding
27 suicide), when the offense is graded as a felony.

28 (6) 18 Pa.C.S. § 2506 (relating to drug delivery
29 resulting in death).

30 (7) 18 Pa.C.S. § 2507 (relating to criminal homicide of

1 law enforcement officer).

2 (8) 18 Pa.C.S. § 2603 (relating to criminal homicide of
3 unborn child).

4 (9) 18 Pa.C.S. § 2604 (relating to murder of unborn
5 child).

6 (10) 18 Pa.C.S. § 2605 (relating to voluntary
7 manslaughter of unborn child).

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

10 "DNA." Deoxyribonucleic acid[. DNA is located in the cells
11 and provides an individual's personal genetic blueprint. DNA]
12 located in the chromosomes or mitochondria of a living
13 organism's cells which encodes genetic information that is the
14 basis of human heredity and forensic identification.

15 "DNA record." DNA profile and identification information
16 stored in the State DNA Data Base or the Combined DNA Index
17 System for the purpose of generating investigative leads or
18 supporting statistical interpretation of DNA test results. The
19 term includes nuclear and mitochondrial typing. The DNA record
20 is the result obtained from the DNA typing tests. [The DNA
21 record is comprised of the characteristics of a DNA sample which
22 are of value in establishing the identity of individuals. The
23 results of all DNA identification tests on an individual's DNA
24 sample are also collectively referred to as the DNA profile of
25 an individual.]

26 "DNA sample." [A blood or tissue sample provided by any
27 person with respect to offenses covered by this chapter or
28 submitted to the Pennsylvania State Police laboratory pursuant
29 to the former act of May 28, 1995 (1st Sp.Sess., P.L.1009,
30 No.14), known as the DNA Detection of Sexual and Violent

1 Offenders Act, to the former 42 Pa.C.S. Ch. 47 (relating to DNA
2 data and testing) or to this chapter for analysis or storage, or
3 both.] A sample of biological material suitable for DNA
4 analysis.

5 "FBI." The Federal Bureau of Investigation.

6 "Felony sex offense." A felony offense or an attempt,
7 conspiracy or solicitation to commit a felony offense under any
8 of the following:

9 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

10 18 Pa.C.S. § 3130 (relating to conduct relating to sex
11 offenders).

12 18 Pa.C.S. § 4302 (relating to incest).

13 18 Pa.C.S. § [5902(c)(1)(iii) and (iv)] 5902(c)(1)(iv)
14 (relating to prostitution and related offenses).

15 18 Pa.C.S. § 5903(a) (relating to obscene and other
16 sexual materials and performances) where the offense
17 constitutes a felony.

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

20 18 Pa.C.S. § 6318 (relating to unlawful contact with
21 minor) where the most serious underlying offense for which
22 the defendant contacted the minor is graded as a felony.

23 18 Pa.C.S. § 6320 (relating to sexual exploitation of
24 children).]

25 Any offense graded as a felony requiring registration
26 under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of
27 sexual offenders).

28 "Forensic DNA laboratory." A laboratory that performs
29 forensic DNA testing for the purposes of identification.

30 "Forensic DNA testing." A test that applies techniques from

1 molecular biology to analyze deoxyribonucleic acid (DNA) to
2 identify characteristics unique to a particular individual.

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

6 "Fund." The DNA Detection Fund reestablished in section 2335
7 (relating to DNA Detection Fund).

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

12 "Law enforcement identification purposes." Assisting in the
13 determination of the identity of an individual whose DNA is
14 contained in a biological sample.

15 "Mitochondrial DNA analysis." A method that applies
16 techniques from molecular biology to analyze DNA found in the
17 mitochondria of cells.

18 "Modified DNA search." A search of the State DNA Data Base,
19 using scientifically valid and reliable methods in accordance
20 with rules, regulations and guidelines promulgated under section
21 2318 (relating to procedures for conduct, disposition and use of
22 DNA analysis), to determine that a crime scene DNA profile is
23 sufficiently likely to have originated from a close relative of
24 an individual whose DNA profile is recorded in the State DNA
25 Data Base.

26 "Other specified offense." Any of the following:

27 (1) A felony offense, other than criminal homicide or a
28 felony sex offense.

29 (2) [An offense under 18 Pa.C.S. § 2910 (relating to
30 luring a child into a motor vehicle or structure) or 3126

1 (relating to indecent assault) or an attempt to commit such
2 an offense] (Reserved).

3 (3) [An offense subject to 42 Pa.C.S. Ch. 97 Subch. H
4 (relating to registration of sexual offenders)] (Reserved).

5 (4) 18 Pa.C.S. § 2701(b)(2) (relating to simple
6 assault).

7 (5) 18 Pa.C.S. § 2902 (relating to unlawful restraint).

8 (6) 18 Pa.C.S. § 3503(b)(1)(v) (relating to criminal
9 trespass).

10 (7) 18 Pa.C.S. § 4303 (relating to concealing death of
11 child).

12 (8) 18 Pa.C.S. § 4305 (relating to dealing in infant
13 children).

14 (9) A misdemeanor offense requiring registration under
15 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of
16 sexual offenders).

17 "State Police." The Pennsylvania State Police.

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

20 § 2311. Powers and duties of State Police.

21 In addition to any other powers and duties conferred by this
22 chapter, the State Police shall:

23 * * *

24 (2) Promulgate [rules and regulations], as necessary,
25 rules, regulations and guidelines to carry out the provisions
26 of this chapter.

27 * * *

28 § 2312. State DNA Data Base.

29 [The State DNA Data Base is reestablished. It shall be
30 administered by the State Police and provide DNA records to the

1 FBI for storage and maintenance by CODIS.] A Statewide DNA Data
2 Base is established within the State Police to store DNA records
3 from DNA samples submitted for analysis and storage to the State
4 Police laboratory under the former DNA Act, the former
5 provisions of 42 Pa.C.S. Ch. 47 (relating to DNA data and
6 testing) or to this chapter, and to provide DNA records to
7 CODIS. The State DNA Data Base shall have the capability
8 provided by computer software and procedures administered by the
9 State Police to store and maintain DNA records related to:

10 (1) forensic casework;

11 (2) [convicted] arrestees and convicted or delinquency
12 adjudicated offenders required to provide a DNA sample under
13 this chapter; and

14 (3) anonymous DNA records used for statistical research
15 [or] on the frequency of DNA genotypes, quality control or
16 the development of new DNA identification methods.

17 § 2313. State DNA Data Bank.

18 The State DNA Data Bank is reestablished. It shall serve as
19 the repository of DNA samples collected under this chapter or
20 under prior law.

21 § 2314. State Police recommendation of additional offenses and
22 annual report.

23 (a) Recommendation.--The State Police may recommend to the
24 General Assembly that it enact legislation for the inclusion of
25 additional offenses for which DNA samples shall be taken and
26 otherwise subjected to the provisions of this chapter. In
27 determining whether to recommend additional offenses, the State
28 Police shall consider those offenses for which DNA testing will
29 have a substantial impact on the detection and identification of
30 sex offenders and [violent] other offenders.

1 (b) Annual report.--No later than August 1 of each year, the
2 commissioner shall submit to the Governor's Office, the majority
3 and minority chairmen of the Senate Judiciary Committee and the
4 majority and minority chairmen of the House Judiciary Committee,
5 a written report containing information regarding the collection
6 and testing of DNA samples under the provisions of this chapter.
7 The report must include, but need not be limited to, the
8 following information pertaining to the previous fiscal year:

9 (1) The number of DNA samples collected at arrest.

10 (2) The number of DNA samples collected at arrest that
11 contributed to the filing of charges in or the closing of
12 investigations related to previously unsolved offenses.

13 (3) The number of acquittals, convictions and dismissals
14 in cases where DNA samples collected at arrest contributed to
15 the filing of charges in previously unsolved offenses.

16 (4) The age, ethnicity, race and sex of arrestees from
17 whom DNA samples were collected at arrest and upon
18 conviction.

19 (5) The fiscal impact on the State Police of collecting
20 DNA samples from persons convicted of offenses.

21 (6) The fiscal impact on the State Police of collecting
22 DNA samples from arrestees.

23 (7) The number of DNA samples collected at arrest that
24 were expunged from the Statewide DNA Data Base by request, by
25 court order, as a result of acquittal, as a result of charges
26 never having been filed and because charges filed were
27 dismissed.

28 (8) The average length of time between the collection of
29 DNA samples from arrestees and from those convicted of
30 offenses and the completion of forensic DNA testing of each

1 of those categories of DNA samples.

2 (9) Recommendations, if any, under this section for the
3 inclusion of additional offenses for which DNA samples must
4 be collected or recommendations for the removal of specific
5 offenses from the categories requiring the collection of DNA
6 samples from arrestees or persons convicted of crimes.

7 § 2315. Procedural compatibility with FBI.

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

15 § 2316. DNA sample required [upon conviction, delinquency
16 adjudication and certain ARD cases].

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

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

1 If a DNA sample is not timely [drawn] collected in accordance
2 with this section, the DNA sample may be [drawn] collected
3 any time thereafter by the prison, jail, juvenile detention
4 facility, detention facility or institution.

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

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

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

17 (1) A person who has been convicted or adjudicated
18 delinquent for criminal homicide, a felony sex offense or
19 other specified offense and who serves a term of confinement
20 in connection therewith after June 18, 2002, shall not be
21 released in any manner unless and until a DNA sample has been
22 [withdrawn] collected.

23 (2) This chapter shall apply to incarcerated persons
24 convicted or adjudicated delinquent for criminal homicide, a
25 felony sex offense or other specified offense prior to June
26 19, 2002.

27 (3) This chapter shall apply to incarcerated persons and
28 persons on probation or parole who were convicted or
29 adjudicated delinquent for criminal homicide, a felony sex
30 offense or other specified offenses prior to the effective

1 date of this paragraph.

2 (c) Certain ARD cases.--Acceptance into ARD as a result of a
3 criminal charge for criminal homicide, a felony sex offense or
4 other specified offense filed after June 18, 2002, [may] shall
5 be conditioned upon the [giving] collection of a DNA sample.

6 (c.1) Arrest.--A person who is arrested in this Commonwealth
7 for criminal homicide and felony sex offenses shall have a DNA
8 sample collected as follows:

9 (1) A person who is arrested for an offense covered
10 under this subsection shall have a DNA sample collected no
11 later than five days after the date of the arrest.

12 (2) If a DNA sample is not timely collected in
13 accordance with this subsection, the DNA sample may be
14 collected any time thereafter by a law enforcement official,
15 prison, jail, juvenile detention facility, detention facility
16 or institution.

17 (3) A person who is arrested for an offense covered
18 under this subsection may not be released unless and until a
19 DNA sample and fingerprints have been collected.

20 (4) This subsection shall apply as follows:

21 (i) Beginning one year after the effective date of
22 this subsection, any person arrested for criminal
23 homicide shall have a DNA sample collected under this
24 subsection upon arrest.

25 (ii) Beginning two years after the effective date of
26 this subsection, any person arrested for a felony sex
27 offense shall have a DNA sample collected under this
28 subsection upon arrest.

29 (d) Supervision of DNA samples.--All DNA samples taken
30 pursuant to this section shall be taken in accordance with

1 rules, regulations and guidelines promulgated by the State
2 Police in consultation with the Department of Corrections.

3 (d.1) Mandatory submission.--The requirements of this
4 chapter are mandatory and apply regardless of whether a court
5 advises a person that a DNA sample must be provided to the State
6 DNA Data Base and the State DNA Data Bank as a result of [a] an
7 arrest, conviction or adjudication of delinquency. A person who
8 has been sentenced to death or life imprisonment without the
9 possibility of parole or to any term of incarceration is not
10 exempt from the requirements of this chapter. Any person subject
11 to this chapter who has not provided a DNA sample for any
12 reason, including because of an oversight or error, shall
13 provide a DNA sample for inclusion in the State DNA Data Base
14 and the State DNA Data Bank after being notified by authorized
15 law enforcement or corrections personnel. If a person provides a
16 DNA sample which is not adequate for any reason, the person
17 shall provide another DNA sample for inclusion in the State DNA
18 Data Base and the State DNA Data Bank after being notified by
19 authorized law enforcement or corrections personnel. The
20 collection of a DNA sample under this chapter shall not be
21 required if the authorized law enforcement or corrections
22 official confirms that a DNA sample from the person has already
23 been validly collected and provided to the State DNA Data Base
24 and the State DNA Data Bank.

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

29 Section 2. Title 44 is amended by adding a section to read:
30 § 2316.1. Collection from persons accepted from other

1 jurisdictions.

2 (a) Conditional acceptance.--When a person is accepted into
3 this Commonwealth for supervision from another jurisdiction
4 under the Interstate Compact for Supervision of Adult Offenders,
5 other reciprocal agreement with a Federal, state or county
6 agency, or a provision of law, whether or not the person is
7 confined or released, the acceptance shall be conditioned on the
8 offender's providing DNA samples under this chapter if the
9 offender has a past or present Federal, state or military court
10 conviction or adjudication that is equivalent to criminal
11 homicide, a felony sex offense or other specified offense as
12 determined by the Pennsylvania Board of Probation and Parole.
13 Additional DNA samples shall not be required if a DNA sample is
14 currently on file with the State DNA Data Base.

15 (b) Time period.--

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

23 (2) If the person accepted under subsection (a) is
24 confined, the person shall provide the DNA sample and
25 fingerprints required by this chapter within five calendar
26 days after the person is received at a place of incarceration
27 or confinement.

28 Section 3. Sections 2317 heading and (a) (1) and (b) and
29 2318(a) and (c) of Title 44 are amended to read:

30 § 2317. Procedures for [withdrawal,] collection and

1 transmission of DNA samples.

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

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

20 * * *

21 (b) Limitation on liability.--Persons authorized to [draw]
22 collect DNA samples under this section shall not be criminally
23 liable for withdrawing a DNA sample and transmitting test
24 results pursuant to this chapter if they perform these
25 activities in good faith and shall not be civilly liable for
26 such activities when the person acted in a reasonable manner
27 according to generally accepted medical and other professional
28 practices.

29 * * *

30 § 2318. Procedures for conduct, disposition and use of DNA

1 analysis.

2 (a) Procedures.--

3 (1) The State Police shall [prescribe] promulgate, as
4 necessary, rules, regulations and guidelines to implement
5 this chapter, including procedures to be used in the
6 collection, submission, identification, analysis, storage and
7 disposition of DNA samples and typing results of DNA samples
8 submitted under the former DNA Act, former provisions of 42
9 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this
10 chapter.

11 (2) The DNA sample typing results shall be securely
12 stored in the State DNA Data Base, and records of testing
13 shall be retained on file with the State Police consistent
14 with the procedures established by the FBI Quality Assurance
15 Standards for forensic DNA testing laboratories and DNA data
16 basing laboratories and CODIS policies and procedures.

17 (3) These procedures shall also include quality
18 assurance guidelines to ensure that DNA identification
19 records meet standards for accredited forensic DNA
20 laboratories which submit DNA records to the State DNA Data
21 Base.

22 (4) The rules, regulations and guidelines shall address
23 the following:

24 (i) Verification of accreditation.

25 (ii) Compliance with FBI Quality Assurance
26 Standards, including continuing education requirements
27 for the personnel of forensics DNA testing laboratories.

28 * * *

29 (c) Use of tests.--

30 (1) Except as otherwise provided in section 2319(c)

1 (relating to DNA data base exchange), the tests to be
2 performed on each DNA sample shall be used only for law
3 enforcement identification purposes or to assist in the
4 recovery or identification of human remains from disasters or
5 for other humanitarian identification purposes, including
6 identification of missing persons.

7 (2) No DNA sample or DNA record acquired under this
8 chapter may be used for human behavioral genetic research or
9 for nonlaw enforcement or nonhumanitarian identification
10 purposes.

11 * * *

12 Section 4. Title 44 is amended by adding a section to read:
13 § 2318.1. Request for modified DNA search.

14 (a) General rule.--

15 (1) A criminal justice agency may request in writing
16 that the State Police perform a modified DNA search in an
17 unsolved case and shall provide information as required by
18 the State Police.

19 (2) The State Police may grant a request to conduct a
20 modified DNA search if the State Police determine that the
21 request complies with subsection (d) (2).

22 (b) Modified DNA search.--

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

25 (2) The State Police may conduct a modified DNA search
26 in unsolved cases without the request of a criminal justice
27 agency if the State Police determine that they would have
28 granted a request had a request been made by a criminal
29 justice agency.

30 (3) In all cases, the State Police shall use procedures

1 for conducting a modified DNA search that are consistent with
2 the rules, regulations and guidelines promulgated under
3 section 2318 (relating to procedures for conduct, disposition
4 and use of DNA analysis).

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

9 (d) Requirements.--

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

13 (i) A representation that a modified DNA search is
14 necessary for law enforcement identification purposes in
15 an unsolved case.

16 (ii) A representation that all other investigative
17 leads have been pursued.

18 (iii) A commitment to further investigate the case
19 if personal identifying information from a modified DNA
20 search is provided.

21 (iv) Any other information the State Police deem
22 necessary.

23 (2) The State Police shall grant a modified DNA search
24 request if the State Police determine that:

25 (i) The crime scene DNA profile has sufficient size,
26 quality and integrity.

27 (ii) The crime scene DNA profile has previously been
28 subjected to a routine DNA search against the State DNA
29 Data Base.

30 (iii) The modified DNA search is necessary for law

1 enforcement identification purposes in an unsolved case.

2 (iv) The criminal justice agency has pursued all
3 other investigative leads.

4 (v) Any relevant consideration, including factors or
5 requirements considered by any other jurisdiction,
6 supports granting the request.

7 (3) The State Police procedures, promulgated under
8 section 2318, to conduct modified DNA searches shall be based
9 on scientifically valid and reliable methods to determine
10 that a crime scene DNA profile is sufficiently likely to have
11 originated from a close relative of an individual whose DNA
12 profile is recorded in the State DNA Data Base. The State
13 Police may require the following:

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

16 (ii) An analysis of the pattern of shared DNA
17 characteristics.

18 (iii) Y chromosome analysis.

19 (iv) Mitochondrial DNA analysis.

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

23 Section 5. Sections 2319, 2321 and 2322 of Title 44 are
24 amended to read:

25 § 2319. DNA data base exchange.

26 (a) Receipt of DNA samples by State Police.--It shall be the
27 duty of the State Police to receive DNA samples, to store, to
28 perform analysis or to contract for DNA typing analysis with [a
29 qualified] an accredited forensic DNA laboratory that meets the
30 [guidelines] rules, regulations and guidelines under section

1 2318 (relating to procedures for conduct, disposition and use of
2 DNA analysis) as established by the State Police, to classify
3 and to file the DNA record of identification characteristic
4 profiles of DNA samples submitted under the former DNA Act,
5 former provisions of 42 Pa.C.S. Ch. 47 (relating to DNA data and
6 testing) or this chapter and to make such information available
7 as provided in this section. The State Police may contract [out]
8 for the storage of DNA typing analysis [and may contract out] or
9 DNA typing analysis to [a qualified] an accredited forensic DNA
10 laboratory that meets the rules, regulations and guidelines as
11 established by the State Police under section 2318. The results
12 of the DNA profile of individuals in the State DNA Data Base
13 shall be made available:

14 (1) to criminal justice agencies or [approved crime]
15 CODIS-participating DNA laboratories which serve these
16 agencies; or

17 (2) upon written or electronic request and in
18 furtherance of an official investigation of a criminal
19 offense or offender or suspected offender.

20 (b) Methods of obtaining information.--The State Police
21 shall [adopt] promulgate, as necessary, rules, regulations and
22 guidelines governing the methods of obtaining information from
23 the State DNA Data Base and CODIS and procedures for
24 verification of the identity and authority of the requester.

25 (c) Population data base.--

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

29 (2) The State Police may share or disseminate the
30 population data base with other criminal justice agencies or

1 [crime] CODIS-participating DNA laboratories that serve to
2 assist the State Police with statistical data bases.

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

6 (d) Separate category.--The State Police shall create a
7 separate category within the data base to store DNA samples and
8 records collected upon arrest under section 2316(c.1) (relating
9 to DNA sample required).

10 § 2321. Expungement.

11 [(a) General rule.--A person whose DNA sample, record or
12 profile has been included in the State DNA Data Bank or the
13 State DNA Data Base pursuant to the former DNA Act, former 42
14 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this
15 chapter may request expungement on the grounds that the
16 conviction or delinquency adjudication on which the authority
17 for including that person's DNA sample, record or profile was
18 based has been reversed and the case dismissed or that the DNA
19 sample, record or profile was included in the State DNA Data
20 Bank or the State DNA Data Base by mistake.

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

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

28 (2) clear and convincing proof that the sample record or
29 profile was included by mistake.]

30 (a) General rule.--A person whose DNA sample, record or

1 profile has been included in the State DNA Data Bank or the
2 State DNA Data Base under the former DNA Act, former provisions
3 of 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this
4 chapter may have the DNA sample, record or profile expunged in
5 accordance with this section.

6 (b) Removal by request.--A person whose DNA sample, record
7 or profile has been included in the State DNA Data Bank or the
8 State DNA Date Base under the former DNA Act, former provisions
9 of 42 Pa.C.S. Ch. 47 or this chapter may file a written request
10 with the State Police on the grounds that the DNA sample, record
11 or profile be removed on the grounds that the DNA sample, record
12 or profile was included in the State DNA Data Bank or the State
13 DNA Data Base by mistake. If the State Police grants the
14 request, the request shall be processed at no cost and the State
15 Police shall provide written notice of the removal to the person
16 and his attorney of record, if any, within 60 days after
17 destroying the DNA sample, record and profile. If the State
18 Police erroneously denies the request, the person may request
19 expungement of the DNA sample, record or profile under
20 subsection (c).

21 (b.1) Expungement by court order.--The following shall
22 apply:

23 (1) Except as provided under paragraph (2), a person may
24 request the court of common pleas of the county where the
25 original charges were filed to issue an order directing the
26 expungement of the DNA sample, record or profile pertaining
27 to the person in the State DNA Data Bank or the State DNA
28 Data Base in the following instances:

29 (i) the conviction or delinquency adjudication for
30 which the person's DNA sample was collected has been

1 reversed and no appeal is pending;

2 (ii) the charge for which the DNA sample was taken
3 has been dismissed, no appeal is pending and the
4 prosecuting authority is barred from seeking a retrial;

5 (iii) there has been a judgment of acquittal on the
6 charge for which the DNA sample was taken;

7 (iv) the person from whom the DNA sample was taken
8 was not charged with a crime for which a DNA sample is
9 authorized to be taken under this chapter;

10 (v) the prosecuting authority has expressly declined
11 to prosecute the charge for which the DNA sample was
12 taken;

13 (vi) the charge for which the DNA sample was taken
14 was not filed within the statute of limitations;

15 (vii) the person was granted an unconditional pardon
16 for the crime for which the DNA sample was taken; or

17 (viii) the DNA sample, record or profile was
18 included in the State DNA Data Bank or State DNA Data
19 Base by mistake and the State Police has erroneously
20 refused to grant the person's request for removal under
21 subsection (b).

22 (2) Paragraph (1) shall not apply if the person has been
23 arrested, charged, convicted or adjudicated delinquent for
24 any other crime for which a DNA sample is required to be
25 collected under this chapter.

26 (3) The court shall give ten days' prior notice to the
27 district attorney of the county where the original charges
28 were filed of any application for expungement under
29 subsection (c) (1).

30 (4) Notwithstanding any other law or rule of court, the

1 court shall have no authority to order the expungement of any
2 DNA sample, record or profile in the State DNA Data Bank or
3 the State DNA Data Base except as provided under this
4 subsection.

5 (b.2) Expungement reporting.--A person whose DNA sample,
6 record or profile has been expunged under subsection (c) shall
7 forward a certified copy of an expungement order issued under
8 subsection (c) to the State Police.

9 (b.3) Duties of State Police.--The following shall apply:

10 (1) Upon receipt of an expungement order issued under
11 subsection (c), the State Police shall destroy the DNA
12 sample, record and profile in the State DNA Data Bank and the
13 State DNA Data Base pertaining to a person identified in an
14 expungement order.

15 (2) The expungement shall be processed at no cost to the
16 person from whom the DNA sample was taken.

17 (3) The State Police shall provide written notice of the
18 expungement to the person and his attorney of record, if any,
19 within 60 days after destroying the DNA sample, record and
20 profile.

21 (c) Limitations.--

22 (1) An incarcerated or previously incarcerated person
23 may not seek expungement of a DNA sample, record or profile
24 on the ground that that person was convicted or adjudicated
25 delinquent for a felony sex offense prior to July 27, 1995.

26 (2) A person may not seek expungement of a DNA sample,
27 record or profile on the ground that that person was
28 convicted or adjudicated delinquent for one of the other
29 specified offenses prior to the effective date of the former
30 DNA Act or this chapter.

1 (d) Effect of expungement.--The expungement of a DNA sample,
2 record or profile pursuant to this section shall have no effect
3 on any data bank or data base match or partial match occurring
4 prior to the expungement of the sample, record or profile.

5 § 2322. Mandatory cost.

6 Unless the court finds that undue hardship would result, a
7 mandatory cost of \$250, which shall be in addition to any other
8 costs imposed pursuant to statutory authority, shall
9 automatically be assessed on any person convicted, adjudicated
10 delinquent or granted ARD for criminal homicide, a felony sex
11 offense or other specified offense, and all proceeds derived
12 from this section shall be transmitted to the fund.

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