

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, DINNIMAN AND BROWNE, JANUARY 16, 2013

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, FEBRUARY 4, 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

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

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

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

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

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

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

28 § 2303. Definitions.

29 The following words and phrases when used in this chapter
30 shall have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

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

8 "ARD." Accelerated Rehabilitative Disposition.

9 "ARREST." THE TAKING OR KEEPING OF A PERSON IN CUSTODY BY <--
10 LEGAL AUTHORITY OR PROCEEDINGS COMMENCED BY A POLICE COMPLAINT
11 THAT IS PROCEEDED AGAINST BY SUMMONS OR BY A PETITION FILED
12 PURSUANT TO 42 PA.C.S. § 6321(A)(3) (RELATING TO COMMENCEMENT OF
13 PROCEEDINGS).

14 "CODIS." The [term is derived from] Combined DNA Index
15 System[, the Federal Bureau of Investigation's national DNA
16 identification index system that allows the storage and exchange
17 of DNA records submitted by state and local forensic DNA
18 laboratories] established and maintained by the Federal Bureau
19 of Investigation.

20 "Commissioner." The Commissioner of the Pennsylvania State
21 Police.

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

25 "Criminal homicide." Any of the following:

26 (1) 18 Pa.C.S. § 2501 (relating to criminal homicide).

27 (2) 18 Pa.C.S. § 2502 (relating to murder).

28 (3) 18 Pa.C.S. § 2503 (relating to voluntary
29 manslaughter).

30 (4) 18 Pa.C.S. § 2504 (relating to involuntary

1 manslaughter), when the offense is graded as a felony.

2 (5) 18 Pa.C.S. § 2505 (relating to causing or aiding
3 suicide), when the offense is graded as a felony.

4 (6) 18 Pa.C.S. § 2506 (relating to drug delivery
5 resulting in death).

6 (7) 18 Pa.C.S. § 2507 (relating to criminal homicide of
7 law enforcement officer).

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

10 (9) 18 Pa.C.S. § 2604 (relating to murder of unborn
11 child).

12 (10) 18 Pa.C.S. § 2605 (relating to voluntary
13 manslaughter of unborn child).

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

16 "DNA." Deoxyribonucleic acid[. DNA is located in the cells
17 and provides an individual's personal genetic blueprint. DNA]
18 located in the chromosomes or mitochondria of a living
19 organism's cells which encodes genetic information that is the
20 basis of human heredity and forensic identification.

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

1 an individual.]

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

11 "FBI." The Federal Bureau of Investigation.

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

15 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

16 18 Pa.C.S. § 3130 (relating to conduct relating to sex
17 offenders).

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

19 18 Pa.C.S. § [5902(c)(1)(iii) and (iv)] 5902(c)(1)(iv)
20 (relating to 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
25 children).

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

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

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

4 "Forensic DNA laboratory." A laboratory that performs
5 forensic DNA testing for the purposes of identification.

6 "Forensic DNA testing." A test that applies techniques from
7 molecular biology to analyze deoxyribonucleic acid (DNA) to
8 identify characteristics unique to a particular individual.

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

12 "Fund." The DNA Detection Fund reestablished in section 2335
13 (relating to DNA Detection Fund).

14 "Human behavioral genetic research." The study of the
15 possible genetic underpinnings of behaviors, including, but not
16 limited to, aggression, substance abuse, social attitudes,
17 mental abilities, sexual activity and eating habits.

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

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

24 "Modified DNA search." A search of the State DNA Data Base,
25 using scientifically valid and reliable methods in accordance
26 with rules, regulations and guidelines promulgated under section
27 2318 (relating to procedures for conduct, disposition and use of
28 DNA analysis), to determine that a crime scene DNA profile is
29 sufficiently likely to have originated from a close relative of
30 an individual whose DNA profile is recorded in the State DNA

1 Data Base.

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

3 (1) A felony offense, other than criminal homicide or a
4 felony sex offense.

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

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

11 (4) 18 Pa.C.S. § 2701(b)(2) (relating to simple
12 assault).

13 (5) 18 Pa.C.S. § 2902 (relating to unlawful restraint).

14 (6) 18 Pa.C.S. § 3503(b)(1)(v) (relating to criminal
15 trespass).

16 (7) 18 Pa.C.S. § 4303 (relating to concealing death of
17 child).

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

20 (9) A misdemeanor offense requiring registration under
21 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of
22 sexual offenders).

23 "State Police." The Pennsylvania State Police.

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

26 § 2311. Powers and duties of State Police.

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

29 * * *

30 (2) Promulgate [rules and regulations], as necessary,

1 rules, regulations and guidelines to carry out the provisions
2 of this chapter.

3 * * *

4 § 2312. State DNA Data Base.

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

16 (1) forensic casework;

17 (2) [convicted] arrestees and convicted or delinquency
18 adjudicated offenders required to provide a DNA sample under
19 this chapter; and

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

23 § 2313. State DNA Data Bank.

24 The State DNA Data Bank is reestablished. It shall serve as
25 the repository of DNA samples collected under this chapter or
26 under prior law.

27 § 2314. State Police recommendation of additional offenses and
28 annual report.

29 (a) Recommendation.--The State Police may recommend to the
30 General Assembly that it enact legislation for the inclusion of

1 additional offenses for which DNA samples shall be taken and
2 otherwise subjected to the provisions of this chapter. In
3 determining whether to recommend additional offenses, the State
4 Police shall consider those offenses for which DNA testing will
5 have a substantial impact on the detection and identification of
6 sex offenders and [violent] other offenders.

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

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

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

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

22 (4) The age, ethnicity, race and sex of arrestees from
23 whom DNA samples were collected at arrest and upon
24 conviction.

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

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

29 (7) The number of DNA samples collected at arrest that
30 were expunged from the Statewide DNA Data Base by request, by

1 court order, as a result of acquittal, as a result of charges
2 never having been filed and because charges filed were
3 dismissed.

4 (8) The average length of time between the collection of
5 DNA samples from arrestees and from those convicted of
6 offenses and the completion of forensic DNA testing of each
7 of those categories of DNA samples.

8 (9) Recommendations, if any, under this section for the
9 inclusion of additional offenses for which DNA samples must
10 be collected or recommendations for the removal of specific
11 offenses from the categories requiring the collection of DNA
12 samples from arrestees or persons convicted of crimes.

13 § 2315. Procedural compatibility with FBI.

14 The DNA identification system [as] established by the State
15 Police shall be compatible with the procedures [specified]
16 established by the FBI Quality Assurance Standards for forensic
17 DNA testing laboratories and DNA data basing laboratories and
18 CODIS policies and procedures, including use of comparable test
19 procedures, laboratory equipment, supplies and computer
20 software.

21 § 2316. DNA sample required [upon conviction, delinquency
22 adjudication and certain ARD cases].

23 (a) [General rule] Conviction or adjudication.--A person who
24 is convicted or adjudicated delinquent for criminal homicide, a
25 felony sex offense or other specified offense or who is or
26 remains incarcerated for CRIMINAL HOMICIDE, a felony sex offense <--
27 or other specified offense on or after the effective date of
28 this chapter shall have a DNA sample [drawn] collected as
29 follows:

30 (1) A person who is sentenced or receives a delinquency

1 disposition to a term of confinement for an offense covered
2 by this subsection shall have a DNA sample [drawn] collected
3 upon intake to a prison, jail or juvenile detention facility
4 or any other detention facility or institution. If the person
5 is already confined at the time of sentencing or
6 adjudication, the person shall have a DNA sample [drawn]
7 collected immediately after the sentencing or adjudication.
8 If a DNA sample is not timely [drawn] collected in accordance
9 with this section, the DNA sample may be [drawn] collected
10 any time thereafter by the prison, jail, juvenile detention
11 facility, detention facility or institution.

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

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

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

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

30 (2) This chapter shall apply to incarcerated persons

1 convicted or adjudicated delinquent for criminal homicide, a
2 felony sex offense or other specified offense prior to June
3 19, 2002.

4 (3) This chapter shall apply to incarcerated persons and
5 persons on probation or parole who were convicted or
6 adjudicated delinquent for criminal homicide, a felony sex
7 offense or other specified offenses prior to the effective
8 date of this paragraph.

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

13 (c.1) Arrest.--A person who is arrested in this Commonwealth
14 for criminal homicide, felony sex offenses or other specified
15 offenses shall have a DNA sample collected as follows:

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

19 (2) If a DNA sample is not timely collected in
20 accordance with this subsection, the DNA sample may be
21 collected any time thereafter by a law enforcement official,
22 prison, jail, juvenile detention facility, detention facility
23 or institution.

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

27 (4) This subsection shall apply as follows:

28 (i) Beginning one year after the effective date of
29 this subsection, any person arrested for criminal
30 homicide shall have a DNA sample collected under this

1 subsection upon arrest.

2 (ii) Beginning two years after the effective date of
3 this subsection, any person arrested for a felony sex
4 offense shall have a DNA sample collected under this
5 subsection upon arrest.

6 (iii) Beginning three years after the effective date
7 of this subsection, any person arrested for any other
8 specified offense shall have a DNA sample collected under
9 this subsection upon arrest.

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

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

1 collection of a DNA sample under this chapter shall not be
2 required if the authorized law enforcement or corrections
3 official confirms that a DNA sample from the person has already
4 been validly collected and provided to the State DNA Data Base
5 and the State DNA Data Bank.

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

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

11 § 2316.1. Collection from persons accepted from other
12 jurisdictions.

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

26 (b) Time period.--

27 (1) If the person accepted under subsection (a) is not
28 confined, the DNA sample and fingerprints required under this
29 chapter shall be provided within five calendar days after the
30 person reports to the supervising agent or within five

1 calendar days of notice to the person, whichever occurs
2 first. The person shall appear and the DNA samples shall be
3 collected in accordance with the provisions of this chapter.

4 (2) If the person accepted under subsection (a) is
5 confined, the person shall provide the DNA sample and
6 fingerprints required by this chapter within five calendar
7 days after the person is received at a place of incarceration
8 or confinement.

9 Section 3. Sections 2317 heading and (a) (1) and (b) and
10 2318(a) and (c) of Title 44 are amended to read:

11 § 2317. Procedures for [withdrawal,] collection and
12 transmission of DNA samples.

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

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

1 * * *

2 (b) Limitation on liability.--Persons authorized to [draw]
3 collect DNA samples under this section shall not be criminally
4 liable for withdrawing a DNA sample and transmitting test
5 results pursuant to this chapter if they perform these
6 activities in good faith and shall not be civilly liable for
7 such activities when the person acted in a reasonable manner
8 according to generally accepted medical and other professional
9 practices.

10 * * *

11 § 2318. Procedures for conduct, disposition and use of DNA
12 analysis.

13 (a) Procedures.--

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

5 (i) Verification of accreditation.

6 (ii) Compliance with FBI Quality Assurance
7 Standards, including continuing education requirements
8 for the personnel of forensics DNA testing laboratories.

9 * * *

10 (c) Use of tests.--

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

18 (2) No DNA sample or DNA record acquired under this
19 chapter may be used for human behavioral genetic research or
20 for nonlaw enforcement or nonhumanitarian identification
21 purposes.

22 * * *

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

24 § 2318.1. Request for modified DNA search.

25 (a) General rule.--

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

30 (2) The State Police may grant a request to conduct a

1 modified DNA search if the State Police determine that the
2 request complies with subsection (d) (2).

3 (b) Modified DNA search.--

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

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

11 (3) In all cases, the State Police shall use procedures
12 for conducting a modified DNA search that are consistent with
13 the rules, regulations and guidelines promulgated under
14 section 2318 (relating to procedures for conduct, disposition
15 and use of DNA analysis).

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

20 (d) Requirements.--

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

24 (i) A representation that a modified DNA search is
25 necessary for law enforcement identification purposes in
26 an unsolved case.

27 (ii) A representation that all other investigative
28 leads have been pursued.

29 (iii) A commitment to further investigate the case
30 if personal identifying information from a modified DNA

1 search is provided.

2 (iv) Any other information the State Police deem
3 necessary.

4 (2) The State Police ~~shall~~ MAY grant a modified DNA <--

5 search request if the State Police determine that:

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

8 (ii) The crime scene DNA profile has previously been
9 subjected to a routine DNA search against the State DNA
10 Data Base.

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

13 (iv) The criminal justice agency has pursued all
14 other investigative leads.

15 (v) Any relevant consideration, including factors or
16 requirements considered by any other jurisdiction,
17 supports granting the request.

18 (3) The State Police procedures, promulgated under
19 section 2318, to conduct modified DNA searches shall be based
20 on scientifically valid and reliable methods to determine
21 that a crime scene DNA profile is sufficiently likely to have
22 originated from a close relative of an individual whose DNA
23 profile is recorded in the State DNA Data Base. The State
24 Police may require the following:

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

27 (ii) An analysis of the pattern of shared DNA
28 characteristics.

29 (iii) Y chromosome analysis.

30 (iv) Mitochondrial DNA analysis.

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

4 Section 5. Sections 2319, 2321 and 2322 of Title 44 are
5 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] rules, regulations and guidelines under section
12 2318 (relating to procedures for conduct, disposition and use of
13 DNA analysis) as established by the State Police, to classify
14 and to file the DNA record of identification characteristic
15 profiles of DNA samples submitted under the former DNA Act,
16 former provisions of 42 Pa.C.S. Ch. 47 (relating to DNA data and
17 testing) or this chapter and to make such information available
18 as provided in this section. The State Police may contract [out]
19 for the storage of DNA typing analysis [and may contract out] or
20 DNA typing analysis to [a qualified] an accredited forensic DNA
21 laboratory that meets the rules, regulations and guidelines as
22 established by the State Police under section 2318. The results
23 of the DNA profile of individuals in the State DNA Data Base
24 shall be made available:

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

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

1 (b) Methods of obtaining information.--The State Police
2 shall [adopt] promulgate, as necessary, rules, regulations and
3 guidelines governing the methods of obtaining information from
4 the State DNA Data Base and CODIS and procedures for
5 verification of the identity and authority of the requester.

6 (c) Population data base.--

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

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

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

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

21 § 2321. Expungement.

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

1 Bank or the State DNA Data Base by mistake.

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

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

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

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 under the former DNA Act, former provisions
14 of 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this
15 chapter may have the DNA sample, record or profile expunged in
16 accordance with this section.

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

1 subsection (b.1).

2 (b.1) Expungement by court order.--The following shall
3 apply:

4 (1) Except as provided under paragraph (2), a person may
5 request the court of common pleas of the county where the
6 original charges were filed to issue an order directing the
7 expungement of the DNA sample, record or profile pertaining
8 to the person in the State DNA Data Bank or the State DNA
9 Data Base in the following instances:

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

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

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

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

21 (v) the prosecuting authority has expressly declined
22 to prosecute the charge for which the DNA sample was
23 taken;

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

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

28 (viii) the DNA sample, record or profile was
29 included in the State DNA Data Bank or State DNA Data
30 Base by mistake and the State Police has erroneously

1 refused to grant the person's request for removal under
2 subsection (b).

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

7 (3) The court shall give ten days' prior notice to the
8 district attorney of the county where the original charges
9 were filed of any application for expungement under this
10 subsection.

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

16 (b.2) Expungement reporting.--A person whose DNA sample,
17 record or profile has been expunged under subsection (b.1) shall
18 forward a certified copy of an expungement order issued under
19 subsection (b.1) to the State Police.

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

21 (1) Upon receipt of an expungement order issued under
22 subsection (b.1), the State Police shall destroy the DNA
23 sample, record and profile in the State DNA Data Bank and the
24 State DNA Data Base pertaining to a person identified in an
25 expungement order.

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

28 (3) The State Police shall provide written notice of the
29 expungement to the person and his attorney of record, if any,
30 within 60 days after destroying the DNA sample, record and

1 profile.

2 (4) THE STATE POLICE SHALL CREATE AND PROVIDE AN <--
3 EXPUNGEMENT PROCEDURE INFORMATIONAL PAMPHLET TO ANY PERSON
4 WHOSE DNA SAMPLE, RECORD OR PROFILE HAS BEEN TAKEN OR CREATED
5 UNDER THIS CHAPTER.

6 (c) Limitations.--

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

11 (2) A person may not seek expungement of a DNA sample,
12 record or profile on the ground that that person was
13 convicted or adjudicated delinquent for one of the other
14 specified offenses prior to the effective date of the former
15 DNA Act or this chapter.

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

20 § 2322. Mandatory cost.

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

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