
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 398 Session of
2017

INTRODUCED BY BOSCOLA, BROWNE, BREWSTER, HAYWOOD AND VULAKOVICH,
FEBRUARY 27, 2017

REFERRED TO JUDICIARY, FEBRUARY 27, 2017

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 and for DNA sample
4 required upon conviction, delinquency adjudication and
5 certain ARD cases, providing for collection from persons
6 accepted from other jurisdictions and further providing for
7 procedures for withdrawal, collection and transmission of DNA
8 samples and for expungement.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 2302 of Title 44 of the Pennsylvania
12 Consolidated Statutes is amended to read:

13 § 2302. Policy.

14 The General Assembly finds and declares that:

15 (1) DNA data banks are an important tool in criminal
16 investigations, in the exclusion of individuals who are the
17 subject of criminal investigations or prosecutions and in
18 deterring and detecting recidivist acts.

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

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

5 (4) It is therefore in the best interest of the
6 Commonwealth to establish a DNA data base and a DNA data bank
7 containing DNA samples submitted by individuals arrested,
8 charged, convicted of, adjudicated delinquent for or accepted
9 into ARD for felony [sex] offenses and other specified
10 offenses.

11 Section 2. The definition of "felony sex offense" in section
12 2303 of Title 44 is amended to read:

13 § 2303. Definitions.

14 The following words and phrases when used in this chapter
15 shall have the meanings given to them in this section unless the
16 context clearly indicates otherwise:

17 * * *

18 ["Felony sex offense." A felony offense or an attempt,
19 conspiracy or solicitation to commit a felony offense under any
20 of the following:

21 18 Pa.C.S. Ch. 31 (relating to sexual offenses).

22 18 Pa.C.S. § 4302 (relating to incest).

23 18 Pa.C.S. § 5902(c)(1)(iii) and (iv) (relating to
24 prostitution and related offenses).

25 18 Pa.C.S. § 5903(a) (relating to obscene and other
26 sexual materials and performances) where the offense
27 constitutes a felony.

28 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

29 18 Pa.C.S. § 6318 (relating to unlawful contact with
30 minor) where the most serious underlying offense for which

1 the defendant contacted the minor is graded as a felony.

2 18 Pa.C.S. § 6320 (relating to sexual exploitation of
3 children).]

4 * * *

5 Section 3. Section 2316 of Title 44 is amended to read:

6 § 2316. DNA sample required upon arrest, conviction,
7 delinquency adjudication and certain ARD cases.

8 (a) [General rule] Conviction or adjudication.--A person who
9 is convicted or adjudicated delinquent for a felony [sex]
10 offense or other specified offense or who is or remains
11 incarcerated for a felony [sex] offense or other specified
12 offense on or after the effective date of this chapter shall
13 have a DNA sample drawn as follows:

14 (1) A person who is sentenced or receives a delinquency
15 disposition to a term of confinement for an offense covered
16 by this subsection shall have a DNA sample drawn upon intake
17 to a prison, jail or juvenile detention facility or any other
18 detention facility or institution. If the person is already
19 confined at the time of sentencing or adjudication, the
20 person shall have a DNA sample drawn immediately after the
21 sentencing or adjudication. If a DNA sample is not timely
22 drawn in accordance with this section, the DNA sample may be
23 drawn any time thereafter by the prison, jail, juvenile
24 detention facility, detention facility or institution.

25 (2) A person who is convicted or adjudicated delinquent
26 for an offense covered by this subsection shall have a DNA
27 sample drawn as a condition for any sentence or adjudication
28 which disposition will not involve an intake into a prison,
29 jail, juvenile detention facility or any other detention
30 facility or institution.

1 (3) Under no circumstances shall a person who is
2 convicted or adjudicated delinquent for an offense covered by
3 this subsection be released in any manner after such
4 disposition unless and until a DNA sample has been withdrawn.

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

6 (1) A person who has been convicted or adjudicated
7 delinquent for a felony [sex] offense or other specified
8 offense and who serves a term of confinement in connection
9 therewith after June 18, 2002, shall not be released in any
10 manner unless and until a DNA sample has been withdrawn.

11 (2) This chapter shall apply to incarcerated persons
12 convicted or adjudicated delinquent for a felony [sex]
13 offense prior to June 19, 2002.

14 (3) This chapter shall apply to incarcerated persons and
15 persons on probation or parole who were convicted or
16 adjudicated delinquent for other specified offenses prior to
17 the effective date of this paragraph[.] whether or not the
18 offense for which the person is currently imprisoned or under
19 probation or parole supervision is a felony offense or other
20 specified offense.

21 (c) Certain ARD cases.--Acceptance into ARD as a result of a
22 criminal charge for a felony [sex] offense or other specified
23 offense filed after June 18, 2002, may be conditioned upon the
24 giving of a DNA sample.

25 (c.1) Criminal charge or arrest.--A person who is charged or
26 arrested as an adult for a felony offense or other specified
27 offense shall have a DNA sample drawn as follows:

28 (1) An adult person arrested for a felony offense or
29 other specified felony shall provide a DNA sample and
30 fingerprints as required under this chapter immediately

1 following arrest, during booking or intake or as soon as
2 administratively practical after arrest, but no later than
3 prior to release on bail or pending trial or any other
4 physical release from confinement or custody.

5 (2) If for any reason a person subject to this chapter
6 did not have DNA samples and fingerprints taken under
7 paragraph (1) or otherwise bypasses the State or county
8 prison system, the court shall order the person to report
9 within five calendar days to prison, jail unit, juvenile
10 facility or other facility to be specified by the court to
11 provide DNA samples and fingerprints in accordance with this
12 chapter.

13 (d) Supervision of DNA samples.--All DNA samples taken
14 pursuant to this section shall be taken in accordance with
15 regulations promulgated by the State Police in consultation with
16 the Department of Corrections.

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

1 DNA sample for inclusion in the State DNA Data Base and the
2 State DNA Data Bank after being notified by authorized law
3 enforcement or corrections personnel.

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

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

9 § 2316.1. Collection from persons accepted from other
10 jurisdictions.

11 (a) Conditional acceptance.--When a person is accepted into
12 this Commonwealth for supervision from another jurisdiction
13 through the Interstate Compact for Supervision of Adult
14 Offenders or under any other reciprocal agreement with any
15 Federal, state or county agency, or any other provision of law,
16 whether or not the person is confined or released, the
17 acceptance shall be conditioned on the offender providing DNA
18 samples under this chapter if the offender has a record of any
19 past or present conviction or adjudication that is substantially
20 similar to a felony offense or other specified offense from any
21 Federal, state or military court. Additional DNA samples shall
22 not be required if a DNA sample is currently on file with CODIS
23 or the DNA record.

24 (b) Time period.--

25 (1) If the person accepted under subsection (a) is not
26 confined, the DNA sample and fingerprints required by this
27 chapter shall be provided within five calendar days after the
28 person reports to the supervising agent or within five
29 calendar days of notice to the person, whichever occurs
30 first. The person shall appear and the DNA samples shall be

1 collected in accordance with the provisions of this chapter.

2 (2) If the person accepted under subsection (a) is
3 confined, the person shall provide the DNA sample and
4 fingerprints required by this chapter as soon as practical
5 after receipt in a facility in this Commonwealth.

6 Section 5. Sections 2317(a)(1) and 2321(a) and (b) of Title
7 44 are amended to read:

8 § 2317. Procedures for withdrawal, collection and transmission
9 of DNA samples.

10 (a) Drawing of DNA samples.--

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

26 * * *

27 § 2321. Expungement.

28 (a) General rule.--

29 (1) A person whose DNA sample, record or profile has
30 been included in the State DNA Data Bank or the State DNA

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

11 (i) The State Police receive, for each conviction of
12 the person of an offense the basis of which that analysis
13 was or could have been included in the State DNA Data
14 Bank or the State DNA Data Base, a certified copy of a
15 final court order establishing that the conviction has
16 been overturned.

17 (ii) The person has not been convicted of an offense
18 the basis of which that analysis was or could have been
19 included in the State DNA Data Bank or the State DNA Data
20 Base and the State Police receive, for each charge
21 against the person the basis of which the analysis was or
22 could have been included in the State DNA Data Bank or
23 the State DNA Data Base, a certified copy of a final
24 court order establishing that the charge has been
25 dismissed or has resulted in an acquittal or that no
26 charge was filed within the applicable time period.

27 (iii) The State Police receive clear and convincing
28 proof that the DNA sample, record or profile was included
29 in the State DNA Data Bank or the State DNA Data Base by
30 mistake.

1 (2) For the purposes of this section, a court order is
2 not "final" if time remains for an appeal or application for
3 discretionary review with respect to the order.

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

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

11 (2) clear and convincing proof that the sample record or
12 profile was included by mistake.] receipt of the applicable
13 documents and other materials required under subsection (a).

14 * * *

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