

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, BAKER AND DINNIMAN, JANUARY 16, 2013

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, JANUARY 29, 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 OR OTHER <--  
8 SPECIFIED OFFENSES shall have a DNA 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 (III) BEGINNING THREE YEARS AFTER THE EFFECTIVE DATE <--  
30 OF THIS SUBSECTION, ANY PERSON ARRESTED FOR ANY OTHER

1           SPECIFIED OFFENSE SHALL HAVE A DNA SAMPLE COLLECTED UNDER  
2           THIS SUBSECTION UPON ARREST.

3           (d) Supervision of DNA samples.--All DNA samples taken  
4 pursuant to this section shall be taken in accordance with  
5 rules, regulations and guidelines promulgated by the State  
6 Police in consultation with the Department of Corrections.

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

29           (e) Definition.--As used in this section, the term  
30 "released" means any release, parole, furlough, work release,

1 prerelease or release in any other manner from a prison, jail,  
2 juvenile detention facility or any other place of confinement.

3 Section 2. Title 44 is amended by adding a section to read:

4 § 2316.1. Collection from persons accepted from other  
5 jurisdictions.

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

19 (b) Time period.--

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

27 (2) If the person accepted under subsection (a) is  
28 confined, the person shall provide the DNA sample and  
29 fingerprints required by this chapter within five calendar  
30 days after the person is received at a place of incarceration

1 or confinement.

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

4 § 2317. Procedures for [withdrawal,] collection and  
5 transmission of DNA samples.

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

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

24 \* \* \*

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

1 according to generally accepted medical and other professional  
2 practices.

3 \* \* \*

4 § 2318. Procedures for conduct, disposition and use of DNA  
5 analysis.

6 (a) Procedures.--

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

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

21 (3) These procedures shall also include quality  
22 assurance guidelines to ensure that DNA identification  
23 records meet standards for accredited forensic DNA  
24 laboratories which submit DNA records to the State DNA Data  
25 Base.

26 (4) The rules, regulations and guidelines shall address  
27 the following:

28 (i) Verification of accreditation.

29 (ii) Compliance with FBI Quality Assurance  
30 Standards, including continuing education requirements



1 for the personnel of forensics DNA testing laboratories.

2 \* \* \*

3 (c) Use of tests.--

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

11 (2) No DNA sample or DNA record acquired under this  
12 chapter may be used for human behavioral genetic research or  
13 for nonlaw enforcement or nonhumanitarian identification  
14 purposes.

15 \* \* \*

16 Section 4. Title 44 is amended by adding a section to read:

17 § 2318.1. Request for modified DNA search.

18 (a) General rule.--

19 (1) A criminal justice agency may request in writing  
20 that the State Police perform a modified DNA search in an  
21 unsolved case and shall provide information as required by  
22 the State Police.

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

26 (b) Modified DNA search.--

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

29 (2) The State Police may conduct a modified DNA search  
30 in unsolved cases without the request of a criminal justice

1 agency if the State Police determine that they would have  
2 granted a request had a request been made by a criminal  
3 justice agency.

4 (3) In all cases, the State Police shall use procedures  
5 for conducting a modified DNA search that are consistent with  
6 the rules, regulations and guidelines promulgated under  
7 section 2318 (relating to procedures for conduct, disposition  
8 and use of DNA analysis).

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

13 (d) Requirements.--

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

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

20 (ii) A representation that all other investigative  
21 leads have been pursued.

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

25 (iv) Any other information the State Police deem  
26 necessary.

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

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

1           (ii) The crime scene DNA profile has previously been  
2 subjected to a routine DNA search against the State DNA  
3 Data Base.

4           (iii) The modified DNA search is necessary for law  
5 enforcement identification purposes in an unsolved case.

6           (iv) The criminal justice agency has pursued all  
7 other investigative leads.

8           (v) Any relevant consideration, including factors or  
9 requirements considered by any other jurisdiction,  
10 supports granting the request.

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

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

20           (ii) An analysis of the pattern of shared DNA  
21 characteristics.

22           (iii) Y chromosome analysis.

23           (iv) Mitochondrial DNA analysis.

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

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

29           § 2319. DNA data base exchange.

30           (a) Receipt of DNA samples by State Police.--It shall be the

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

18 (1) to criminal justice agencies or [approved crime]  
19 CODIS-participating DNA laboratories which serve these  
20 agencies; or

21 (2) upon written or electronic request and in  
22 furtherance of an official investigation of a criminal  
23 offense or offender or suspected offender.

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

29 (c) Population data base.--

30 (1) The State Police may establish a separate population

1 data base comprised of DNA samples obtained under this  
2 chapter after all personal identification is removed.

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

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

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

14 § 2321. Expungement.

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

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

29 (1) receipt of a written request for expungement  
30 pursuant to this section and a certified copy of the final

1 court order reversing and dismissing the conviction; or  
2 (2) clear and convincing proof that the sample record or  
3 profile was included by mistake.]

4 (a) General rule.--A person whose DNA sample, record or  
5 profile has been included in the State DNA Data Bank or the  
6 State DNA Data Base under the former DNA Act, former provisions  
7 of 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this  
8 chapter may have the DNA sample, record or profile expunged in  
9 accordance with this section.

10 (b) Removal by request.--A person whose DNA sample, record  
11 or profile has been included in the State DNA Data Bank or the  
12 State DNA Date Base under the former DNA Act, former provisions  
13 of 42 Pa.C.S. Ch. 47 or this chapter may file a written request  
14 with the State Police on the grounds that the DNA sample, record  
15 or profile be removed on the grounds that the DNA sample, record  
16 or profile was included in the State DNA Data Bank or the State  
17 DNA Data Base by mistake. If the State Police grants the  
18 request, the request shall be processed at no cost and the State  
19 Police shall provide written notice of the removal to the person  
20 and his attorney of record, if any, within 60 days after  
21 destroying the DNA sample, record and profile. If the State  
22 Police erroneously denies the request, the person may request  
23 expungement of the DNA sample, record or profile under  
24 subsection ~~(e)~~ (B.1). <--

25 (b.1) Expungement by court order.--The following shall  
26 apply:

27 (1) Except as provided under paragraph (2), a person may  
28 request the court of common pleas of the county where the  
29 original charges were filed to issue an order directing the  
30 expungement of the DNA sample, record or profile pertaining

1 to the person in the State DNA Data Bank or the State DNA  
2 Data Base in the following instances:

3 (i) the conviction or delinquency adjudication for  
4 which the person's DNA sample was collected has been  
5 reversed and no appeal is pending;

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

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

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

14 (v) the prosecuting authority has expressly declined  
15 to prosecute the charge for which the DNA sample was  
16 taken;

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

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

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

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

30 (3) The court shall give ten days' prior notice to the

1 district attorney of the county where the original charges  
2 were filed of any application for expungement under  
3 subsection (e) (1) THIS SUBSECTION. <--

4 (4) Notwithstanding any other law or rule of court, the  
5 court shall have no authority to order the expungement of any  
6 DNA sample, record or profile in the State DNA Data Bank or  
7 the State DNA Data Base except as provided under this  
8 subsection.

9 (b.2) Expungement reporting.--A person whose DNA sample,  
10 record or profile has been expunged under subsection (e) (B.1) <--  
11 shall forward a certified copy of an expungement order issued  
12 under subsection (e) (B.1) to the State Police. <--

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

14 (1) Upon receipt of an expungement order issued under  
15 subsection (e) (B.1), the State Police shall destroy the DNA <--  
16 sample, record and profile in the State DNA Data Bank and the  
17 State DNA Data Base pertaining to a person identified in an  
18 expungement order.

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

21 (3) The State Police shall provide written notice of the  
22 expungement to the person and his attorney of record, if any,  
23 within 60 days after destroying the DNA sample, record and  
24 profile.

25 (c) Limitations.--

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

30 (2) A person may not seek expungement of a DNA sample,



1 record or profile on the ground that that person was  
2 convicted or adjudicated delinquent for one of the other  
3 specified offenses prior to the effective date of the former  
4 DNA Act or this chapter.

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

9 § 2322. Mandatory cost.

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

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