

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 683 Session of 2015

INTRODUCED BY PILEGGI, GREENLEAF, RAFFERTY, BOSCOLA, BROWNE, COSTA, MCGARRIGLE, SCHWANK, VULAKOVICH, VANCE, WARD, YAW AND YUDICHAK, MARCH 31, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, FEBRUARY 9, 2016

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, AND 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] FORENSIC DNA TESTING IS an <--

1 important tool in criminal investigations, in [the exclusion
2 of] excluding innocent individuals who are the subject of
3 criminal investigations or prosecutions and in [detering and
4 detecting recidivist acts] detecting and deterring repeated
5 crimes by the same 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." A FORENSIC DNA profile and identification <--
22 information stored in the State DNA Data Base or the Combined
23 DNA Index System for the purpose of [generating investigative <--
24 leads] IDENTIFICATION or supporting statistical interpretation <--
25 of DNA test results. [The term includes nuclear and <--
26 mitochondrial typing. The DNA record is the result obtained from
27 the DNA typing tests. †The DNA record is comprised of the <--
28 characteristics of a DNA sample which are of value in
29 establishing the identity of individuals. The results of all DNA
30 identification tests on an individual's DNA sample are also

1 collectively referred to as the DNA profile of 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 FORENSIC DNA <--
10 analysis TESTING. <--

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 HUMAN deoxyribonucleic acid (DNA) <--
8 to identify characteristics unique to a particular individual. <--
9 DATA WHICH MEETS THE REQUIREMENTS FOR INCLUSION IN CODIS AND THE <--
10 NATIONAL DNA IDENTIFICATION INDEX SYSTEM ADMINISTERED BY THE
11 FBI.

12 "FORENSIC DNA PROFILE." THE DATA SET DERIVED FROM FORENSIC
13 DNA TESTING.

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

17 "Fund." The DNA Detection Fund reestablished in section 2335
18 (relating to DNA Detection Fund).

19 "Human behavioral genetic research." The study of the
20 possible genetic underpinnings of behaviors, including, but not
21 limited to, aggression, substance abuse, social attitudes,
22 mental abilities, sexual activity and eating habits.

23 "Law enforcement identification purposes." Assisting in the
24 determination of the identity of an individual whose DNA is
25 contained in a biological sample.

26 "Mitochondrial DNA analysis." A method that applies
27 techniques from molecular biology to analyze DNA found in the
28 mitochondria of cells FOR THE PURPOSE OF IDENTIFICATION. <--

29 "Modified DNA search." A search of the State DNA Data Base, <--
30 using scientifically valid and reliable methods in accordance

1 ~~with rules, regulations and guidelines promulgated under section~~
2 ~~2318 (relating to procedures for conduct, disposition and use of~~
3 ~~DNA analysis), to determine that a crime scene DNA profile is~~
4 ~~sufficiently likely to have originated from a close relative of~~
5 ~~an individual whose DNA profile is recorded in the State DNA~~
6 ~~Data Base.~~

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

8 (1) A felony offense, ~~other than criminal homicide or a~~ <--
9 ~~felony sex offense.~~

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

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

16 (4) ~~18 Pa.C.S. § 2701(b)(2) (relating to simple~~ <--
17 ~~assault).~~

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

19 ~~(6) 18 Pa.C.S. § 3503(b)(1)(v) (relating to criminal~~
20 ~~trespass).~~

21 ~~(7) 18 Pa.C.S. § 4303 (relating to concealing death of~~
22 ~~child).~~

23 ~~(8) 18 Pa.C.S. § 4305 (relating to dealing in infant~~
24 ~~children).~~ AN OFFENSE UNDER 18 PA.C.S. (RELATING TO CRIMES <--
25 AND OFFENSES) OR 75 PA.C.S. (RELATING TO VEHICLES) THAT IS
26 GRADED AS A MISDEMEANOR OF THE FIRST DEGREE.

27 ~~(9) (5) A misdemeanor offense requiring registration~~ <--
28 ~~under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of~~
29 ~~sexual offenders).~~

30 (6) AN OFFENSE GRADED AS A MISDEMEANOR OF THE SECOND <--

1 DEGREE UNDER ANY OF THE FOLLOWING:

2 18 PA.C.S. § 2701 (RELATING TO SIMPLE ASSAULT).

3 18 PA.C.S. § 2903 (RELATING TO FALSE IMPRISONMENT).

4 18 PA.C.S. § 3127 (RELATING TO INDECENT EXPOSURE).

5 18 PA.C.S. CH. 39 (RELATING TO THEFT AND RELATED
6 OFFENSES).

7 18 PA.C.S. § 4105 (RELATING TO BAD CHECKS).

8 18 PA.C.S. § 4106 (RELATING TO ACCESS DEVICE FRAUD).

9 18 PA.C.S. § 4952 (RELATING TO INTIMIDATION OF
10 WITNESSES OR VICTIMS).

11 18 PA.C.S. § 4953 (RELATING TO RETALIATION AGAINST
12 WITNESS, VICTIM OR PARTY).

13 18 PA.C.S. § 4958 (RELATING TO INTIMIDATION,
14 RETALIATION OR OBSTRUCTION IN CHILD ABUSE CASES).

15 18 PA.C.S. § 5121 (RELATING TO ESCAPE).

16 18 PA.C.S. § 5126 (RELATING TO FLIGHT TO AVOID
17 APPREHENSION, TRIAL OR PUNISHMENT).

18 18 PA.C.S. § 5131 (RELATING TO RECRUITING CRIMINAL
19 GANG MEMBERS).

20 18 PA.C.S. § 5510 (RELATING TO ABUSE OF CORPSE).

21 18 PA.C.S. § 5511 (RELATING TO CRUELTY TO ANIMALS).

22 18 PA.C.S. § 5902 (RELATING TO PROSTITUTION AND
23 RELATED OFFENSES).

24 "State Police." The Pennsylvania State Police.

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

27 § 2311. Powers and duties of State Police.

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

30 * * *

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

4 * * *

5 § 2312. State DNA Data Base.

6 [The State DNA Data Base is reestablished. It shall be
7 administered by the State Police and provide DNA records to the
8 FBI for storage and maintenance by CODIS.] A Statewide DNA Data
9 Base is ~~established~~ REESTABLISHED within the State Police to <--
10 store ~~DNA records from DNA samples submitted for analysis and~~ <--
11 storage FORENSIC DNA PROFILES AND RECORDS DEVELOPED BY OR <--
12 SUBMITTED to the State Police ~~laboratory~~ under the former DNA <--
13 Act, the former provisions of 42 Pa.C.S. Ch. 47 (relating to DNA
14 data and testing) or to this chapter, and to ~~provide DNA~~ <--
15 CONTRIBUTE FORENSIC DNA PROFILES AND records to CODIS AND THE <--
16 NATIONAL DNA IDENTIFICATION INDEX SYSTEM. The State DNA Data
17 Base shall have the capability provided by computer software and
18 procedures administered by the State Police to store and
19 maintain [DNA records] FORENSIC DNA PROFILES AND RECORDS related <--
20 to:

- 21 (1) forensic casework;
- 22 (2) ~~{convicted} arrestees and convicted~~ or delinquency <--
23 adjudicated offenders required to provide a DNA sample under
24 this chapter; and
- 25 (3) anonymous DNA records used for statistical research
26 [or] on the frequency of DNA genotypes, quality control or
27 the development of new DNA identification methods.

28 § 2313. State DNA Data Bank.

29 The State DNA Data Bank is reestablished. It shall serve as
30 the repository of DNA samples collected under this chapter or

1 under prior law.

2 § 2314. State Police recommendation of additional offenses and
3 annual report.

4 (a) Recommendation.--The State Police may recommend to the
5 General Assembly that it enact legislation for the inclusion of
6 additional offenses for which DNA samples shall be taken and
7 otherwise subjected to the provisions of this chapter. In
8 determining whether to recommend additional offenses, the State
9 Police shall consider those offenses for which DNA testing will
10 have a substantial impact on the detection and identification of
11 sex offenders and [violent] other offenders.

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

21 (1) The number of DNA samples submitted from individuals <--
22 upon arrest.

23 (2) The age, race and sex of arrestees from whom DNA
24 samples were submitted upon arrest and the THE age, race and <--
25 sex of those convicted from whom DNA samples were submitted
26 upon conviction.

27 (3) (2) The fiscal impact on the State Police of <--
28 collecting AND TESTING DNA samples from persons convicted of <--
29 OR ADJUDICATED DELINQUENT FOR offenses. <--

30 (4) The fiscal impact on the State Police of collecting <--

1 ~~DNA samples from arrestees.~~

2 ~~(5) The number of DNA samples collected at arrest that~~
3 ~~were expunged from the Statewide DNA Data Base.~~

4 ~~(6) (3) The average length of time between the receipt~~ <--
5 ~~of 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 ~~(7) (4) Recommendations, if any, under this section for~~ <--
9 ~~the inclusion of additional offenses for which DNA samples~~
10 ~~must be collected or recommendations for the removal of~~
11 ~~specific offenses from the categories requiring the~~
12 ~~collection of DNA samples from arrestees or persons convicted~~
13 ~~of crimes.~~

14 § 2315. Procedural compatibility with FBI.

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

22 § 2316. DNA sample required ~~upon conviction, delinquency~~ <--
23 ~~adjudication and certain ARD cases~~. <--

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

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

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

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

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

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

1 (2) This chapter shall apply to incarcerated persons
2 convicted or adjudicated delinquent for ~~criminal homicide,~~ a <--
3 felony sex offense or other specified offense prior to June
4 19, 2002.

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

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

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

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

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

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

28 ~~(4) This subsection shall apply as follows:~~

29 ~~(i) Beginning one year after the effective date of
30 this subsection, any person arrested for criminal~~

~~homicide shall have a DNA sample collected under this subsection upon arrest.~~

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

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

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

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

1 authorized law enforcement or corrections personnel. The
2 collection of a DNA sample MAY BE COLLECTED under this chapter <--
3 BUT shall not be required if the authorized law enforcement or <--
4 corrections official confirms that a DNA sample from the person
5 has already been validly collected and provided to the State DNA
6 Data Base and the State DNA Data Bank BANK AND A DNA RECORD FOR <--
7 THE PERSON EXISTS IN THE STATE DNA DATA BASE.

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

12 Section 2. Title 44 is amended by adding a section to read:
13 § 2316.1. Collection from persons accepted from other
14 jurisdictions.

15 (a) Conditional acceptance.--When a person is accepted into
16 this Commonwealth for supervision from another jurisdiction
17 under the Interstate Compact for Supervision of Adult Offenders,
18 other reciprocal agreement with a Federal, state or county
19 agency, or a provision of law, whether or not the person is
20 confined or released, the acceptance shall be conditioned on the
21 offender's providing DNA samples under this chapter AND <--
22 FINGERPRINTS if the offender has a past or present Federal,
23 state or military court conviction or adjudication that is
24 equivalent to ~~eriminal homicide~~, a felony sex offense or other <--
25 specified offense as determined by the Pennsylvania Board of
26 Probation and Parole. Additional DNA samples MAY BE COLLECTED <--
27 BUT shall not be required if THE SUPERVISING AGENCY OR PLACE OF <--
28 CONFINEMENT CONFIRMS THAT a DNA sample is currently on file with
29 the State DNA Data BANK AND A DNA RECORD FOR THE PERSON EXISTS <--
30 IN THE STATE DNA DATA Base.

1 (b) Time period.--

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

9 (2) If the person accepted under subsection (a) is
10 confined, the person shall provide the DNA sample and
11 fingerprints required by this chapter within five calendar
12 days after the person is received at a place of incarceration
13 or confinement.

14 Section 3. Sections 2317 heading and (a) (1) and (b) ~~and,~~ <--
15 2318(a) and (c), 2319, 2321 AND 2322 of Title 44 are amended to <--
16 read:

17 § 2317. Procedures for [withdrawal,] collection and
18 transmission of DNA samples.

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

20 (1) Each DNA sample required to be [drawn] collected
21 pursuant to [section] sections 2316 (relating to DNA sample
22 required ~~upon conviction, delinquency adjudication and~~ <--
23 ~~certain ARD cases~~) and 2316.1 (relating to collection from <--
24 persons accepted from other jurisdictions) [from persons who <--
25 are incarcerated or confined shall be ~~drawn~~ collected at <--
26 the place of incarceration or confinement as provided for in
27 section 2316. DNA samples from persons who are not ordered or
28 sentenced to a term of confinement shall be ~~drawn~~ collected <--
29 at a prison, jail unit, juvenile facility or other facility
30 to be specified by the court. [Only] ~~For DNA blood samples,~~ <--

~~only those individuals qualified to draw DNA blood samples in a medically approved manner shall draw a DNA blood sample to be submitted for DNA analysis. [Such sample] DNA samples and the set of fingerprints provided for in paragraph (2) shall be delivered to the State Police within 48 hours of [drawing] collecting the sample.~~

* * * TO BE SPECIFIED BY THE COURT. ONLY] SHALL BE <--
COLLECTED AS FOLLOWS:

(I) FROM PERSONS WHO ARE INCARCERATED OR CONFINED, THE DNA SAMPLE SHALL BE COLLECTED AT THE PLACE OF INCARCERATION OR CONFINEMENT AS PROVIDED IN SECTION 2316 OR 2346.1.

(II) DNA SAMPLES FROM PERSONS WHO ARE NOT ORDERED TO BE OR ARE NOT CURRENTLY INCARCERATED OR CONFINED SHALL BE COLLECTED AS PROVIDED IN SECTIONS 2316 AND 2316.1 OR AT A PRISON, JAIL UNIT, JUVENILE FACILITY OR OTHER FACILITY SPECIFIED BY THE COURT OR SUPERVISING AGENCY.

(III) FOR DNA BLOOD SAMPLES, ONLY THOSE INDIVIDUALS QUALIFIED TO DRAW DNA BLOOD SAMPLES IN A MEDICALLY APPROVED MANNER SHALL DRAW A DNA BLOOD SAMPLE TO BE SUBMITTED FOR DNA ANALYSIS. [SUCH SAMPLE]

(IV) DNA SAMPLES AND THE SET OF FINGERPRINTS PROVIDED FOR IN PARAGRAPH (2) SHALL BE DELIVERED TO THE STATE POLICE WITHIN 48 HOURS OF [DRAWING] COLLECTING THE SAMPLE.

(2) IN ADDITION TO THE DNA SAMPLE, A FULL SET OF FINGERPRINTS SHALL BE TAKEN FROM THE PERSON FROM WHOM THE DNA SAMPLE IS BEING [DRAWN] COLLECTED FOR THE EXCLUSIVE PURPOSE OF VERIFYING THE IDENTITY OF SUCH PERSON.

(b) Limitation on liability.--Persons authorized to [draw]

1 collect DNA samples under this section shall not be criminally
2 liable for withdrawing a DNA sample and transmitting test
3 results pursuant to this chapter if they perform these
4 activities in good faith and shall not be civilly liable for
5 such activities when the person acted in a reasonable manner
6 according to generally accepted medical and other professional
7 practices.

8 * * *

9 § 2318. Procedures for conduct, disposition and use of DNA
10 analysis.

11 (a) Procedures.--

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

20 (2) The [DNA sample typing] results OF FORENSIC DNA <--
21 TESTING shall be securely stored in the State DNA Data Base,
22 and records of testing shall be retained on file with the
23 State Police consistent with the procedures established by
24 the FBI[.] Quality Assurance Standards for forensic DNA
25 testing laboratories and DNA data basing laboratories and
26 CODIS policies and procedures.

27 (3) These procedures shall also include quality
28 assurance guidelines [to ensure that DNA identification <--
29 records meet standards for] FOR SAMPLES AND FORENSIC DNA <--
30 PROFILES AND RECORDS FROM 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) A DNA sample or DNA record acquired under this
19 chapter may not be used for human behavioral genetic research
20 or 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~~

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

~~(b) Modified DNA search.~~

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

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

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

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

~~(d) Requirements.~~

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

~~(i) A representation INFORMATION DEMONSTRATING that a modified DNA search is necessary for COULD MATERIALLY ASSIST law enforcement identification purposes TO IDENTIFY THE PERPETRATOR in an unsolved case FELONY CRIME OF VIOLENCE AS DEFINED IN 42 PA.C.S. § 9714(G) (RELATING TO SENTENCES FOR SECOND AND SUBSEQUENT OFFENSES).~~

~~(ii) A representation that all other REASONABLE~~

~~investigative leads have been pursued.~~

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

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

~~(2) The State Police may grant a modified DNA search request if the State Police determine that:~~

~~(i) The crime scene DNA profile has SAMPLE IS OF sufficient size, quality and integrity TO PERMIT ADDITIONAL FORENSIC DNA TESTING IF NECESSARY.~~ <--

~~(ii) The crime scene FORENSIC DNA profile has previously been subjected to a routine DNA search against the State DNA Data Base AND THE NATIONAL DNA IDENTIFICATION INDEX SYSTEM IN CODIS AND DOES NOT HAVE A MATCH TO AN IDENTIFIABLE INDIVIDUAL.~~ <--

~~(iii) The modified DNA search is necessary for COULD MATERIALLY ASSIST law enforcement identification purposes TO IDENTIFY THE PERPETRATOR in an A QUALIFYING unsolved case.~~ <--

~~(iv) The criminal justice agency has pursued all other REASONABLE investigative leads.~~ <--

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

~~(3) The State Police GUIDELINES AND procedures, promulgated under section 2318, to conduct modified DNA searches shall be based on scientifically valid and reliable methods to determine that a crime scene DNA profile is sufficiently likely to have originated from a close relative~~ <--

1 ~~of an individual whose DNA profile is recorded in the State~~
2 ~~DNA Data Base. The State Police GUIDELINES OR PROCEDURES may~~ <--
3 ~~require the following:~~

4 ~~(i) An analysis of the rarity in the relevant~~
5 ~~population of each shared DNA characteristic ALLELE.~~ <--

6 ~~(ii) An analysis of the pattern of shared DNA~~
7 ~~characteristics ALLELE.~~ <--

8 ~~(iii) Y chromosome analysis.~~

9 ~~(iv) Mitochondrial DNA analysis.~~

10 ~~(v) Any other suitable method REQUIREMENTS designed~~ <--
11 ~~to determine that a crime scene DNA profile originated~~
12 ~~from a close relative of an individual in the State DNA~~
13 ~~Data Base.~~

14 ~~(E) VALIDITY. A PERSON MAY NOT CHALLENGE THE VALIDITY OF A~~ <--
15 ~~CONVICTION, ARREST, SEARCH OR OTHER INVESTIGATIVE MEASURES TAKEN~~
16 ~~IN THE INVESTIGATION OF THE CRIME FOR WHICH THE PERSON WAS~~
17 ~~ARRESTED, CHARGED OR CONVICTED, ON THE ASSERTION THAT A MODIFIED~~
18 ~~DNA SEARCH DID NOT MEET THE REQUIREMENTS OF THIS SECTION OR WAS~~
19 ~~IMPROPERLY CONDUCTED.~~

20 ~~Section 5. Sections 2319, AND 2321 and 2322 of Title 44 are~~ <--
21 ~~amended to read:~~

22 § 2319. DNA data base exchange.

23 ~~(a) Receipt of DNA samples by State Police. It shall be the~~ <--
24 ~~duty of the State Police to receive DNA samples, to store, to~~
25 ~~perform analysis or to contract for DNA typing analysis with [a~~
26 ~~qualified] an accredited forensic DNA laboratory that meets the~~
27 ~~[guidelines] rules, regulations and guidelines under section~~
28 ~~2318 (relating to procedures for conduct, disposition and use of~~
29 ~~DNA analysis) as established by the State Police, to classify~~
30 ~~and to file the DNA record of identification characteristic~~

1 ~~profiles of DNA samples submitted under the former DNA Act,~~

2 (A) RECEIPT OF DNA SAMPLES BY STATE POLICE.--IT SHALL BE THE <--
3 DUTY OF THE STATE POLICE TO [RECEIVE]: <--

4 (1) RECEIVE AND STORE DNA SAMPLES, [TO STORE,] TO
5 PERFORM [ANALYSIS] FORENSIC DNA TESTING OR TO CONTRACT FOR
6 [DNA TYPING ANALYSIS] TESTING WITH [A QUALIFIED] AN
7 ACCREDITED FORENSIC DNA LABORATORY THAT MEETS THE
8 [GUIDELINES] RULES, REGULATIONS AND GUIDELINES UNDER SECTION
9 2318 (RELATING TO PROCEDURES FOR CONDUCT, DISPOSITION AND USE
10 OF DNA ANALYSIS) AS ESTABLISHED BY THE STATE POLICE[, TO
11 CLASSIFY AND TO FILE THE DNA RECORD OF IDENTIFICATION
12 CHARACTERISTIC PROFILES OF].

13 (2) STORE FORENSIC DNA RECORDS FROM DNA SAMPLES
14 SUBMITTED UNDER THE FORMER DNA ACT, former provisions of 42
15 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this
16 chapter and to make such information available as ~~provided in~~ <--
17 ~~this section. The State Police may contract [out] for the~~
18 ~~storage of DNA typing analysis [and may contract out] or DNA~~
19 ~~typing analysis to [a qualified] an accredited forensic DNA~~
20 ~~laboratory that meets the rules, regulations and guidelines~~
21 ~~as established by the State Police under section 2318. The~~
22 ~~results of the DNA profile of individuals in the State DNA~~
23 ~~Data Base shall be made available:~~ PROVIDED IN THIS SECTION. <--

24 (A.1) CONTRACTS.--THE STATE POLICE MAY CONTRACT [OUT]
25 FOR [THE STORAGE OF DNA TYPING ANALYSIS AND MAY CONTRACT OUT]
26 DNA [TYPING ANALYSIS] TESTING TO [A QUALIFIED] AN ACCREDITED
27 FORENSIC DNA LABORATORY THAT MEETS THE RULES, REGULATIONS AND
28 GUIDELINES AS ESTABLISHED BY THE STATE POLICE UNDER SECTION
29 2318. [THE RESULTS OF THE DNA PROFILE OF INDIVIDUALS] DNA
30 RECORDS IN THE STATE DNA DATA BASE SHALL BE MADE AVAILABLE:

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

4 (2) upon written or electronic request and in
5 furtherance of an official investigation of a criminal
6 offense or offender or suspected offender.

7 (b) Methods of obtaining information.--The State Police
8 shall [adopt] promulgate, as necessary, rules, regulations and
9 guidelines governing the methods of obtaining information from
10 the State DNA Data Base and CODIS and procedures for
11 verification of the identity and authority of the requester.

12 (c) Population data base.--

13 (1) The State Police may establish a separate population
14 data base comprised of FORENSIC DNA [samples] PROFILES <--
15 obtained under this chapter after all personal identification
16 is removed.

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

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

24 ~~(d) Separate category. The State Police shall create a~~ <--
25 ~~separate category within the data base to store DNA samples and~~
26 ~~records collected upon arrest under section 2316(c.1) (relating~~
27 ~~to DNA sample required).~~

28 § 2321. Expungement.

29 [(a) General rule.--A person whose DNA sample, record or
30 profile has been included in the State DNA Data Bank or the

1 State DNA Data Base pursuant to the former DNA Act, former 42
2 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this
3 chapter may request expungement on the grounds that the
4 conviction or delinquency adjudication on which the authority
5 for including that person's DNA sample, record or profile was
6 based has been reversed and the case dismissed or that the DNA
7 sample, record or profile was included in the State DNA Data
8 Bank or the State DNA Data Base by mistake.

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

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

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

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

24 (b) Removal by request.--A person whose DNA sample, record
25 or profile has been included in the State DNA Data Bank or the
26 State DNA Data Base under the former DNA Act, former provisions
27 of 42 Pa.C.S. Ch. 47 or this chapter may file a written request
28 with the State Police ~~on the grounds~~ that the DNA sample, record <--
29 or profile be removed on the grounds that the DNA sample, record
30 or profile was included in the State DNA Data Bank or the State

1 DNA Data Base by mistake. If the State Police grants the
2 request, the request shall be processed at no cost and the State
3 Police shall provide written notice of the removal to the person
4 and his attorney of record, if any, within 60 days after
5 destroying the DNA sample, record and profile. If the State
6 Police erroneously denies the request, the person may request <--
7 expungement of the DNA sample, record or profile under
8 subsection (b.1).

9 (b.1) Expungement by court order.--The following shall
10 apply:

11 (1) Except as provided under paragraph (2), a person may
12 request the court of common pleas of the county where the
13 original charges were filed to issue an order directing the
14 expungement of the DNA sample, record or profile pertaining
15 to the person in the State DNA Data Bank or the State DNA
16 Data Base in the following instances:

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

20 ~~(ii) the charge for which the DNA sample was taken~~ <--
21 ~~has been dismissed, no appeal is pending and the~~
22 ~~prosecuting authority is barred from seeking a retrial;~~

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

25 ~~(iv) the person from whom the DNA sample was taken~~
26 ~~was not charged with a crime for which a DNA sample is~~
27 ~~authorized to be taken under this chapter;~~

28 ~~(v) the prosecuting authority has expressly declined~~
29 ~~to prosecute the charge for which the DNA sample was~~
30 ~~taken;~~

1 ~~(vi) the charge for which the DNA sample was taken~~
2 ~~was not filed within the statute of limitations;~~

3 ~~(vii) (II) the person was granted an unconditional~~ <--
4 ~~pardon for the crime for which the DNA sample was taken;~~
5 ~~or~~

6 ~~(viii) (III) the DNA sample, record or profile was~~ <--
7 ~~included in the State DNA Data Bank or State DNA Data~~
8 ~~Base by mistake and the State Police has erroneously~~
9 ~~refused to grant the person's request for removal under~~
10 ~~subsection (b).~~

11 (2) Paragraph (1) shall not apply if the person has been
12 arrested, charged, convicted or adjudicated delinquent for <--
13 any other crime for which a DNA sample is required to be
14 collected under this chapter.

15 (3) The court shall give 10 days' prior notice to the
16 district attorney of the county where the original charges
17 were filed of any application for expungement under this
18 subsection.

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

24 (b.2) Expungement reporting.--A person whose DNA sample, <--
25 record or profile has been expunged under subsection (b.1) THE <--
26 COURT shall forward a certified copy of an expungement order
27 issued under subsection (b.1) to the State Police.

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

29 (1) Upon receipt of an expungement order issued under
30 subsection (b.1), the State Police shall destroy the DNA

1 sample, record and profile in the State DNA Data Bank and the
2 State DNA Data Base pertaining to a person identified in an
3 expungement order.

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

6 (3) The State Police shall provide written notice of the
7 expungement to the person and his attorney of record, if any,
8 within 60 days after destroying the DNA sample, record and
9 profile.

10 (4) The State Police shall publish information regarding
11 the eligibility requirements for expungement under this
12 section and the steps necessary to obtain an expungement
13 under this section on the State Police's publicly available
14 Internet website. The State Police shall publish the
15 information in at least two commonly accessible formats, such
16 as HyperText Markup Language and Portable Document Format.

17 (c) Limitations.--

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

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

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

1 ~~§ 2322. Mandatory cost.~~

<--

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

9 Section ~~6~~ 4. This act shall take effect in ~~60~~ 180 days.

<--