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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 450 Session of  
2015

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INTRODUCED BY BOSCOLA, BROWNE, BREWSTER AND VULAKOVICH,  
FEBRUARY 12, 2015

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REFERRED TO JUDICIARY, FEBRUARY 12, 2015

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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 2326.1 (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 purposes of this section, a court order is not  
2           "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.