

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2308 Session of 2018

INTRODUCED BY NESBIT, McCLINTON, BERNSTINE, BRIGGS, DALEY, HILL- EVANS, PASHINSKI, READSHAW, SCHLOSSBERG, SOLOMON, MURT, MOUL AND GILLEN, MAY 2, 2018

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, SEPTEMBER 25, 2018

AN ACT

1 Amending ~~Title~~ TITLES 42 (Judiciary and Judicial Procedure) AND <--
2 44 (LAW AND JUSTICE) of the Pennsylvania Consolidated
3 Statutes, in post-trial matters, further providing for
4 postconviction DNA testing-; AND, IN DNA DATA AND TESTING, <--
5 FURTHER PROVIDING FOR POLICY, FOR DEFINITIONS, FOR POWERS AND
6 DUTIES OF STATE POLICE, FOR STATE DNA DATA BASE, FOR STATE
7 DNA DATA BANK, FOR STATE POLICE RECOMMENDATION OF ADDITIONAL
8 OFFENSES, FOR PROCEDURAL COMPATIBILITY WITH FBI AND FOR DNA
9 SAMPLE REQUIRED UPON CONVICTION, DELINQUENCY ADJUDICATION AND
10 CERTAIN ARD CASES, PROVIDING FOR COLLECTION FROM PERSONS
11 ACCEPTED FROM OTHER JURISDICTIONS AND FURTHER PROVIDING FOR
12 PROCEDURES FOR WITHDRAWAL, COLLECTION AND TRANSMISSION OF DNA
13 SAMPLES, FOR PROCEDURES FOR CONDUCT, DISPOSITION AND USE OF
14 DNA ANALYSIS, FOR DNA DATA BASE EXCHANGE AND FOR EXPUNGEMENT.

15 The General Assembly finds and declares as follows:

16 (1) Postconviction DNA testing has exonerated wrongfully
17 convicted individuals and identified real perpetrators of
18 crimes.

19 (2) To the extent possible, DNA testing of evidence
20 before trial is encouraged to help prevent wrongful
21 convictions and to lead to earlier detection and conviction
22 of actual perpetrators.

23 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Section 9543.1 of Title 42 of the Pennsylvania
3 Consolidated Statutes is amended to read:

4 § 9543.1. Postconviction DNA testing.

5 (a) Motion.--

6 (1) An individual convicted of a criminal offense in a
7 court of this Commonwealth [and serving a term of
8 imprisonment or awaiting execution because of a sentence of
9 death] may apply by making a written motion to the sentencing
10 court at any time for the performance of forensic DNA testing
11 on specific evidence that is related to the investigation or
12 prosecution that resulted in the judgment of conviction.

13 (2) The evidence may have been discovered either prior
14 to or after the applicant's conviction. The evidence shall be
15 available for testing as of the date of the motion. If the
16 evidence was discovered prior to the applicant's conviction,
17 the evidence shall not have been subject to the DNA testing
18 requested because the technology for testing was not in
19 existence at the time of the trial or the applicant's counsel
20 did not seek testing at the time of the trial in a case where
21 a verdict was rendered on or before January 1, 1995, or the
22 evidence was subject to the testing, but newer technology
23 could provide substantially more accurate and substantially
24 probative results or the applicant's counsel sought funds
25 from the court to pay for the testing because his client was
26 indigent and the court refused the request despite the
27 client's indigency.

28 (3) A request for DNA testing under this section shall
29 be by written petition and shall be filed with the clerk of
30 courts of the judicial district where the sentence is

1 imposed.

2 (4) DNA testing may be sought at any time if the motion
3 is made in a timely manner and for the purpose of
4 demonstrating the applicant's actual innocence and not to
5 delay the execution of sentence or administration of justice.

6 (5) Notwithstanding any other provision of law, a plea
7 of guilty to a crime of violence, as defined in section
8 9714(g) (relating to sentences for second and subsequent
9 offenses), or a confession given by an applicant concerning
10 the offense for which the applicant was convicted shall not
11 prohibit the applicant from asserting actual innocence under
12 subsection (c)(2) or the court from making a determination
13 and ordering DNA testing under subsection (d)(2).

14 (6) The motion shall explain how, after review of the
15 record of the applicant's trial, there is a reasonable
16 possibility if the applicant is under State supervision, or
17 there is a reasonable probability if the applicant is not
18 under State supervision, or after review of the record of the
19 applicant's guilty plea there is a reasonable probability,
20 that the testing would produce exculpatory evidence that
21 would establish:

22 (i) the applicant's actual innocence of the offense
23 for which the applicant was convicted;

24 (ii) in a capital case, the applicant's actual
25 innocence of the charged or uncharged conduct
26 constituting an aggravating circumstance under section
27 9711(d) (relating to sentencing procedure for murder of
28 the first degree) if the applicant's exoneration of the
29 conduct would result in vacating a sentence of death; or

30 (iii) in a capital case, a mitigating circumstance

1 under section 9711(e)(7) under the circumstances set
2 forth in section 9711(c)(1)(iv).

3 (b) Notice to the Commonwealth.--

4 (1) Upon receipt of a motion under subsection (a), the
5 court shall notify the Commonwealth and shall afford the
6 Commonwealth an opportunity to respond to the motion.

7 (2) Upon receipt of a motion under subsection (a) or
8 notice of the motion, as applicable, the Commonwealth and the
9 court shall take the steps reasonably necessary to ensure
10 that any remaining biological material in the possession of
11 the Commonwealth or the court is preserved pending the
12 completion of the proceedings under this section.

13 (c) Requirements.--In any motion under subsection (a), under
14 penalty of perjury, the applicant shall:

15 (1) (i) specify the evidence to be tested;

16 (ii) state that the applicant consents to provide
17 samples of bodily fluid for use in the DNA testing; and

18 (iii) acknowledge that the applicant understands
19 that, if the motion is granted, any data obtained from
20 any DNA samples or test results may be entered into law
21 enforcement databases, may be used in the investigation
22 of other crimes and may be used as evidence against the
23 applicant in other cases.

24 (2) (i) in a sworn statement subject to the penalties
25 under 18 Pa.C.S. §§ 4902 (relating to perjury) and 4903
26 (relating to false swearing), assert the applicant's
27 actual innocence of the offense for which the applicant
28 was convicted and that the applicant seeks DNA testing
29 for the purpose of demonstrating the applicant's actual
30 innocence; and

1 (ii) in a capital case:

2 (A) assert the applicant's actual innocence of
3 the charged or uncharged conduct constituting an
4 aggravating circumstance under section 9711(d)
5 [(relating to sentencing procedure for murder of the
6 first degree)] if the applicant's exoneration of the
7 conduct would result in vacating a sentence of death;
8 or

9 (B) assert that the outcome of the DNA testing
10 would establish a mitigating circumstance under
11 section 9711(e) (7) if that mitigating circumstance
12 was presented to the sentencing judge or jury and
13 facts as to that issue were in dispute at the
14 sentencing hearing.

15 (3) present a prima facie case demonstrating that the:

16 (i) identity of or the participation in the crime by
17 the perpetrator was at issue in the proceedings that
18 resulted in the applicant's conviction and sentencing;
19 and

20 (ii) DNA testing of the specific evidence, assuming
21 exculpatory results, would establish:

22 (A) the applicant's actual innocence of the
23 offense for which the applicant was convicted;

24 (B) in a capital case, the applicant's actual
25 innocence of the charged or uncharged conduct
26 constituting an aggravating circumstance under
27 section 9711(d) if the applicant's exoneration of the
28 conduct would result in vacating a sentence of death;
29 or

30 (C) in a capital case, a mitigating circumstance

1 under section 9711(e) (7) under the circumstances set
2 forth in [subsection (c) (1) (iv)] section 9711(c) (1)
3 (iv).

4 (d) Order.--

5 (1) Except as provided in paragraph (2), the court shall
6 order the testing requested in a motion under subsection (a)
7 under reasonable conditions designed to preserve the
8 integrity of the evidence and the testing process upon a
9 determination, after review of the record of the applicant's
10 trial, that the:

11 (i) requirements of subsection (c) have been met;

12 (ii) evidence to be tested has been subject to a
13 chain of custody sufficient to establish that it has not
14 been altered in any material respect; and

15 (iii) motion is made in a timely manner and for the
16 purpose of demonstrating the applicant's actual innocence
17 and not to delay the execution of sentence or
18 administration of justice.

19 (2) The court shall not order the testing requested in a
20 motion under subsection (a) if, after review of the record of
21 the applicant's trial, the court determines that there is no
22 reasonable possibility for an applicant under State
23 supervision, or there is no reasonable probability for an
24 applicant not under State supervision, or after review of the
25 record of the applicant's guilty plea, the court determines
26 that there is no reasonable probability, that the testing
27 would produce exculpatory evidence that:

28 (i) would establish the applicant's actual innocence
29 of the offense for which the applicant was convicted;

30 (ii) in a capital case, would establish the

1 applicant's actual innocence of the charged or uncharged
2 conduct constituting an aggravating circumstance under
3 section 9711(d) if the applicant's exoneration of the
4 conduct would result in vacating a sentence of death; or

5 (iii) in a capital case, would establish a
6 mitigating circumstance under section 9711(e) (7) under
7 the circumstances set forth in [subsection (c) (1) (iv).]
8 section 9711(c) (1) (iv).

9 (3) Any DNA testing order under this section shall
10 constitute a final order. An applicant or the Commonwealth
11 may appeal a decision denying or granting a DNA testing order
12 in accordance with the Pennsylvania Rules of Appellate
13 Procedure.

14 (4) Any decision granting or denying a DNA testing order
15 shall include an explanation by the court of how the testing
16 requested in a motion under subsection (a) has met or fails
17 to have met the requirements under paragraphs (1), (2) and
18 (3).

19 (5) Upon determining the petitioner has met the
20 applicable burden established in paragraph (1) or (2), the
21 court may require the Commonwealth to prepare an inventory of
22 evidence related to the case and serve a copy of the
23 inventory to the prosecution, the applicant, the applicant's
24 attorney, if applicable, and the court. The inventory may
25 include, but not be limited to, a list of evidence collected
26 and forensic testing previously done relating to the evidence
27 and the names of agencies that conducted the forensic
28 testing.

29 (e) Testing procedures.--

30 (1) Any DNA testing ordered under this section shall be

1 conducted by:

2 (i) a laboratory mutually selected by the
3 Commonwealth and the applicant;

4 (ii) a laboratory selected by the court that ordered
5 the testing if the Commonwealth and the applicant are
6 unable to agree on a laboratory[, a laboratory selected
7 by the court that ordered the testing]; or

8 (iii) if the applicant is indigent, the testing
9 shall be conducted by the Pennsylvania State Police or,
10 at the Pennsylvania State Police's sole discretion, by a
11 laboratory designated by the Pennsylvania State Police.

12 (2) The costs of any testing ordered under this section
13 shall be paid:

14 (i) by the applicant; or

15 (ii) in the case of an applicant who is indigent, by
16 the Commonwealth of Pennsylvania.

17 (3) [Testing conducted by the Pennsylvania State Police
18 shall be carried out in accordance with the protocols and
19 procedures established by the Pennsylvania State Police.] To
20 the extent possible and not inconsistent with best laboratory
21 practices, the testing shall be conducted in a manner that
22 ensures that some portion of the sample is preserved for
23 replication of testing. If the laboratory determines it may
24 be necessary to consume the entirety of any sample during
25 testing, the laboratory shall inform the prosecution, the
26 applicant and the applicant's attorney, if applicable, of its
27 recommendation and obtain the prosecution and the applicant's
28 consent before proceeding. If the prosecution and the
29 applicant do not consent, the court may issue any appropriate
30 order before testing proceeds.

1 (4) If testing is performed by a private laboratory and
2 a DNA database search is anticipated, the applicant shall
3 ensure that the chosen laboratory is accredited by an
4 accreditation body that is a signatory to the International
5 Laboratory Accreditation Cooperation Mutual Recognition
6 Agreement that is designated by the Federal Bureau of
7 Investigation in accordance with section 210303 of the
8 Violent Crime Control and Law Enforcement Act of 1994 (Public
9 Law 103-322, 34 U.S.C. § 12591), that requires conformance to
10 forensic science requirements and that the accreditation
11 include DNA testing, and is compliant with Federal Bureau of
12 Investigation quality assurance standards.

13 (5) When testing is performed by a private laboratory,
14 the public laboratory shall take all reasonable measures
15 before the testing is conducted to ensure that the results of
16 the testing may be entered into CODIS so that a comparison to
17 known offender or crime scene profiles may be made if the
18 laboratory and test results otherwise satisfy the criteria
19 for database entry.

20 (6) Testing conducted by the Pennsylvania State Police
21 shall be carried out in accordance with the protocols and
22 procedures established by the Pennsylvania State Police.

23 (7) To the extent possible, if communication with the
24 parties regarding the testing process and test results is
25 necessary, the testing laboratory shall communicate with
26 counsel for the applicant and the Commonwealth
27 simultaneously.

28 (8) No direct communication involving the testing
29 laboratory without the inclusion of a representative of each
30 party shall occur.

1 (f) Posttesting procedures.--

2 (1) After the DNA testing conducted under this section
3 has been completed, the applicant may, pursuant to section
4 9545(b)(2) (relating to jurisdiction and proceedings), during
5 the [60-day] one-year period beginning on the date on which
6 the applicant is notified of the test results, petition to
7 the court for postconviction relief pursuant to section
8 9543(a)(2)(vi) (relating to eligibility for relief).

9 (2) Upon receipt of a petition filed under paragraph
10 (1), the court shall consider the petition along with any
11 answer filed by the Commonwealth and shall conduct a hearing
12 thereon.

13 (3) In any hearing on a petition for postconviction
14 relief filed under paragraph (1), the court shall determine
15 whether the exculpatory evidence resulting from the DNA
16 testing conducted under this section would have changed the
17 outcome of the trial as required by section 9543(a)(2)(vi).

18 (4) If testing complies with Federal Bureau of
19 Investigation requirements and the data meets NDIS criteria,
20 profiles obtained from the testing shall be searched or
21 uploaded to CODIS.

22 (5) When testing is conducted by a private laboratory, a
23 court may order a public laboratory with access to CODIS to
24 take the necessary measures to ensure the DNA profile
25 obtained from probative biological material from crime scene
26 evidence can be uploaded to CODIS by the public laboratory.
27 Necessary measures may include requiring the public
28 laboratory to conduct a review of the private laboratory's
29 facilities or records to ensure that the private laboratory
30 complies with Federal Bureau of Investigation requirements

1 regarding CODIS. If the private laboratory meets Federal
2 Bureau of Investigation and CODIS requirements, the court may
3 order the public laboratory to upload the DNA profile to
4 determine whether the profile matches a profile of a known
5 individual or a profile from an unsolved crime. The DNA
6 profile submitted to the databases must comply with the
7 Federal Bureau of Investigation requirements for the
8 uploading of DNA profiles to CODIS, and the Commonwealth
9 shall take all reasonable measures to ensure that the testing
10 complies with the requirements.

11 (6) If DNA testing conclusively identifies the DNA
12 profile of the applicant on probative and inculpatory
13 evidence, the court shall dismiss the petition and may make
14 any further orders that are appropriate. An order under this
15 paragraph may:

16 (i) direct that the Pennsylvania Board of Probation
17 and Parole be notified of the test results; or

18 (ii) mandate that the applicant's DNA profile be
19 added to the Commonwealth's convicted offender database.

20 (g) Effect of motion.--The filing of a motion for forensic
21 DNA testing pursuant to subsection (a) shall have the following
22 effect:

23 (1) The filing of the motion shall constitute the
24 applicant's consent to provide samples of bodily fluid for
25 use in the DNA testing.

26 (2) The data from any DNA samples or test results
27 obtained as a result of the motion may be entered into law
28 enforcement databases, may be used in the investigation of
29 other crimes and may be used as evidence against the
30 applicant in other cases.

1 (h) Definitions.--As used in this section, the following
2 words and phrases shall have the meanings given to them in this
3 subsection:

4 "Applicant." The individual who files a motion under
5 subsection (a).

6 "CODIS." The Combined DNA Index System administered by the
7 Federal Bureau of Investigation that allows for the storage and
8 exchange of DNA records submitted by Federal, State and local
9 forensic DNA laboratories.

10 "DNA." Deoxyribonucleic acid.

11 "NDIS." The National DNA Index System which is the national
12 DNA database system of DNA records and meets Federal quality
13 assurance and privacy standards.

14 "Public laboratory." The Pennsylvania State Police Forensic
15 DNA Division, the Philadelphia Police Department Forensic
16 Science Bureau, the Allegheny County Medical Examiner's Office
17 or any other laboratory maintained by the Commonwealth with
18 access to CODIS.

19 ~~Section 2. This act shall take effect in 60 days.~~ <--

20 SECTION 2. SECTIONS 2302, 2303, 2311(2), 2312, 2313, 2314,
21 2315 AND 2316 OF TITLE 44 ARE AMENDED TO READ: <--

22 § 2302. POLICY.

23 THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

24 (1) [DNA DATA BANKS ARE] FORENSIC DNA TESTING IS AN
25 IMPORTANT TOOL IN CRIMINAL INVESTIGATIONS, IN [THE EXCLUSION
26 OF] EXCLUDING INNOCENT INDIVIDUALS WHO ARE THE SUBJECT OF
27 CRIMINAL INVESTIGATIONS OR PROSECUTIONS AND IN [DETECTING AND
28 DETECTING RECIDIVIST ACTS] DETECTING AND DETERRING REPEATED
29 CRIMES BY THE SAME INDIVIDUAL.

30 (2) SEVERAL STATES HAVE ENACTED LAWS REQUIRING PERSONS

1 CONVICTED OF CERTAIN CRIMES, ESPECIALLY SEX OFFENSES, TO
2 PROVIDE GENETIC SAMPLES FOR DNA PROFILING.

3 (3) MOREOVER, IT IS THE POLICY OF THE COMMONWEALTH TO
4 ASSIST FEDERAL, STATE AND LOCAL CRIMINAL JUSTICE AND LAW
5 ENFORCEMENT AGENCIES IN THE IDENTIFICATION AND DETECTION OF
6 INDIVIDUALS IN CRIMINAL INVESTIGATIONS.

7 (4) IT IS [THEREFORE] IN THE BEST INTEREST OF THE
8 COMMONWEALTH TO ESTABLISH A DNA DATA BASE AND A DNA DATA BANK
9 CONTAINING DNA SAMPLES SUBMITTED BY INDIVIDUALS CONVICTED OF,
10 ADJUDICATED DELINQUENT FOR OR ACCEPTED INTO ARD FOR FELONY
11 SEX OFFENSES AND OTHER SPECIFIED OFFENSES.

12 (5) IT IS IN THE BEST INTEREST OF THE COMMONWEALTH TO
13 AUTHORIZE THE STATE POLICE TO USE DNA ANALYSIS AND TO
14 IDENTIFY THESE INDIVIDUALS TO A CRIMINAL JUSTICE AGENCY IN
15 CERTAIN CASES.

16 § 2303. DEFINITIONS.

17 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
18 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
19 CONTEXT CLEARLY INDICATES OTHERWISE:

20 "ACCREDITED FORENSIC DNA LABORATORY." A FORENSIC DNA
21 LABORATORY THAT HAS RECEIVED ACCREDITATION BY AN ACCREDITING
22 BODY NATIONALLY RECOGNIZED WITHIN THE FORENSIC SCIENCE COMMUNITY
23 IN ACCORDANCE WITH THE FBI QUALITY ASSURANCE STANDARDS TO
24 PERFORM FORENSIC DNA TESTING AND IS IN COMPLIANCE WITH FBI
25 QUALITY ASSURANCE STANDARDS.

26 "ARD." ACCELERATED REHABILITATIVE DISPOSITION.

27 "CODIS." THE [TERM IS DERIVED FROM] COMBINED DNA INDEX
28 SYSTEM[, THE FEDERAL BUREAU OF INVESTIGATION'S NATIONAL DNA
29 IDENTIFICATION INDEX SYSTEM THAT ALLOWS THE STORAGE AND EXCHANGE
30 OF DNA RECORDS SUBMITTED BY STATE AND LOCAL FORENSIC DNA

1 LABORATORIES.] ESTABLISHED AND MAINTAINED BY THE FEDERAL BUREAU
2 OF INVESTIGATION.

3 "COMMISSIONER." THE COMMISSIONER OF THE PENNSYLVANIA STATE
4 POLICE.

5 "CRIME SCENE DNA PROFILE." A DNA PROFILE DERIVED FROM A DNA
6 SAMPLE RECOVERED FROM A VICTIM, CRIME SCENE OR ITEM LINKED TO A
7 CRIME, WHICH MAY HAVE ORIGINATED FROM A PERPETRATOR.

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 ENCODES GENETIC INFORMATION THAT IS THE BASIS OF HUMAN HEREDITY
13 AND FORENSIC IDENTIFICATION] LOCATED IN THE CHROMOSOMES OR
14 MITOCHONDRIA OF A LIVING ORGANISM'S CELLS.

15 "DNA RECORD." A FORENSIC DNA PROFILE AND IDENTIFICATION
16 INFORMATION STORED IN THE STATE DNA DATA BASE OR THE COMBINED
17 DNA INDEX SYSTEM FOR THE PURPOSE OF [GENERATING INVESTIGATIVE
18 LEADS] IDENTIFICATION OR SUPPORTING STATISTICAL INTERPRETATION
19 OF DNA TEST RESULTS. [THE TERM INCLUDES NUCLEAR AND
20 MITOCHONDRIAL TYPING. THE DNA RECORD IS THE RESULT OBTAINED FROM
21 THE DNA TYPING TESTS. THE DNA RECORD IS COMPRISED OF THE
22 CHARACTERISTICS OF A DNA SAMPLE WHICH ARE OF VALUE IN
23 ESTABLISHING THE IDENTITY OF INDIVIDUALS. THE RESULTS OF ALL DNA
24 IDENTIFICATION TESTS ON AN INDIVIDUAL'S DNA SAMPLE ARE ALSO
25 COLLECTIVELY REFERRED TO AS THE DNA PROFILE OF 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 FORENSIC DNA
4 TESTING.

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. § 4302 (RELATING TO INCEST) .

11 18 PA.C.S. § [5902 (C) (1) (III) AND (IV)] 5902 (C) (1) (IV)
12 (RELATING TO PROSTITUTION AND RELATED OFFENSES) .

13 18 PA.C.S. § 5903 (A) (RELATING TO OBSCENE AND OTHER
14 SEXUAL MATERIALS AND PERFORMANCES) WHERE THE OFFENSE
15 CONSTITUTES A FELONY .

16 [18 PA.C.S. § 6312 (RELATING TO SEXUAL ABUSE OF
17 CHILDREN) .

18 18 PA.C.S. § 6318 (RELATING TO UNLAWFUL CONTACT WITH
19 MINOR) WHERE THE MOST SERIOUS UNDERLYING OFFENSE FOR WHICH
20 THE DEFENDANT CONTACTED THE MINOR IS GRADED AS A FELONY .

21 18 PA.C.S. § 6320 (RELATING TO SEXUAL EXPLOITATION OF
22 CHILDREN) .]

23 ANY OFFENSE GRADED AS A FELONY REQUIRING REGISTRATION
24 UNDER 42 PA.C.S. CH. 97 SUBCH. H (RELATING TO REGISTRATION OF
25 SEXUAL OFFENDERS) .

26 "FORENSIC DNA LABORATORY." A LABORATORY THAT PERFORMS
27 FORENSIC DNA TESTING FOR THE PURPOSES OF IDENTIFICATION.

28 "FORENSIC DNA PROFILE." THE DATA SET DERIVED FROM FORENSIC
29 DNA TESTING.

30 "FORENSIC DNA TESTING." A TEST THAT APPLIES TECHNIQUES FROM

1 MOLECULAR BIOLOGY TO ANALYZE HUMAN DEOXYRIBONUCLEIC ACID (DNA)
2 TO IDENTIFY DATA WHICH MEETS THE REQUIREMENTS FOR INCLUSION IN
3 CODIS AND THE NATIONAL DNA IDENTIFICATION INDEX SYSTEM
4 ADMINISTERED BY THE FBI.

5 "FORMER DNA ACT." THE FORMER ACT OF MAY 28, 1995 (1ST
6 SP.SESS., P.L.1009, NO.14), KNOWN AS THE DNA DETECTION OF SEXUAL
7 AND VIOLENT OFFENDERS ACT.

8 "FUND." THE DNA DETECTION FUND REESTABLISHED IN SECTION 2335
9 (RELATING TO DNA DETECTION FUND).

10 "HUMAN BEHAVIORAL GENETIC RESEARCH." THE STUDY OF THE
11 POSSIBLE GENETIC UNDERPINNINGS OF BEHAVIORS, INCLUDING, BUT NOT
12 LIMITED TO, AGGRESSION, SUBSTANCE ABUSE, SOCIAL ATTITUDES,
13 MENTAL ABILITIES, SEXUAL ACTIVITY AND EATING HABITS.

14 "LAW ENFORCEMENT IDENTIFICATION PURPOSES." ASSISTING IN THE
15 DETERMINATION OF THE IDENTITY OF AN INDIVIDUAL WHOSE DNA IS
16 CONTAINED IN A BIOLOGICAL SAMPLE.

17 "MITOCHONDRIAL DNA ANALYSIS." A METHOD THAT APPLIES
18 TECHNIQUES FROM MOLECULAR BIOLOGY TO ANALYZE DNA FOUND IN THE
19 MITOCHONDRIA OF CELLS FOR THE PURPOSE OF IDENTIFICATION.

20 "OTHER SPECIFIED OFFENSE." ANY OF THE FOLLOWING:

21 (1) A FELONY OFFENSE, OTHER THAN A FELONY SEX OFFENSE.

22 (2) [AN OFFENSE UNDER 18 PA.C.S. § 2910 (RELATING TO
23 LURING A CHILD INTO A MOTOR VEHICLE OR STRUCTURE) OR 3126
24 (RELATING TO INDECENT ASSAULT) OR AN ATTEMPT TO COMMIT SUCH
25 AN OFFENSE.] (RESERVED).

26 (3) [AN OFFENSE SUBJECT TO 42 PA.C.S. CH. 97 SUBCH. H
27 (RELATING TO REGISTRATION OF SEXUAL OFFENDERS)] (RESERVED).

28 (4) AN OFFENSE UNDER 18 PA.C.S. (RELATING TO CRIMES AND
29 OFFENSES) OR 75 PA.C.S. (RELATING TO VEHICLES) THAT IS GRADED
30 AS A MISDEMEANOR OF THE FIRST DEGREE.

1 (5) A MISDEMEANOR OFFENSE REQUIRING REGISTRATION UNDER
2 42 PA.C.S. CH. 97 SUBCH. H (RELATING TO REGISTRATION OF
3 SEXUAL OFFENDERS).

4 (6) AN OFFENSE GRADED AS A MISDEMEANOR OF THE SECOND
5 DEGREE UNDER ANY OF THE FOLLOWING:

6 18 PA.C.S. § 2701 (RELATING TO SIMPLE ASSAULT).

7 18 PA.C.S. § 2903 (RELATING TO FALSE IMPRISONMENT).

8 18 PA.C.S. § 3127 (RELATING TO INDECENT EXPOSURE).

9 18 PA.C.S. CH. 39 (RELATING TO THEFT AND RELATED
10 OFFENSES).

11 18 PA.C.S. § 4105 (RELATING TO BAD CHECKS).

12 18 PA.C.S. § 4106 (RELATING TO ACCESS DEVICE FRAUD).

13 18 PA.C.S. § 4952 (RELATING TO INTIMIDATION OF
14 WITNESSES OR VICTIMS).

15 18 PA.C.S. § 4953 (RELATING TO RETALIATION AGAINST
16 WITNESS, VICTIM OR PARTY).

17 18 PA.C.S. § 4958 (RELATING TO INTIMIDATION,
18 RETALIATION OR OBSTRUCTION IN CHILD ABUSE CASES).

19 18 PA.C.S. § 5121 (RELATING TO ESCAPE).

20 18 PA.C.S. § 5126 (RELATING TO FLIGHT TO AVOID
21 APPREHENSION, TRIAL OR PUNISHMENT).

22 18 PA.C.S. § 5131 (RELATING TO RECRUITING CRIMINAL
23 GANG MEMBERS).

24 18 PA.C.S. § 5510 (RELATING TO ABUSE OF CORPSE).

25 18 PA.C.S. § 5511 (RELATING TO CRUELTY TO ANIMALS).

26 18 PA.C.S. § 5902 (RELATING TO PROSTITUTION AND
27 RELATED OFFENSES).

28 "STATE POLICE." THE PENNSYLVANIA STATE POLICE.

29 "Y CHROMOSOME ANALYSIS." A METHOD THAT APPLIES TECHNIQUES
30 FROM MOLECULAR BIOLOGY TO EXAMINE DNA FOUND ON THE Y CHROMOSOME.

1 § 2311. POWERS AND DUTIES OF STATE POLICE.

2 IN ADDITION TO ANY OTHER POWERS AND DUTIES CONFERRED BY THIS
3 CHAPTER, THE STATE POLICE SHALL:

4 * * *

5 (2) PROMULGATE [RULES AND REGULATIONS], AS NECESSARY,
6 RULES, REGULATIONS AND GUIDELINES TO CARRY OUT THE PROVISIONS
7 OF THIS CHAPTER.

8 * * *

9 § 2312. STATE DNA DATA BASE.

10 [THE STATE DNA DATA BASE IS REESTABLISHED. IT SHALL BE
11 ADMINISTERED BY THE STATE POLICE AND PROVIDE DNA RECORDS TO THE
12 FBI FOR STORAGE AND MAINTENANCE BY CODIS.] A STATEWIDE DNA DATA
13 BASE IS REESTABLISHED WITHIN THE STATE POLICE TO STORE FORENSIC
14 DNA PROFILES AND RECORDS DEVELOPED BY OR SUBMITTED TO THE STATE
15 POLICE UNDER THE FORMER DNA ACT, THE FORMER PROVISIONS OF 42
16 PA.C.S. CH. 47 (RELATING TO DNA DATA AND TESTING) OR THIS
17 CHAPTER, AND TO CONTRIBUTE FORENSIC DNA PROFILES AND RECORDS TO
18 CODIS AND THE NATIONAL DNA IDENTIFICATION INDEX SYSTEM. THE
19 STATE DNA DATA BASE SHALL HAVE THE CAPABILITY PROVIDED BY
20 COMPUTER SOFTWARE AND PROCEDURES ADMINISTERED BY THE STATE
21 POLICE TO STORE AND MAINTAIN [DNA RECORDS] FORENSIC DNA PROFILES
22 AND RECORDS RELATED TO:

23 (1) FORENSIC CASEWORK;

24 (2) CONVICTED OR DELINQUENCY ADJUDICATED OFFENDERS
25 REQUIRED TO PROVIDE A DNA SAMPLE UNDER THIS CHAPTER; AND

26 (3) ANONYMOUS DNA RECORDS USED FOR STATISTICAL RESEARCH
27 [OR] ON THE FREQUENCY OF DNA GENOTYPES, QUALITY CONTROL OR
28 THE DEVELOPMENT OF NEW DNA IDENTIFICATION METHODS.

29 § 2313. STATE DNA DATA BANK.

30 THE STATE DNA DATA BANK IS REESTABLISHED. IT SHALL SERVE AS

1 THE REPOSITORY OF DNA SAMPLES COLLECTED UNDER THIS CHAPTER OR
2 UNDER PRIOR LAW.

3 § 2314. STATE POLICE RECOMMENDATION OF ADDITIONAL OFFENSES AND
4 ANNUAL REPORT.

5 (A) RECOMMENDATION.--THE STATE POLICE MAY RECOMMEND TO THE
6 GENERAL ASSEMBLY THAT IT ENACT LEGISLATION FOR THE INCLUSION OF
7 ADDITIONAL OFFENSES FOR WHICH DNA SAMPLES SHALL BE TAKEN AND
8 OTHERWISE SUBJECTED TO THE PROVISIONS OF THIS CHAPTER. IN
9 DETERMINING WHETHER TO RECOMMEND ADDITIONAL OFFENSES, THE STATE
10 POLICE SHALL CONSIDER THOSE OFFENSES FOR WHICH DNA TESTING WILL
11 HAVE A SUBSTANTIAL IMPACT ON THE DETECTION AND IDENTIFICATION OF
12 SEX OFFENDERS AND [VIOLENT] OTHER OFFENDERS.

13 (B) ANNUAL REPORT.--NO LATER THAN AUGUST 1 OF EACH YEAR, THE
14 COMMISSIONER SHALL SUBMIT TO THE GOVERNOR'S OFFICE, THE
15 CHAIRPERSON AND MINORITY CHAIRPERSON OF THE JUDICIARY COMMITTEE
16 OF THE SENATE AND THE CHAIRPERSON AND MINORITY CHAIRPERSON OF
17 THE JUDICIARY COMMITTEE OF THE HOUSE OF REPRESENTATIVES, A
18 WRITTEN REPORT CONTAINING INFORMATION REGARDING THE COLLECTION
19 AND TESTING OF DNA SAMPLES UNDER THE PROVISIONS OF THIS CHAPTER.
20 THE REPORT MUST INCLUDE, BUT NEED NOT BE LIMITED TO, THE
21 FOLLOWING INFORMATION PERTAINING TO THE PREVIOUS FISCAL YEAR:

22 (1) THE AGE, RACE AND SEX OF THOSE CONVICTED FROM WHOM
23 DNA SAMPLES WERE SUBMITTED UPON CONVICTION.

24 (2) THE FISCAL IMPACT ON THE STATE POLICE OF COLLECTING
25 AND TESTING DNA SAMPLES FROM PERSONS CONVICTED OF OR
26 ADJUDICATED DELINQUENT FOR OFFENSES.

27 (3) THE AVERAGE LENGTH OF TIME BETWEEN THE RECEIPT OF
28 DNA SAMPLES FROM THOSE CONVICTED OF OFFENSES AND THE
29 COMPLETION OF FORENSIC DNA TESTING OF EACH OF THOSE
30 CATEGORIES OF DNA SAMPLES.

1 (4) RECOMMENDATIONS, IF ANY, UNDER THIS SECTION FOR THE
2 INCLUSION OF ADDITIONAL OFFENSES FOR WHICH DNA SAMPLES MUST
3 BE COLLECTED OR RECOMMENDATIONS FOR THE REMOVAL OF SPECIFIC
4 OFFENSES FROM THE CATEGORIES REQUIRING THE COLLECTION OF DNA
5 SAMPLES FROM ARRESTEES OR PERSONS CONVICTED OF CRIMES.

6 § 2315. PROCEDURAL COMPATIBILITY WITH FBI.

7 THE DNA IDENTIFICATION SYSTEM [AS] ESTABLISHED BY THE STATE
8 POLICE SHALL [BE COMPATIBLE] COMPLY WITH [THE PROCEDURES
9 SPECIFIED BY] THE FBI QUALITY ASSURANCE STANDARDS FOR FORENSIC
10 DNA TESTING LABORATORIES AND DNA DATA BASING LABORATORIES AND
11 CODIS POLICIES AND PROCEDURES, INCLUDING USE OF COMPARABLE TEST
12 PROCEDURES, LABORATORY EQUIPMENT, SUPPLIES AND COMPUTER
13 SOFTWARE.

14 § 2316. DNA SAMPLE REQUIRED UPON CONVICTION, DELINQUENCY
15 ADJUDICATION AND CERTAIN ARD CASES.

16 (A) GENERAL RULE.--A PERSON WHO IS CONVICTED OR ADJUDICATED
17 DELINQUENT FOR A FELONY SEX OFFENSE OR OTHER SPECIFIED OFFENSE
18 OR WHO IS OR REMAINS INCARCERATED FOR A FELONY SEX OFFENSE OR
19 OTHER SPECIFIED OFFENSE ON OR AFTER THE EFFECTIVE DATE OF THIS
20 CHAPTER SHALL HAVE A DNA SAMPLE [DRAWN] COLLECTED AS FOLLOWS:

21 (1) A PERSON WHO IS SENTENCED OR RECEIVES A DELINQUENCY
22 DISPOSITION TO A TERM OF CONFINEMENT FOR AN OFFENSE COVERED
23 BY THIS SUBSECTION SHALL HAVE A DNA SAMPLE [DRAWN] COLLECTED
24 UPON INTAKE TO A PRISON, JAIL OR JUVENILE DETENTION FACILITY
25 OR ANY OTHER DETENTION FACILITY OR INSTITUTION. IF THE PERSON
26 IS ALREADY CONFINED AT THE TIME OF SENTENCING OR
27 ADJUDICATION, THE PERSON SHALL HAVE A DNA SAMPLE [DRAWN]
28 COLLECTED IMMEDIATELY AFTER THE SENTENCING OR ADJUDICATION.
29 IF A DNA SAMPLE IS NOT TIMELY [DRAWN] COLLECTED IN ACCORDANCE
30 WITH THIS SECTION, THE DNA SAMPLE MAY BE [DRAWN] COLLECTED

1 ANY TIME THEREAFTER BY THE PRISON, JAIL, JUVENILE DETENTION
2 FACILITY, DETENTION FACILITY OR INSTITUTION.

3 (2) A PERSON WHO IS CONVICTED OR ADJUDICATED DELINQUENT
4 FOR AN OFFENSE COVERED BY THIS SUBSECTION SHALL HAVE A DNA
5 SAMPLE [DRAWN] COLLECTED AS A CONDITION FOR ANY SENTENCE OR
6 ADJUDICATION WHICH DISPOSITION WILL NOT INVOLVE AN INTAKE
7 INTO A PRISON, JAIL, JUVENILE DETENTION FACILITY OR ANY OTHER
8 DETENTION FACILITY OR INSTITUTION.

9 (3) UNDER NO CIRCUMSTANCES SHALL A PERSON WHO IS
10 CONVICTED OR ADJUDICATED DELINQUENT FOR AN OFFENSE COVERED BY
11 THIS SUBSECTION BE RELEASED IN ANY MANNER AFTER SUCH
12 DISPOSITION UNLESS AND UNTIL A DNA SAMPLE [HAS BEEN
13 WITHDRAWN] AND FINGERPRINTS HAVE BEEN COLLECTED.

14 (B) CONDITION OF RELEASE, PROBATION OR PAROLE.--

15 (1) A PERSON WHO HAS BEEN CONVICTED OR ADJUDICATED
16 DELINQUENT FOR A FELONY SEX OFFENSE OR OTHER SPECIFIED
17 OFFENSE AND WHO SERVES A TERM OF CONFINEMENT IN CONNECTION
18 THEREWITH AFTER JUNE 18, 2002, SHALL NOT BE RELEASED IN ANY
19 MANNER UNLESS AND UNTIL A DNA SAMPLE HAS BEEN [WITHDRAWN]
20 COLLECTED.

21 (2) THIS CHAPTER SHALL APPLY TO INCARCERATED PERSONS
22 CONVICTED OR ADJUDICATED DELINQUENT FOR A FELONY SEX OFFENSE
23 OR OTHER SPECIFIED OFFENSE PRIOR TO JUNE 19, 2002.

24 (3) [THIS] THE FOLLOWING SHALL APPLY:

25 (I) EXCEPT AS PROVIDED UNDER SUBPARAGRAPH (II), THIS
26 CHAPTER SHALL APPLY TO INCARCERATED PERSONS AND PERSONS
27 ON PROBATION OR PAROLE WHO WERE CONVICTED OR ADJUDICATED
28 DELINQUENT FOR A FELONY SEX OFFENSE OR OTHER SPECIFIED
29 OFFENSES PRIOR TO THE EFFECTIVE DATE OF THIS PARAGRAPH.

30 (II) SUBPARAGRAPH (I) SHALL NOT APPLY TO PERSONS

1 CONVICTED OR ADJUDICATED DELINQUENT OF AN OFFENSE
2 ENUMERATED UNDER PARAGRAPH (4) OR (6) OF THE DEFINITION
3 OF "OTHER SPECIFIED OFFENSE" IN SECTION 2303 (RELATING TO
4 DEFINITIONS).

5 (C) CERTAIN ARD CASES.--ACCEPTANCE INTO ARD AS A RESULT OF A
6 CRIMINAL CHARGE FOR A FELONY SEX OFFENSE OR OTHER SPECIFIED
7 OFFENSE, OTHER THAN AN OFFENSE ENUMERATED UNDER PARAGRAPH (4) OR
8 (6) OF THE DEFINITION OF "OTHER SPECIFIED OFFENSE" IN SECTION
9 2303 FILED AFTER JUNE 18, 2002, MAY BE CONDITIONED UPON THE
10 [GIVING] COLLECTION OF A DNA SAMPLE.

11 (D) SUPERVISION OF DNA SAMPLES.--ALL DNA SAMPLES [TAKEN]
12 COLLECTED PURSUANT TO THIS SECTION SHALL BE [TAKEN] COLLECTED IN
13 ACCORDANCE WITH RULES, REGULATIONS AND GUIDELINES PROMULGATED BY
14 THE STATE POLICE IN CONSULTATION WITH THE DEPARTMENT OF
15 CORRECTIONS.

16 (D.1) MANDATORY SUBMISSION.--THE REQUIREMENTS OF THIS
17 CHAPTER ARE MANDATORY AND APPLY REGARDLESS OF WHETHER A COURT
18 ADVISES A PERSON THAT A DNA SAMPLE MUST BE PROVIDED TO THE STATE
19 DNA DATA BASE AND THE STATE DNA DATA BANK AS A RESULT OF A
20 CONVICTION OR ADJUDICATION OF DELINQUENCY. A PERSON WHO HAS BEEN
21 SENTENCED TO DEATH OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
22 OF PAROLE OR TO ANY TERM OF INCARCERATION IS NOT EXEMPT FROM THE
23 REQUIREMENTS OF THIS CHAPTER. ANY PERSON SUBJECT TO THIS CHAPTER
24 WHO HAS NOT PROVIDED A DNA SAMPLE FOR ANY REASON, INCLUDING
25 BECAUSE OF AN OVERSIGHT OR ERROR, SHALL PROVIDE A DNA SAMPLE FOR
26 INCLUSION IN THE STATE DNA DATA BASE AND THE STATE DNA DATA BANK
27 AFTER BEING NOTIFIED BY AUTHORIZED LAW ENFORCEMENT OR
28 CORRECTIONS PERSONNEL. IF A PERSON PROVIDES A DNA SAMPLE WHICH
29 IS NOT ADEQUATE FOR ANY REASON, THE PERSON SHALL PROVIDE ANOTHER
30 DNA SAMPLE FOR INCLUSION IN THE STATE DNA DATA BASE AND THE

1 STATE DNA DATA BANK AFTER BEING NOTIFIED BY AUTHORIZED LAW
2 ENFORCEMENT OR CORRECTIONS PERSONNEL. THE DNA SAMPLE MAY BE
3 COLLECTED UNDER THIS CHAPTER BUT SHALL NOT BE REQUIRED IF THE
4 AUTHORIZED LAW ENFORCEMENT OR CORRECTIONS OFFICIAL CONFIRMS THAT
5 A DNA SAMPLE FROM THE PERSON HAS ALREADY BEEN VALIDLY COLLECTED
6 AND PROVIDED TO THE STATE DNA DATA BANK AND A DNA RECORD FOR THE
7 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 3. 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 PROVIDING A DNA SAMPLE 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 A FELONY SEX OFFENSE OR OTHER SPECIFIED OFFENSE AS
25 DETERMINED BY THE PENNSYLVANIA BOARD OF PROBATION AND PAROLE.
26 ADDITIONAL DNA SAMPLES MAY BE COLLECTED BUT SHALL NOT BE
27 REQUIRED IF THE SUPERVISING AGENCY OR PLACE OF CONFINEMENT
28 CONFIRMS THAT A DNA SAMPLE IS CURRENTLY ON FILE WITH THE STATE
29 DNA DATA BANK AND A DNA RECORD FOR THE PERSON EXISTS IN THE
30 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 SAMPLE 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 4. SECTIONS 2317 HEADING, (A) AND (B), 2318(A) AND
15 (C), 2319 AND 2321 OF TITLE 44 ARE AMENDED TO READ:

16 § 2317. PROCEDURES FOR [WITHDRAWAL,] COLLECTION AND
17 TRANSMISSION OF DNA SAMPLES.

18 (A) [DRAWING] COLLECTION OF DNA SAMPLES.--

19 (1) EACH DNA SAMPLE REQUIRED TO BE [DRAWN] COLLECTED
20 PURSUANT TO [SECTION] SECTIONS 2316 (RELATING TO DNA SAMPLE
21 REQUIRED UPON CONVICTION, DELINQUENCY ADJUDICATION AND
22 CERTAIN ARD CASES) [FROM PERSONS WHO ARE INCARCERATED OR
23 CONFINED SHALL BE DRAWN AT THE PLACE OF INCARCERATION OR
24 CONFINEMENT AS PROVIDED FOR IN SECTION 2316. DNA SAMPLES FROM
25 PERSONS WHO ARE NOT ORDERED OR SENTENCED TO A TERM OF
26 CONFINEMENT SHALL BE DRAWN AT A PRISON, JAIL UNIT, JUVENILE
27 FACILITY OR OTHER FACILITY TO BE SPECIFIED BY THE COURT.
28 ONLY] AND 2316.1 (RELATING TO COLLECTION FROM PERSONS
29 ACCEPTED FROM OTHER JURISDICTIONS) SHALL BE COLLECTED AS
30 FOLLOWS:

1 (I) DNA SAMPLES FROM PERSONS WHO ARE INCARCERATED OR
2 CONFINED SHALL BE COLLECTED AT THE PLACE OF INCARCERATION
3 OR CONFINEMENT AS PROVIDED IN SECTION 2316 OR 2316.1.

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

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

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

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

21 (B) LIMITATION ON LIABILITY.--PERSONS AUTHORIZED TO [DRAW]
22 COLLECT DNA SAMPLES UNDER THIS SECTION SHALL NOT BE CRIMINALLY
23 LIABLE FOR WITHDRAWING A DNA SAMPLE AND TRANSMITTING TEST
24 RESULTS PURSUANT TO THIS CHAPTER IF THEY PERFORM THESE
25 ACTIVITIES IN GOOD FAITH AND SHALL NOT BE CIVILLY LIABLE FOR
26 SUCH ACTIVITIES WHEN THE PERSON ACTED IN A REASONABLE MANNER
27 ACCORDING TO GENERALLY ACCEPTED MEDICAL AND OTHER PROFESSIONAL
28 PRACTICES.

29 * * *

30 § 2318. PROCEDURES FOR CONDUCT, DISPOSITION AND USE OF DNA

1 ANALYSIS.

2 (A) PROCEDURES.--

3 (1) THE STATE POLICE SHALL [PRESCRIBE] PROMULGATE, AS
4 NECESSARY, RULES, REGULATIONS AND GUIDELINES TO IMPLEMENT
5 THIS CHAPTER, INCLUDING PROCEDURES TO BE USED IN THE
6 COLLECTION, SUBMISSION, IDENTIFICATION, ANALYSIS, STORAGE AND
7 DISPOSITION OF DNA SAMPLES AND [TYPING RESULTS OF] FORENSIC
8 DNA PROFILES AND RECORDS FROM DNA SAMPLES SUBMITTED UNDER THE
9 FORMER DNA ACT, FORMER PROVISIONS OF 42 PA.C.S. CH. 47
10 (RELATING TO DNA DATA AND TESTING) OR THIS CHAPTER.

11 (2) THE [DNA SAMPLE TYPING] RESULTS OF FORENSIC DNA
12 TESTING SHALL BE SECURELY STORED IN THE STATE DNA DATA BASE,
13 AND RECORDS OF TESTING SHALL BE RETAINED ON FILE WITH THE
14 STATE POLICE CONSISTENT WITH THE PROCEDURES ESTABLISHED BY
15 THE FBI[.] QUALITY ASSURANCE STANDARDS FOR FORENSIC DNA
16 TESTING LABORATORIES AND DNA DATA BASING LABORATORIES AND
17 CODIS POLICIES AND PROCEDURES.

18 (3) THESE PROCEDURES SHALL ALSO INCLUDE QUALITY
19 ASSURANCE GUIDELINES [TO ENSURE THAT DNA IDENTIFICATION
20 RECORDS MEET STANDARDS FOR] FOR SAMPLES AND FORENSIC DNA
21 PROFILES AND RECORDS FROM ACCREDITED FORENSIC DNA
22 LABORATORIES WHICH SUBMIT DNA RECORDS TO THE STATE DNA DATA
23 BASE.

24 (4) THE RULES, REGULATIONS AND GUIDELINES SHALL ADDRESS
25 THE FOLLOWING:

26 (I) VERIFICATION OF ACCREDITATION.

27 (II) COMPLIANCE WITH FBI QUALITY ASSURANCE
28 STANDARDS, INCLUDING CONTINUING EDUCATION REQUIREMENTS
29 FOR THE PERSONNEL OF FORENSICS DNA TESTING LABORATORIES.

30 * * *

1 (C) USE OF TESTS.--

2 (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 2319(C)
3 (RELATING TO DNA DATA BASE EXCHANGE), THE TESTS TO BE
4 PERFORMED ON EACH DNA SAMPLE SHALL BE USED ONLY FOR LAW
5 ENFORCEMENT IDENTIFICATION PURPOSES OR TO ASSIST IN THE
6 RECOVERY OR IDENTIFICATION OF HUMAN REMAINS FROM DISASTERS OR
7 FOR OTHER HUMANITARIAN IDENTIFICATION PURPOSES, INCLUDING
8 IDENTIFICATION OF MISSING PERSONS.

9 (2) A DNA SAMPLE OR DNA RECORD ACQUIRED UNDER THIS
10 CHAPTER MAY NOT BE USED FOR HUMAN BEHAVIORAL GENETIC RESEARCH
11 OR FOR NON-LAW ENFORCEMENT OR NONHUMANITARIAN IDENTIFICATION
12 PURPOSES.

13 * * *

14 § 2319. DNA DATA BASE EXCHANGE.

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

17 (1) RECEIVE AND STORE DNA SAMPLES, [TO STORE,] TO
18 PERFORM [ANALYSIS] FORENSIC DNA TESTING OR TO CONTRACT FOR
19 [DNA TYPING ANALYSIS] TESTING WITH [A QUALIFIED] AN
20 ACCREDITED FORENSIC DNA LABORATORY THAT MEETS THE
21 [GUIDELINES] RULES, REGULATIONS AND GUIDELINES UNDER SECTION
22 2318 (RELATING TO PROCEDURES FOR CONDUCT, DISPOSITION AND USE
23 OF DNA ANALYSIS) AS ESTABLISHED BY THE STATE POLICE[, TO
24 CLASSIFY AND TO FILE THE DNA RECORD OF IDENTIFICATION
25 CHARACTERISTIC PROFILES OF]_.

26 (2) STORE FORENSIC DNA RECORDS FROM DNA SAMPLES
27 SUBMITTED UNDER THE FORMER DNA ACT, FORMER PROVISIONS OF 42
28 PA.C.S. CH. 47 (RELATING TO DNA DATA AND TESTING) OR THIS
29 CHAPTER AND TO MAKE SUCH INFORMATION AVAILABLE AS PROVIDED IN
30 THIS SECTION.

1 (A.1) CONTRACTS.--THE STATE POLICE MAY CONTRACT [OUT THE
2 STORAGE OF DNA TYPING ANALYSIS AND MAY CONTRACT OUT] FOR DNA
3 [TYPING ANALYSIS] TESTING TO [A QUALIFIED] AN ACCREDITED
4 FORENSIC DNA LABORATORY THAT MEETS THE RULES, REGULATIONS AND
5 GUIDELINES AS ESTABLISHED BY THE STATE POLICE UNDER SECTION
6 2318. [THE RESULTS OF THE DNA PROFILE OF INDIVIDUALS] DNA
7 RECORDS IN THE STATE DNA DATA BASE SHALL BE MADE AVAILABLE:

8 (1) TO CRIMINAL JUSTICE AGENCIES OR [APPROVED CRIME]
9 CODIS-PARTICIPATING DNA LABORATORIES WHICH SERVE THESE
10 AGENCIES; OR

11 (2) UPON WRITTEN OR ELECTRONIC REQUEST AND IN
12 FURTHERANCE OF AN OFFICIAL INVESTIGATION OF A CRIMINAL
13 OFFENSE OR OFFENDER OR SUSPECTED OFFENDER.

14 (B) METHODS OF OBTAINING INFORMATION.--THE STATE POLICE
15 SHALL [ADOPT] PROMULGATE, AS NECESSARY, RULES, REGULATIONS AND
16 GUIDELINES GOVERNING THE METHODS OF OBTAINING INFORMATION FROM
17 THE STATE DNA DATA BASE AND CODIS AND PROCEDURES FOR
18 VERIFICATION OF THE IDENTITY AND AUTHORITY OF THE REQUESTER.

19 (C) POPULATION DATA BASE.--

20 (1) THE STATE POLICE MAY ESTABLISH A SEPARATE POPULATION
21 DATA BASE COMPRISED OF FORENSIC DNA [SAMPLES] PROFILES
22 OBTAINED UNDER THIS CHAPTER AFTER ALL PERSONAL IDENTIFICATION
23 IS REMOVED.

24 (2) THE STATE POLICE MAY SHARE OR DISSEMINATE THE
25 POPULATION DATA BASE WITH OTHER CRIMINAL JUSTICE AGENCIES OR
26 [CRIME] CODIS-PARTICIPATING DNA LABORATORIES THAT SERVE TO
27 ASSIST THE STATE POLICE WITH STATISTICAL DATA BASES.

28 (3) THE POPULATION DATA BASE MAY BE MADE AVAILABLE TO
29 AND SEARCHED BY OTHER AGENCIES PARTICIPATING IN THE CODIS
30 SYSTEM.

1 § 2321. EXPUNGEMENT.

2 [(A) GENERAL RULE.--A PERSON WHOSE DNA SAMPLE, RECORD OR
3 PROFILE HAS BEEN INCLUDED IN THE STATE DNA DATA BANK OR THE
4 STATE DNA DATA BASE PURSUANT TO THE FORMER DNA ACT, FORMER 42
5 PA.C.S. CH. 47 (RELATING TO DNA DATA AND TESTING) OR THIS
6 CHAPTER MAY REQUEST EXPUNGEMENT ON THE GROUNDS THAT THE
7 CONVICTION OR DELINQUENCY ADJUDICATION ON WHICH THE AUTHORITY
8 FOR INCLUDING THAT PERSON'S DNA SAMPLE, RECORD OR PROFILE WAS
9 BASED HAS BEEN REVERSED AND THE CASE DISMISSED OR THAT THE DNA
10 SAMPLE, RECORD OR PROFILE WAS INCLUDED IN THE STATE DNA DATA
11 BANK OR THE STATE DNA DATA BASE BY MISTAKE.

12 (B) DUTY OF STATE POLICE.--THE STATE POLICE SHALL PURGE ALL
13 RECORDS AND IDENTIFIABLE INFORMATION IN THE STATE DNA DATA BANK
14 OR STATE DNA DATA BASE PERTAINING TO THE PERSON AND DESTROY EACH
15 SAMPLE, RECORD AND PROFILE FROM THE PERSON UPON:

16 (1) RECEIPT OF A WRITTEN REQUEST FOR EXPUNGEMENT
17 PURSUANT TO THIS SECTION AND A CERTIFIED COPY OF THE FINAL
18 COURT ORDER REVERSING AND DISMISSING THE CONVICTION; OR

19 (2) CLEAR AND CONVINCING PROOF THAT THE SAMPLE RECORD OR
20 PROFILE WAS INCLUDED BY MISTAKE.]

21 (A) GENERAL RULE.--A PERSON WHOSE DNA SAMPLE, RECORD OR
22 PROFILE HAS BEEN INCLUDED IN THE STATE DNA DATA BANK OR THE
23 STATE DNA DATA BASE UNDER THE FORMER DNA ACT, FORMER PROVISIONS
24 OF 42 PA.C.S. CH. 47 (RELATING TO DNA DATA AND TESTING) OR THIS
25 CHAPTER MAY HAVE THE DNA SAMPLE, RECORD OR PROFILE EXPUNGED IN
26 ACCORDANCE WITH THIS SECTION.

27 (B) REMOVAL BY REQUEST.--A PERSON WHOSE DNA SAMPLE, RECORD
28 OR PROFILE HAS BEEN INCLUDED IN THE STATE DNA DATA BANK OR THE
29 STATE DNA DATA BASE UNDER THE FORMER DNA ACT, FORMER PROVISIONS
30 OF 42 PA.C.S. CH. 47 OR THIS CHAPTER MAY FILE A WRITTEN REQUEST

1 WITH THE STATE POLICE THAT THE DNA SAMPLE, RECORD OR PROFILE BE
2 REMOVED ON THE GROUNDS THAT THE DNA SAMPLE, RECORD OR PROFILE
3 WAS INCLUDED IN THE STATE DNA DATA BANK OR THE STATE DNA DATA
4 BASE BY MISTAKE. IF THE STATE POLICE GRANTS THE REQUEST, THE
5 REQUEST SHALL BE PROCESSED AT NO COST AND THE STATE POLICE SHALL
6 PROVIDE WRITTEN NOTICE OF THE REMOVAL TO THE PERSON AND HIS
7 ATTORNEY OF RECORD, IF ANY, WITHIN 60 DAYS AFTER DESTROYING THE
8 DNA SAMPLE, RECORD OR PROFILE. IF THE STATE POLICE DENIES THE
9 REQUEST, THE PERSON MAY REQUEST EXPUNGEMENT OF THE DNA SAMPLE,
10 RECORD OR PROFILE UNDER SUBSECTION (B.1).

11 (B.1) EXPUNGEMENT BY COURT ORDER.--THE FOLLOWING SHALL
12 APPLY:

13 (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2), A PERSON MAY
14 REQUEST THE COURT OF COMMON PLEAS OF THE COUNTY WHERE THE
15 ORIGINAL CHARGES WERE FILED TO ISSUE AN ORDER DIRECTING THE
16 EXPUNGEMENT OF THE DNA SAMPLE, RECORD OR PROFILE PERTAINING
17 TO THE PERSON IN THE STATE DNA DATA BANK OR THE STATE DNA
18 DATA BASE IN THE FOLLOWING INSTANCES:

19 (I) THE CONVICTION OR DELINQUENCY ADJUDICATION FOR
20 WHICH THE PERSON'S DNA SAMPLE WAS COLLECTED HAS BEEN
21 REVERSED AND NO APPEAL IS PENDING;

22 (II) THE PERSON WAS GRANTED AN UNCONDITIONAL PARDON
23 FOR THE CRIME FOR WHICH THE DNA SAMPLE WAS TAKEN; OR

24 (III) THE DNA SAMPLE, RECORD OR PROFILE WAS INCLUDED
25 IN THE STATE DNA DATA BANK OR STATE DNA DATA BASE BY
26 MISTAKE AND THE STATE POLICE HAS ERRONEOUSLY REFUSED TO
27 GRANT THE PERSON'S REQUEST FOR REMOVAL UNDER SUBSECTION
28 (B).

29 (2) PARAGRAPH (1) SHALL NOT APPLY IF THE PERSON HAS BEEN
30 CONVICTED OR ADJUDICATED DELINQUENT FOR ANY OTHER CRIME FOR

1 WHICH A DNA SAMPLE IS REQUIRED TO BE COLLECTED UNDER THIS
2 CHAPTER.

3 (3) THE COURT SHALL GIVE 10 DAYS' PRIOR NOTICE TO THE
4 DISTRICT ATTORNEY OF THE COUNTY WHERE THE ORIGINAL CHARGES
5 WERE FILED OF AN APPLICATION FOR EXPUNGEMENT UNDER THIS
6 SUBSECTION.

7 (4) NOTWITHSTANDING ANY OTHER LAW OR RULE OF COURT, THE
8 COURT SHALL HAVE NO AUTHORITY TO ORDER THE EXPUNGEMENT OF A
9 DNA SAMPLE, RECORD OR PROFILE IN THE STATE DNA DATA BANK OR
10 THE STATE DNA DATA BASE EXCEPT AS PROVIDED UNDER THIS
11 SUBSECTION.

12 (B.2) EXPUNGEMENT REPORTING.--THE COURT SHALL FORWARD A
13 CERTIFIED COPY OF AN EXPUNGEMENT ORDER ISSUED UNDER SUBSECTION
14 (B.1) TO THE STATE POLICE.

15 (B.3) DUTIES OF STATE POLICE.--THE FOLLOWING SHALL APPLY:

16 (1) UPON RECEIPT OF AN EXPUNGEMENT ORDER ISSUED UNDER
17 SUBSECTION (B.1), THE STATE POLICE SHALL DESTROY THE DNA
18 SAMPLE, RECORD OR PROFILE IN THE STATE DNA DATA BANK AND THE
19 STATE DNA DATA BASE PERTAINING TO A PERSON IDENTIFIED IN AN
20 EXPUNGEMENT ORDER.

21 (2) THE EXPUNGEMENT SHALL BE PROCESSED AT NO COST TO THE
22 PERSON FROM WHOM THE DNA SAMPLE WAS TAKEN.

23 (3) THE STATE POLICE SHALL PROVIDE WRITTEN NOTICE OF THE
24 EXPUNGEMENT TO THE PERSON AND HIS ATTORNEY OF RECORD, IF ANY,
25 WITHIN 60 DAYS AFTER DESTROYING THE DNA SAMPLE, RECORD OR
26 PROFILE.

27 (4) THE STATE POLICE SHALL PUBLISH INFORMATION REGARDING
28 THE ELIGIBILITY REQUIREMENTS FOR EXPUNGEMENT UNDER THIS
29 SECTION AND THE STEPS NECESSARY TO OBTAIN AN EXPUNGEMENT
30 UNDER THIS SECTION ON THE STATE POLICE'S PUBLICLY ACCESSIBLE

1 INTERNET WEBSITE. THE STATE POLICE SHALL PUBLISH THE
2 INFORMATION IN AT LEAST TWO COMMONLY ACCESSIBLE FORMATS, SUCH
3 AS HYPERTEXT MARKUP LANGUAGE AND PORTABLE DOCUMENT FORMAT.

4 (C) LIMITATIONS.--

5 (1) AN INCARCERATED OR PREVIOUSLY INCARCERATED PERSON
6 MAY NOT SEEK EXPUNGEMENT OF A DNA SAMPLE, RECORD OR PROFILE
7 ON THE GROUND THAT THAT PERSON WAS CONVICTED OR ADJUDICATED
8 DELINQUENT FOR A FELONY SEX OFFENSE PRIOR TO JULY 27, 1995.

9 (2) A PERSON MAY NOT SEEK EXPUNGEMENT OF A DNA SAMPLE,
10 RECORD OR PROFILE ON THE GROUND THAT THAT PERSON WAS
11 CONVICTED OR ADJUDICATED DELINQUENT FOR ONE OF THE OTHER
12 SPECIFIED OFFENSES PRIOR TO THE EFFECTIVE DATE OF THE FORMER
13 DNA ACT OR THIS CHAPTER.

14 (D) EFFECT OF EXPUNGEMENT.--THE EXPUNGEMENT OF A DNA SAMPLE,
15 RECORD OR PROFILE PURSUANT TO THIS SECTION SHALL HAVE NO EFFECT
16 ON ANY DATA BANK OR DATA BASE MATCH OR PARTIAL MATCH OCCURRING
17 PRIOR TO THE EXPUNGEMENT OF THE SAMPLE, RECORD OR PROFILE.

18 SECTION 5. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

19 (1) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

20 (2) THE AMENDMENT OF 42 PA.C.S. § 9543.1 SHALL TAKE
21 EFFECT IN 60 DAYS.

22 (3) THE ADDITION OF PARAGRAPHS (4) AND (6) OF THE
23 DEFINITION OF "OTHER SPECIFIED OFFENSE" IN 44 PA.C.S. § 2303
24 SHALL TAKE EFFECT DECEMBER 1, 2019.

25 (4) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 360
26 DAYS.