

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 835 Session of
2003

INTRODUCED BY MAITLAND, GILLESPIE, KELLER, BAKER, BALDWIN,
BASTIAN, BELFANTI, BROWNE, BUNT, CAPPELLI, CREIGHTON,
FLEAGLE, FLICK, GEIST, HENNESSEY, HERMAN, HICKERNELL, HORSEY,
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MELIO, JAMES, DALLY AND BLAUM, MARCH 11, 2003

SENATOR THOMPSON, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, NOVEMBER 18, 2004

AN ACT

1 ~~Amending Title 42 (Judiciary and Judicial Procedure) of the~~ <—
2 ~~Pennsylvania Consolidated Statutes, further providing for~~
3 ~~scope of chapter relating to DNA data and testing, for the~~
4 ~~definitions of "DNA record" and "other specified offense,"~~
5 ~~for DNA sample required upon conviction, delinquency~~
6 ~~adjudication and certain ARD cases and for expungement.~~
7 AMENDING TITLES 42 (JUDICIARY AND JUDICIAL PROCEDURE) AND 44 <—
8 (LAW AND JUSTICE) OF THE PENNSYLVANIA CONSOLIDATED STATUTES,
9 FURTHER PROVIDING FOR GENETIC IDENTIFICATION EVIDENCE;
10 RECODIFYING PROVISIONS ON DNA DATA AND TESTING; FURTHER
11 PROVIDING FOR SCOPE, FOR POLICY, FOR THE DEFINITIONS OF "DNA
12 RECORD" AND "OTHER SPECIFIED OFFENSE," FOR REQUIRED DNA
13 SAMPLES AND FOR EXPUNGEMENT, AND PROVIDING FOR GOOD FAITH.

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

16 ~~Section 1. Section 4701 of Title 42 of the Pennsylvania~~ <—
17 ~~Consolidated Statutes is amended to read:~~
18 ~~§ 4701. Scope of chapter.~~
19 ~~This chapter provides for DNA detection of sexual [and~~
20 ~~violent] offenders and other felony offenders.~~

1 Section 2. ~~The definitions of "DNA record" and "other~~
2 ~~specified offense" in section 4703 of Title 42 are amended to~~
3 ~~read:~~

4 ~~§ 4703. Definitions.~~

5 ~~The following words and phrases when used in this chapter~~
6 ~~shall have the meanings given to them in this section unless the~~
7 ~~context clearly indicates otherwise:~~

8 * * *

9 ~~"DNA record." DNA identification information stored in the~~
10 ~~State DNA Data Base or the Combined DNA Index System for the~~
11 ~~purpose of generating investigative leads or supporting~~
12 ~~statistical interpretation of DNA test results. The DNA record~~
13 ~~is the result obtained from the DNA typing tests, which include,~~
14 ~~but are not limited to, nuclear and mitochondrial DNA typing.~~
15 ~~The DNA record is comprised of the characteristics of a DNA~~
16 ~~sample which are of value in establishing the identity of~~
17 ~~individuals. The results of all DNA identification tests on an~~
18 ~~individual's DNA sample are also collectively referred to as the~~
19 ~~DNA profile of an individual.~~

20 * * *

21 ~~"Other specified offense." [An] Any felony offense or an~~
22 ~~attempt, conspiracy or solicitation to commit [an offense under~~
23 ~~any of the following:~~

24 ~~18 Pa.C.S. § 2502 (relating to murder).~~

25 ~~18 Pa.C.S. § 2709(c)(2)(ii) (relating to harassment and~~
26 ~~stalking).~~

27 ~~18 Pa.C.S. § 2901 (relating to kidnapping).~~

28 ~~18 Pa.C.S. § 2910 (relating to luring a child into a~~
29 ~~motor vehicle).~~

30 ~~18 Pa.C.S. § 3126 (relating to indecent assault).~~

1 ~~18 Pa.C.S. § 3502 (relating to burglary).~~

2 ~~18 Pa.C.S. § 3701 (relating to robbery).] any felony~~
3 ~~offense.~~

4 ~~* * *~~

5 ~~Section 3. Section 4716(b) of Title 42 is amended by adding~~
6 ~~a paragraph to read:~~

7 ~~§ 4716. DNA sample required upon conviction, delinquency~~
8 ~~adjudication and certain ARD cases.~~

9 ~~* * *~~

10 ~~(b) Condition of release.~~

11 ~~* * *~~

12 ~~(3) This chapter shall apply to incarcerated persons and~~
13 ~~persons on probation or parole who were convicted or~~
14 ~~adjudicated delinquent for other specified offenses prior to~~
15 ~~the effective date of this paragraph.~~

16 ~~* * *~~

17 ~~Section 4. Section 4721(c) of Title 42 is amended and the~~
18 ~~section is amended by adding a subsection to read:~~

19 ~~§ 4721. Expungement.~~

20 ~~* * *~~

21 ~~(c) Limitations. [An incarcerated or~~
22 ~~previously incarcerated]~~

23 ~~(1) A person may not seek expungement of a DNA sample,~~
24 ~~record or profile on the ground that that person was~~
25 ~~convicted or adjudicated delinquent for a felony sex offense~~
26 ~~prior to the effective date of the former DNA Act or prior to~~
27 ~~the effective date of this chapter.~~

28 ~~(2) A person may not seek expungement of a DNA sample,~~
29 ~~record or profile on the ground that that person was~~
30 ~~convicted or adjudicated delinquent for one of the other~~

1 ~~specified offenses prior to the effective date of the former~~
2 ~~DNA Act, this chapter or section 4716(b)(3) (relating to DNA~~
3 ~~sample required upon conviction, delinquency adjudication and~~
4 ~~certain ARD cases).~~

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

9 ~~Section 5. This act shall take effect in 180 days.~~

10 SECTION 1. CHAPTER 47 OF TITLE 42 OF THE PENNSYLVANIA
11 CONSOLIDATED STATUTES IS REPEALED.

<—

12 SECTION 2. SECTION 5552 OF TITLE 42 IS AMENDED BY ADDING A
13 SUBSECTION TO READ:

14 § 5552. OTHER OFFENSES.

15 * * *

16 (C.1) GENETIC IDENTIFICATION EVIDENCE.--NOTWITHSTANDING ANY
17 PROVISION OF LAW TO THE CONTRARY, IF EVIDENCE OF A MISDEMEANOR
18 SEXUAL OFFENSE SET FORTH IN SUBSECTION (C)(3) OR A FELONY
19 OFFENSE IS OBTAINED CONTAINING HUMAN DEOXYRIBONUCLEIC ACID
20 (DNA), WHICH IS SUBSEQUENTLY USED TO IDENTIFY AN OTHERWISE
21 UNIDENTIFIED INDIVIDUAL AS THE PERPETRATOR OF THE OFFENSE, THE
22 PROSECUTION OF THE OFFENSE MAY BE COMMENCED WITHIN THE PERIOD OF
23 LIMITATIONS PROVIDED FOR THE OFFENSE OR ONE YEAR AFTER THE
24 IDENTITY OF THE INDIVIDUAL IS DETERMINED, WHICHEVER IS LATER.

25 * * *

26 SECTION 3. TITLE 44 IS AMENDED BY ADDING PARTS TO READ:

27 PART I

28 PRELIMINARY PROVISIONS

29 (RESERVED)

30 PART II

1 PENNSYLVANIA STATE POLICE

2 CHAPTER 21

3 PRELIMINARY PROVISIONS

4 (RESERVED)

5 CHAPTER 23

6 DNA DATA AND TESTING

7 SUBCHAPTER

8 A. PRELIMINARY PROVISIONS

9 B. GENERAL PROVISIONS

10 C. ENFORCEMENT AND OTHER PROVISIONS

11 SUBCHAPTER A

12 PRELIMINARY PROVISIONS

13 SEC.

14 2301. SCOPE OF CHAPTER.

15 2302. POLICY.

16 2303. DEFINITIONS.

17 § 2301. SCOPE OF CHAPTER.

18 THIS CHAPTER PROVIDES FOR DNA DETECTION OF SEXUAL OFFENDERS
19 AND OTHER OFFENDERS.

20 § 2302. POLICY.

21 THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

22 (1) DNA DATA BANKS ARE AN IMPORTANT TOOL IN CRIMINAL
23 INVESTIGATIONS, IN THE EXCLUSION OF INDIVIDUALS WHO ARE THE
24 SUBJECT OF CRIMINAL INVESTIGATIONS OR PROSECUTIONS AND IN
25 DETERRING AND DETECTING RECIDIVIST ACTS.

26 (2) SEVERAL STATES HAVE ENACTED LAWS REQUIRING PERSONS
27 CONVICTED OF CERTAIN CRIMES, ESPECIALLY SEX OFFENSES, TO
28 PROVIDE GENETIC SAMPLES FOR DNA PROFILING.

29 (3) MOREOVER, IT IS THE POLICY OF THE COMMONWEALTH TO
30 ASSIST FEDERAL, STATE AND LOCAL CRIMINAL JUSTICE AND LAW

1 ENFORCEMENT AGENCIES IN THE IDENTIFICATION AND DETECTION OF
2 INDIVIDUALS IN CRIMINAL INVESTIGATIONS.

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

8 § 2303. DEFINITIONS.

9 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
10 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
11 CONTEXT CLEARLY INDICATES OTHERWISE:

12 "ARD." ACCELERATED REHABILITATIVE DISPOSITION.

13 "CODIS." THE TERM IS DERIVED FROM COMBINED DNA INDEX SYSTEM,
14 THE FEDERAL BUREAU OF INVESTIGATION'S NATIONAL DNA
15 IDENTIFICATION INDEX SYSTEM THAT ALLOWS THE STORAGE AND EXCHANGE
16 OF DNA RECORDS SUBMITTED BY STATE AND LOCAL FORENSIC DNA
17 LABORATORIES.

18 "COMMISSIONER." THE COMMISSIONER OF THE PENNSYLVANIA STATE
19 POLICE.

20 "CRIMINAL JUSTICE AGENCY." A CRIMINAL JUSTICE AGENCY AS
21 DEFINED IN 18 PA.C.S. § 9102 (RELATING TO DEFINITIONS).

22 "DNA." DEOXYRIBONUCLEIC ACID. DNA IS LOCATED IN THE CELLS
23 AND PROVIDES AN INDIVIDUAL'S PERSONAL GENETIC BLUEPRINT. DNA
24 ENCODES GENETIC INFORMATION THAT IS THE BASIS OF HUMAN HEREDITY
25 AND FORENSIC IDENTIFICATION.

26 "DNA RECORD." DNA IDENTIFICATION INFORMATION STORED IN THE
27 STATE DNA DATA BASE OR THE COMBINED DNA INDEX SYSTEM FOR THE
28 PURPOSE OF GENERATING INVESTIGATIVE LEADS OR SUPPORTING
29 STATISTICAL INTERPRETATION OF DNA TEST RESULTS. THE TERM
30 INCLUDES NUCLEAR AND MITOCHONDRIAL TYPING. THE DNA RECORD IS THE

1 RESULT OBTAINED FROM THE DNA TYPING TESTS. THE DNA RECORD IS
2 COMPRISED OF THE CHARACTERISTICS OF A DNA SAMPLE WHICH ARE OF
3 VALUE IN ESTABLISHING THE IDENTITY OF INDIVIDUALS. THE RESULTS
4 OF ALL DNA IDENTIFICATION TESTS ON AN INDIVIDUAL'S DNA SAMPLE
5 ARE ALSO COLLECTIVELY REFERRED TO AS THE DNA PROFILE OF AN
6 INDIVIDUAL.

7 "DNA SAMPLE." A BLOOD OR TISSUE SAMPLE PROVIDED BY ANY
8 PERSON WITH RESPECT TO OFFENSES COVERED BY THIS CHAPTER OR
9 SUBMITTED TO THE PENNSYLVANIA STATE POLICE LABORATORY PURSUANT
10 TO THE FORMER ACT OF MAY 28, 1995 (1ST SP.SESS., P.L.1009,
11 NO.14), KNOWN AS THE DNA DETECTION OF SEXUAL AND VIOLENT
12 OFFENDERS ACT, TO THE FORMER 42 PA.C.S. CH. 47 (RELATING TO DNA
13 DATA AND TESTING) OR TO THIS CHAPTER FOR ANALYSIS OR STORAGE, OR
14 BOTH.

15 "FBI." THE FEDERAL BUREAU OF INVESTIGATION.

16 "FELONY SEX OFFENSE." A FELONY OFFENSE OR AN ATTEMPT,
17 CONSPIRACY OR SOLICITATION TO COMMIT A FELONY OFFENSE UNDER ANY
18 OF THE FOLLOWING:

19 18 PA.C.S. CH. 31 (RELATING TO SEXUAL OFFENSES).

20 18 PA.C.S. § 4302 (RELATING TO INCEST).

21 18 PA.C.S. § 5902(C)(1)(III) AND (IV) (RELATING TO
22 PROSTITUTION AND RELATED OFFENSES).

23 18 PA.C.S. § 5903(A) (RELATING TO OBSCENE AND OTHER
24 SEXUAL MATERIALS AND PERFORMANCES) WHERE THE OFFENSE
25 CONSTITUTES A FELONY.

26 18 PA.C.S. § 6312 (RELATING TO SEXUAL ABUSE OF CHILDREN).

27 18 PA.C.S. § 6318 (RELATING TO UNLAWFUL CONTACT WITH
28 MINOR) WHERE THE MOST SERIOUS UNDERLYING OFFENSE FOR WHICH
29 THE DEFENDANT CONTACTED THE MINOR IS GRADED AS A FELONY.

30 18 PA.C.S. § 6320 (RELATING TO SEXUAL EXPLOITATION OF

1 CHILDREN).

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

5 "FUND." THE DNA DETECTION FUND REESTABLISHED IN SECTION 2335
6 (RELATING TO DNA DETECTION FUND).

7 "OTHER SPECIFIED OFFENSE." A FELONY OFFENSE OR AN OFFENSE
8 UNDER 18 PA.C.S. § 2910 (RELATING TO LURING A CHILD INTO A MOTOR
9 VEHICLE) OR 3126 (RELATING TO INDECENT ASSAULT) OR AN ATTEMPT TO
10 COMMIT SUCH AN OFFENSE.

11 "STATE POLICE." THE PENNSYLVANIA STATE POLICE.

12 SUBCHAPTER B
13 GENERAL PROVISIONS

14 SEC.

15 2311. POWERS AND DUTIES OF STATE POLICE.

16 2312. STATE DNA DATA BASE.

17 2313. STATE DNA DATA BANK.

18 2314. STATE POLICE RECOMMENDATION OF ADDITIONAL OFFENSES.

19 2315. PROCEDURAL COMPATIBILITY WITH FBI.

20 2316. DNA SAMPLE REQUIRED UPON CONVICTION, DELINQUENCY
21 ADJUDICATION AND CERTAIN ARD CASES.

22 2317. PROCEDURES FOR WITHDRAWAL, COLLECTION AND TRANSMISSION
23 OF DNA SAMPLES.

24 2318. PROCEDURES FOR CONDUCT, DISPOSITION AND USE OF DNA
25 ANALYSIS.

26 2319. DNA DATA BASE EXCHANGE.

27 2320. CANCELLATION OF AUTHORITY TO ACCESS OR EXCHANGE DNA
28 RECORDS.

29 2321. EXPUNGEMENT.

30 2322. MANDATORY COST.

1 2323. GOOD FAITH.

2 § 2311. POWERS AND DUTIES OF STATE POLICE.

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

5 (1) BE RESPONSIBLE FOR THE POLICY MANAGEMENT AND
6 ADMINISTRATION OF THE STATE DNA IDENTIFICATION RECORD SYSTEM
7 TO SUPPORT LAW ENFORCEMENT AGENCIES AND OTHER CRIMINAL
8 JUSTICE AGENCIES.

9 (2) PROMULGATE RULES AND REGULATIONS TO CARRY OUT THE
10 PROVISIONS OF THIS CHAPTER.

11 (3) PROVIDE FOR LIAISON WITH THE FBI AND OTHER CRIMINAL
12 JUSTICE AGENCIES IN REGARD TO THE COMMONWEALTH'S
13 PARTICIPATION IN CODIS OR IN ANY DNA DATA BASE DESIGNATED BY
14 THE STATE POLICE.

15 § 2312. STATE DNA DATA BASE.

16 THE STATE DNA DATA BASE IS REESTABLISHED. IT SHALL BE
17 ADMINISTERED BY THE STATE POLICE AND PROVIDE DNA RECORDS TO THE
18 FBI FOR STORAGE AND MAINTENANCE BY CODIS. THE STATE DNA DATA
19 BASE SHALL HAVE THE CAPABILITY PROVIDED BY COMPUTER SOFTWARE AND
20 PROCEDURES ADMINISTERED BY THE STATE POLICE TO STORE AND
21 MAINTAIN DNA RECORDS RELATED TO:

22 (1) FORENSIC CASEWORK;

23 (2) CONVICTED OFFENDERS REQUIRED TO PROVIDE A DNA SAMPLE
24 UNDER THIS CHAPTER; AND

25 (3) ANONYMOUS DNA RECORDS USED FOR RESEARCH OR QUALITY
26 CONTROL.

27 § 2313. STATE DNA DATA BANK.

28 THE STATE DNA DATA BANK IS REESTABLISHED. IT SHALL SERVE AS
29 THE REPOSITORY OF DNA SAMPLES COLLECTED UNDER THIS CHAPTER.

30 § 2314. STATE POLICE RECOMMENDATION OF ADDITIONAL OFFENSES.

1 THE STATE POLICE MAY RECOMMEND TO THE GENERAL ASSEMBLY THAT
2 IT ENACT LEGISLATION FOR THE INCLUSION OF ADDITIONAL OFFENSES
3 FOR WHICH DNA SAMPLES SHALL BE TAKEN AND OTHERWISE SUBJECTED TO
4 THE PROVISIONS OF THIS CHAPTER. IN DETERMINING WHETHER TO
5 RECOMMEND ADDITIONAL OFFENSES, THE STATE POLICE SHALL CONSIDER
6 THOSE OFFENSES FOR WHICH DNA TESTING WILL HAVE A SUBSTANTIAL
7 IMPACT ON THE DETECTION AND IDENTIFICATION OF SEX OFFENDERS AND
8 VIOLENT OFFENDERS.

9 § 2315. PROCEDURAL COMPATIBILITY WITH FBI.

10 THE DNA IDENTIFICATION SYSTEM AS ESTABLISHED BY THE STATE
11 POLICE SHALL BE COMPATIBLE WITH THE PROCEDURES SPECIFIED BY THE
12 FBI, INCLUDING USE OF COMPARABLE TEST PROCEDURES, LABORATORY
13 EQUIPMENT, SUPPLIES AND COMPUTER 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 AN OTHER SPECIFIED
18 OFFENSE OR WHO IS OR REMAINS INCARCERATED FOR A FELONY SEX
19 OFFENSE OR AN OTHER SPECIFIED OFFENSE ON OR AFTER THE EFFECTIVE
20 DATE OF THIS CHAPTER SHALL HAVE A DNA SAMPLE DRAWN 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 UPON INTAKE
24 TO A PRISON, JAIL OR JUVENILE DETENTION FACILITY OR ANY OTHER
25 DETENTION FACILITY OR INSTITUTION. IF THE PERSON IS ALREADY
26 CONFINED AT THE TIME OF SENTENCING OR ADJUDICATION, THE
27 PERSON SHALL HAVE A DNA SAMPLE DRAWN IMMEDIATELY AFTER THE
28 SENTENCING OR ADJUDICATION. IF A DNA SAMPLE IS NOT TIMELY
29 DRAWN IN ACCORDANCE WITH THIS SECTION, THE DNA SAMPLE MAY BE
30 DRAWN ANY TIME THEREAFTER BY THE PRISON, JAIL, JUVENILE

1 DETENTION FACILITY, DETENTION FACILITY OR INSTITUTION.

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

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

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

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

18 (2) THIS CHAPTER SHALL APPLY TO INCARCERATED PERSONS
19 CONVICTED OR ADJUDICATED DELINQUENT FOR A FELONY SEX OFFENSE
20 PRIOR TO JUNE 19, 2002.

21 (3) THIS CHAPTER SHALL APPLY TO INCARCERATED PERSONS AND
22 PERSONS ON PROBATION OR PAROLE WHO WERE CONVICTED OR
23 ADJUDICATED DELINQUENT FOR OTHER SPECIFIED OFFENSES PRIOR TO
24 THE EFFECTIVE DATE OF THIS PARAGRAPH.

25 (C) CERTAIN ARD CASES.--ACCEPTANCE INTO ARD AS A RESULT OF A
26 CRIMINAL CHARGE FOR A FELONY SEX OFFENSE OR OTHER SPECIFIED
27 OFFENSE FILED AFTER JUNE 18, 2002, MAY BE CONDITIONED UPON THE
28 GIVING OF A DNA SAMPLE.

29 (D) SUPERVISION OF DNA SAMPLES.--ALL DNA SAMPLES TAKEN
30 PURSUANT TO THIS SECTION SHALL BE TAKEN IN ACCORDANCE WITH

1 REGULATIONS PROMULGATED BY THE STATE POLICE IN CONSULTATION WITH
2 THE DEPARTMENT OF CORRECTIONS.

3 (D.1) MANDATORY SUBMISSION.--THE REQUIREMENTS OF THIS
4 CHAPTER ARE MANDATORY AND APPLY REGARDLESS OF WHETHER A COURT
5 ADVISES A PERSON THAT A DNA SAMPLE MUST BE PROVIDED TO THE STATE
6 DNA DATA BASE AND THE STATE DNA DATA BANK AS A RESULT OF A
7 CONVICTION OR ADJUDICATION OF DELINQUENCY. A PERSON WHO HAS BEEN
8 SENTENCED TO DEATH OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
9 OF PAROLE OR TO ANY TERM OF INCARCERATION IS NOT EXEMPT FROM THE
10 REQUIREMENTS OF THIS CHAPTER. ANY PERSON SUBJECT TO THIS CHAPTER
11 WHO HAS NOT PROVIDED A DNA SAMPLE FOR ANY REASON, INCLUDING
12 BECAUSE OF AN OVERSIGHT OR ERROR, SHALL PROVIDE A DNA SAMPLE FOR
13 INCLUSION IN THE STATE DNA DATA BASE AND THE STATE DNA DATA BANK
14 AFTER BEING NOTIFIED BY AUTHORIZED LAW ENFORCEMENT OR
15 CORRECTIONS PERSONNEL. IF A PERSON PROVIDES A DNA SAMPLE WHICH
16 IS NOT ADEQUATE FOR ANY REASON, THE PERSON SHALL PROVIDE ANOTHER
17 DNA SAMPLE FOR INCLUSION IN THE STATE DNA DATA BASE AND THE
18 STATE DNA DATA BANK AFTER BEING NOTIFIED BY AUTHORIZED LAW
19 ENFORCEMENT OR CORRECTIONS PERSONNEL.

20 (E) DEFINITION.--AS USED IN THIS SECTION, THE TERM
21 "RELEASED" MEANS ANY RELEASE, PAROLE, FURLOUGH, WORK RELEASE,
22 PRERELEASE OR RELEASE IN ANY OTHER MANNER FROM A PRISON, JAIL,
23 JUVENILE DETENTION FACILITY OR ANY OTHER PLACE OF CONFINEMENT.

24 § 2317. PROCEDURES FOR WITHDRAWAL, COLLECTION AND TRANSMISSION
25 OF DNA SAMPLES.

26 (A) DRAWING OF DNA SAMPLES.--

27 (1) EACH DNA SAMPLE REQUIRED TO BE DRAWN PURSUANT TO
28 SECTION 2316 (RELATING TO DNA SAMPLE REQUIRED UPON
29 CONVICTION, DELINQUENCY ADJUDICATION AND CERTAIN ARD CASES)
30 FROM PERSONS WHO ARE INCARCERATED OR CONFINED SHALL BE DRAWN

1 AT THE PLACE OF INCARCERATION OR CONFINEMENT AS PROVIDED FOR
2 IN SECTION 2316. DNA SAMPLES FROM PERSONS WHO ARE NOT ORDERED
3 OR SENTENCED TO A TERM OF CONFINEMENT SHALL BE DRAWN AT A
4 PRISON, JAIL UNIT, JUVENILE FACILITY OR OTHER FACILITY TO BE
5 SPECIFIED BY THE COURT. ONLY THOSE INDIVIDUALS QUALIFIED TO
6 DRAW DNA SAMPLES IN A MEDICALLY APPROVED MANNER SHALL DRAW A
7 DNA SAMPLE TO BE SUBMITTED FOR DNA ANALYSIS. SUCH SAMPLE AND
8 THE SET OF FINGERPRINTS PROVIDED FOR IN PARAGRAPH (2) SHALL
9 BE DELIVERED TO THE STATE POLICE WITHIN 48 HOURS OF DRAWING
10 THE SAMPLE.

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

15 (B) LIMITATION ON LIABILITY.--PERSONS AUTHORIZED TO DRAW DNA
16 SAMPLES UNDER THIS SECTION SHALL NOT BE CRIMINALLY LIABLE FOR
17 WITHDRAWING A DNA SAMPLE AND TRANSMITTING TEST RESULTS PURSUANT
18 TO THIS CHAPTER IF THEY PERFORM THESE ACTIVITIES IN GOOD FAITH
19 AND SHALL NOT BE CIVILLY LIABLE FOR SUCH ACTIVITIES WHEN THE
20 PERSON ACTED IN A REASONABLE MANNER ACCORDING TO GENERALLY
21 ACCEPTED MEDICAL AND OTHER PROFESSIONAL PRACTICES.

22 (C) REASONABLE USE OF FORCE.--DULY AUTHORIZED LAW
23 ENFORCEMENT AND CORRECTIONS PERSONNEL MAY EMPLOY REASONABLE
24 FORCE IN CASES WHERE AN INDIVIDUAL REFUSES TO SUBMIT TO DNA
25 TESTING AUTHORIZED UNDER THIS CHAPTER, AND NO SUCH EMPLOYEE
26 SHALL BE CRIMINALLY OR CIVILLY LIABLE FOR THE USE OF REASONABLE
27 FORCE.

28 § 2318. PROCEDURES FOR CONDUCT, DISPOSITION AND USE OF DNA
29 ANALYSIS.

30 (A) PROCEDURES.--THE STATE POLICE SHALL PRESCRIBE PROCEDURES

1 TO BE USED IN THE COLLECTION, SUBMISSION, IDENTIFICATION,
2 ANALYSIS, STORAGE AND DISPOSITION OF DNA SAMPLES AND TYPING
3 RESULTS OF DNA SAMPLES SUBMITTED UNDER THE FORMER DNA ACT,
4 FORMER 42 PA.C.S. CH. 47 (RELATING TO DNA DATA AND TESTING) OR
5 THIS CHAPTER. THE DNA SAMPLE TYPING RESULTS SHALL BE SECURELY
6 STORED IN THE STATE DNA DATA BASE, AND RECORDS OF TESTING SHALL
7 BE RETAINED ON FILE WITH THE STATE POLICE CONSISTENT WITH THE
8 PROCEDURES ESTABLISHED BY THE FBI. THESE PROCEDURES SHALL ALSO
9 INCLUDE QUALITY ASSURANCE GUIDELINES TO ENSURE THAT DNA
10 IDENTIFICATION RECORDS MEET STANDARDS FOR LABORATORIES WHICH
11 SUBMIT DNA RECORDS TO THE STATE DNA DATA BASE.

12 (B) CONTRACTING.--THE STATE POLICE ARE AUTHORIZED TO
13 CONTRACT WITH THIRD PARTIES FOR PURPOSES OF THIS CHAPTER.

14 (C) USE OF TESTS.--EXCEPT AS OTHERWISE PROVIDED IN SECTION
15 2319(C) (RELATING TO DNA DATA BASE EXCHANGE), THE TESTS TO BE
16 PERFORMED ON EACH DNA SAMPLE SHALL BE USED ONLY FOR LAW
17 ENFORCEMENT IDENTIFICATION PURPOSES OR TO ASSIST IN THE RECOVERY
18 OR IDENTIFICATION OF HUMAN REMAINS FROM DISASTERS OR FOR OTHER
19 HUMANITARIAN IDENTIFICATION PURPOSES, INCLUDING IDENTIFICATION
20 OF MISSING PERSONS.

21 (D) RESTRICTIONS AND REQUIREMENTS ON CONTRACTING PARTY.--ANY
22 OTHER PARTY CONTRACTING TO CARRY OUT THE FUNCTIONS OF THIS
23 CHAPTER SHALL BE SUBJECT TO THE SAME RESTRICTIONS AND
24 REQUIREMENTS OF THIS CHAPTER, INSOFAR AS APPLICABLE, AS THE
25 STATE POLICE AS WELL AS ANY ADDITIONAL RESTRICTIONS IMPOSED BY
26 THE STATE POLICE.

27 § 2319. DNA DATA BASE EXCHANGE.

28 (A) RECEIPT OF DNA SAMPLES BY STATE POLICE.--IT SHALL BE THE
29 DUTY OF THE STATE POLICE TO RECEIVE DNA SAMPLES, TO STORE, TO
30 PERFORM ANALYSIS OR TO CONTRACT FOR DNA TYPING ANALYSIS WITH A

1 QUALIFIED DNA LABORATORY THAT MEETS THE GUIDELINES AS
2 ESTABLISHED BY THE STATE POLICE, TO CLASSIFY AND TO FILE THE DNA
3 RECORD OF IDENTIFICATION CHARACTERISTIC PROFILES OF DNA SAMPLES
4 SUBMITTED UNDER THE FORMER DNA ACT, FORMER 42 PA.C.S. CH. 47
5 (RELATING TO DNA DATA AND TESTING) OR THIS CHAPTER AND TO MAKE
6 SUCH INFORMATION AVAILABLE AS PROVIDED IN THIS SECTION. THE
7 STATE POLICE MAY CONTRACT OUT THE STORAGE OF DNA TYPING ANALYSIS
8 AND MAY CONTRACT OUT DNA TYPING ANALYSIS TO A QUALIFIED DNA
9 LABORATORY THAT MEETS GUIDELINES AS ESTABLISHED BY THE STATE
10 POLICE. THE RESULTS OF THE DNA PROFILE OF INDIVIDUALS IN THE
11 STATE DNA DATA BASE SHALL BE MADE AVAILABLE:

12 (1) TO CRIMINAL JUSTICE AGENCIES OR APPROVED CRIME
13 LABORATORIES WHICH SERVE THESE AGENCIES; OR

14 (2) UPON WRITTEN OR ELECTRONIC REQUEST AND IN
15 FURTHERANCE OF AN OFFICIAL INVESTIGATION OF A CRIMINAL
16 OFFENSE OR OFFENDER OR SUSPECTED OFFENDER.

17 (B) METHODS OF OBTAINING INFORMATION.--THE STATE POLICE
18 SHALL ADOPT GUIDELINES GOVERNING THE METHODS OF OBTAINING
19 INFORMATION FROM THE STATE DNA DATA BASE AND CODIS AND
20 PROCEDURES FOR VERIFICATION OF THE IDENTITY AND AUTHORITY OF THE
21 REQUESTER.

22 (C) POPULATION DATA BASE.--THE STATE POLICE MAY ESTABLISH A
23 SEPARATE POPULATION DATA BASE COMPRISED OF DNA SAMPLES OBTAINED
24 UNDER THIS CHAPTER AFTER ALL PERSONAL IDENTIFICATION IS REMOVED.
25 THE STATE POLICE MAY SHARE OR DISSEMINATE THE POPULATION DATA
26 BASE WITH OTHER CRIMINAL JUSTICE AGENCIES OR CRIME LABORATORIES
27 THAT SERVE TO ASSIST THE STATE POLICE WITH STATISTICAL DATA
28 BASES. THE POPULATION DATA BASE MAY BE MADE AVAILABLE TO AND
29 SEARCHED BY OTHER AGENCIES PARTICIPATING IN THE CODIS SYSTEM.

30 § 2320. CANCELLATION OF AUTHORITY TO ACCESS OR EXCHANGE DNA

1 RECORDS.

2 THE STATE POLICE SHALL BE AUTHORIZED, FOR GOOD CAUSE SHOWN,
3 TO REVOKE OR SUSPEND THE RIGHT OF A FORENSIC DNA LABORATORY
4 WITHIN THIS COMMONWEALTH TO ACCESS OR EXCHANGE DNA
5 IDENTIFICATION RECORDS WITH CRIMINAL JUSTICE AGENCIES.

6 § 2321. EXPUNGEMENT.

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

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

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

24 (2) CLEAR AND CONVINCING PROOF THAT THE SAMPLE RECORD OR
25 PROFILE WAS INCLUDED BY MISTAKE.

26 (C) LIMITATIONS.--

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

1 2335. DNA DETECTION FUND.

2 2336. AUTHORITY OF LAW ENFORCEMENT OFFICERS.

3 § 2331. PROHIBITION ON DISCLOSURE.

4 (A) DISCLOSURE.--ANY PERSON WHO BY VIRTUE OF EMPLOYMENT OR
5 OFFICIAL POSITION OR ANY PERSON CONTRACTING TO CARRY OUT ANY
6 FUNCTIONS UNDER THIS CHAPTER, INCLUDING ANY OFFICERS, EMPLOYEES
7 AND AGENTS OF SUCH CONTRACTOR, WHO HAS POSSESSION OF OR ACCESS
8 TO INDIVIDUALLY IDENTIFIABLE DNA INFORMATION CONTAINED IN THE
9 STATE DNA DATA BASE OR IN THE STATE DNA DATA BANK SHALL NOT
10 DISCLOSE IT IN ANY MANNER TO ANY PERSON OR AGENCY NOT AUTHORIZED
11 TO RECEIVE IT KNOWING THAT SUCH PERSON OR AGENCY IS NOT
12 AUTHORIZED TO RECEIVE IT.

13 (B) OBTAINING INFORMATION.--NO PERSON SHALL OBTAIN
14 INDIVIDUALLY IDENTIFIABLE DNA INFORMATION FROM THE STATE DNA
15 DATA BASE OR THE STATE DNA DATA BANK WITHOUT AUTHORIZATION TO DO
16 SO.

17 § 2332. CRIMINAL PENALTIES.

18 (A) DISCLOSURE.--ANY PERSON WHO BY VIRTUE OF EMPLOYMENT OR
19 OFFICIAL POSITION OR ANY PERSON CONTRACTING TO CARRY OUT ANY
20 FUNCTIONS UNDER THIS CHAPTER, INCLUDING ANY OFFICERS, EMPLOYEES
21 AND AGENTS OF SUCH CONTRACTOR, WHO HAS POSSESSION OF OR ACCESS
22 TO INDIVIDUALLY IDENTIFIABLE DNA INFORMATION CONTAINED IN THE
23 STATE DNA DATA BASE OR IN THE STATE DNA DATA BANK AND WHO FOR
24 PECUNIARY GAIN FOR SUCH PERSON OR FOR ANY OTHER PERSON DISCLOSES
25 IT IN ANY MANNER TO ANY PERSON OR AGENCY NOT AUTHORIZED TO
26 RECEIVE IT COMMITS A MISDEMEANOR OF THE FIRST DEGREE.

27 (B) OBTAINING INFORMATION.--ANY PERSON WHO KNOWINGLY
28 VIOLATES SECTION 2331(B) (RELATING TO PROHIBITION ON DISCLOSURE)
29 COMMITS A MISDEMEANOR OF THE FIRST DEGREE.

30 § 2333. CIVIL ACTIONS.

1 (A) INJUNCTIONS.--THE STATE POLICE OR ANY OTHER AGGRIEVED
2 INDIVIDUAL OR AGENCY MAY INSTITUTE AN ACTION IN A COURT OF
3 PROPER JURISDICTION AGAINST ANY PERSON, AGENCY OR ORGANIZATION
4 TO ENJOIN ANY CRIMINAL JUSTICE AGENCY, NONCRIMINAL JUSTICE
5 AGENCY, ORGANIZATION OR INDIVIDUAL FROM VIOLATING THE PROVISIONS
6 OF THIS CHAPTER OR TO COMPEL SUCH AGENCY, ORGANIZATION OR PERSON
7 TO COMPLY WITH THE PROVISIONS OF THIS CHAPTER.

8 (B) ACTION FOR DAMAGES.--

9 (1) ANY PERSON AGGRIEVED BY A KNOWING VIOLATION OF
10 SECTION 2331 (RELATING TO PROHIBITION ON DISCLOSURE) SHALL
11 HAVE THE SUBSTANTIVE RIGHT TO BRING AN ACTION FOR DAMAGES BY
12 REASON OF SUCH VIOLATION IN A COURT OF COMPETENT
13 JURISDICTION.

14 (2) A PERSON FOUND BY THE COURT TO HAVE BEEN AGGRIEVED
15 BY A KNOWING VIOLATION OF SECTION 2331 SHALL BE ENTITLED TO
16 ACTUAL AND REAL DAMAGES OF NOT LESS THAN \$100 FOR EACH
17 VIOLATION AND TO REASONABLE COSTS OF LITIGATION AND ATTORNEY
18 FEES. EXEMPLARY AND PUNITIVE DAMAGES OF NOT LESS THAN \$1,000
19 NOR MORE THAN \$10,000 SHALL BE IMPOSED FOR ANY VIOLATION OF
20 SECTION 2331.

21 § 2334. CONFIDENTIALITY OF RECORDS.

22 ALL DNA PROFILES AND SAMPLES SUBMITTED TO THE STATE POLICE
23 PURSUANT TO THE FORMER DNA ACT, FORMER 42 PA.C.S. CH.47
24 (RELATING TO DNA DATA AND TESTING) OR THIS CHAPTER SHALL BE
25 TREATED AS CONFIDENTIAL EXCEPT AS OTHERWISE PROVIDED IN THIS
26 CHAPTER.

27 § 2335. DNA DETECTION FUND.

28 THE DNA DETECTION FUND IS REESTABLISHED IN THE STATE TREASURY
29 AS A RESTRICTED FUND. ALL COSTS COLLECTED UNDER SECTION 2322
30 (RELATING TO MANDATORY COST) SHALL BE PAID INTO THE FUND. ALL

1 MONEYS IN THE FUND AND THE INTEREST ACCRUING THEREON ARE HEREBY
2 APPROPRIATED TO THE PENNSYLVANIA STATE POLICE ON A CONTINUING
3 BASIS TO CARRY OUT THE PROVISIONS OF THIS CHAPTER UPON
4 AUTHORIZATION OF THE GOVERNOR FOR EACH FISCAL YEAR.

5 § 2336. AUTHORITY OF LAW ENFORCEMENT OFFICERS.

6 NOTHING IN THIS CHAPTER SHALL LIMIT OR ABROGATE ANY EXISTING
7 AUTHORITY OF LAW ENFORCEMENT OFFICERS TO TAKE, MAINTAIN, STORE
8 AND UTILIZE DNA SAMPLES FOR LAW ENFORCEMENT PURPOSES.

9 SECTION 4. CHAPTER 21 OF TITLE 44 IS A CONTINUATION OF 42
10 PA.C.S. CH. 47, WHICH WAS A CONTINUATION OF THE ACT OF MAY 28,
11 1995 (1ST SP.SESS., P.L.1009, NO.14), KNOWN AS THE DNA DETECTION
12 OF SEXUAL AND VIOLENT OFFENDERS ACT.

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

14 (1) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT
15 IMMEDIATELY:

16 (I) THE ADDITION OF 42 PA.C.S. § 5552(C.1).

17 (II) SECTION 4 OF THIS ACT.

18 (III) THIS SECTION.

19 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
20 DAYS.