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ACT NO. 2018-147

S.B. No. 916

DNA—EVIDENCE—TESTS AND TESTING

AN ACT Amending Titles 42 (Judiciary and Judicial Procedure) and 44 (Law and Justice) of the Pennsylvania Consolidated Statutes, in post-trial matters, further providing for postconviction DNA testing; in DNA data and testing, further providing for policy, for definitions, for powers and duties of State Police, for State DNA Data Base, for State DNA Data Bank, for State Police recommendation of additional offenses, for procedural compatibility with FBI and for DNA sample required upon conviction, delinquency adjudication and certain ARD cases, providing for collection from persons accepted from other jurisdictions and further providing for procedures for withdrawal, collection and transmission of DNA samples, for procedures for conduct, disposition and use of DNA analysis, for DNA data base exchange and for expungement.

The General Assembly finds and declares as follows:

- (1) Postconviction DNA testing has exonerated wrongfully convicted individuals and identified real perpetrators of crimes.
- (2) To the extent possible, DNA testing of evidence before trial is encouraged to help prevent wrongful convictions and to lead to earlier detection and conviction of actual perpetrators.

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

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

<< PA ST 42 Pa.C.S.A. § 9543.1 >>

§ 9543.1. Postconviction DNA testing

(a) Motion.—

- (1) An individual convicted of a criminal offense in a court of this Commonwealth ~~and serving a term of imprisonment or awaiting execution because of a sentence of death~~ may apply by making a written motion to the sentencing court **at any time** for the performance of forensic DNA testing on specific evidence that is related to the investigation or prosecution that resulted in the judgment of conviction.
- (2) The evidence may have been discovered either prior to or after the applicant's conviction. The evidence shall be available for testing as of the date of the motion. If the evidence was discovered prior to the applicant's conviction,

the evidence shall not have been subject to the DNA testing requested because the technology for testing was not in existence at the time of the trial or the applicant's counsel did not seek testing at the time of the trial in a case where a verdict was rendered on or before January 1, 1995, **or the evidence was subject to the testing, but newer technology could provide substantially more accurate and substantially probative results**, or the applicant's counsel sought funds from the court to pay for the testing because his client was indigent and the court refused the request despite the client's indigency.

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

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

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

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

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

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

(iii) in a capital case, a mitigating circumstance under section 9711(e)(7) under the circumstances set forth in section 9711(c)(1)(iv).

(b) Notice to the Commonwealth.—

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

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

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

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

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

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

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

(ii) in a capital case:

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

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

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

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

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

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

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

(C) in a capital case, a mitigating circumstance under section 9711(e)(7) under the circumstances set forth in ~~subsection (e)(1)(iv)~~ **section 9711(c)(1)(iv)**.

(d) Order.—

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

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

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

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

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

- (i) would establish the applicant's actual innocence of the offense for which the applicant was convicted;
- (ii) in a capital case, would establish the applicant's actual innocence of the charged or uncharged conduct constituting an aggravating circumstance under section 9711(d) if the applicant's exoneration of the conduct would result in vacating a sentence of death; or
- (iii) in a capital case, would establish a mitigating circumstance under section 9711(e)(7) under the circumstances set forth in ~~subsection (e)(1)(iv)~~ **section 9711(c)(1)(iv)**.

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

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

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

(e) Testing procedures.—

(1) Any DNA testing ordered under this section shall be conducted by:

- (i) a laboratory mutually selected by the Commonwealth and the applicant;
- (ii) **a laboratory selected by the court that ordered the testing** if the Commonwealth and the applicant are unable to agree on a laboratory, ~~a laboratory selected by the court that ordered the testing~~ ; or
- (iii) if the applicant is indigent, the testing shall be conducted by the Pennsylvania State Police or, at the Pennsylvania State Police's sole discretion, by a laboratory designated by the Pennsylvania State Police.

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

- (i) by the applicant; or
- (ii) in the case of an applicant who is indigent, by the Commonwealth of Pennsylvania.

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

(4) If testing is performed by a private laboratory and a DNA database search is anticipated, the applicant shall ensure that the chosen laboratory is accredited by an accreditation body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Agreement that is designated by the Federal Bureau of Investigation

in accordance with 34 U.S.C. § 12591 (relating to quality assurance and proficiency testing standards), that requires conformance to forensic science requirements and that the accreditation include DNA testing, and is compliant with Federal Bureau of Investigation quality assurance standards.

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

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

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

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

(f) Posttesting procedures.—

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

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

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

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

(5) When testing is conducted by a private laboratory, a court may order a public laboratory with access to CODIS to take the necessary measures to ensure the DNA profile obtained from probative biological material from crime scene evidence can be uploaded to CODIS by the public laboratory. Necessary measures may include requiring the public laboratory to conduct a review of the private laboratory's facilities or records to ensure that the private laboratory complies with Federal Bureau of Investigation requirements regarding CODIS. If the private laboratory meets Federal Bureau of Investigation and CODIS requirements, the court may order the public laboratory to upload the DNA profile to determine whether the profile matches a profile of a known individual or a profile from an unsolved crime. The DNA profile submitted to the databases must comply with the Federal Bureau of Investigation requirements for the uploading of DNA profiles to CODIS, and the Commonwealth shall take all reasonable measures to ensure that the testing complies with the requirements.

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

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

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

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

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

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

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

“Applicant.” The individual who files a motion under subsection (a).

“CODIS.” The Combined DNA Index System administered by the Federal Bureau of Investigation that allows for the storage and exchange of DNA records submitted by Federal, State and local forensic DNA laboratories.

“DNA.” Deoxyribonucleic acid.

“NDIS.” The National DNA Index System which is the national DNA database system of DNA records and meets Federal quality assurance and privacy standards.

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

Section 2. Sections 2302, 2303, 2311(2), 2312, 2313, 2314, 2315 and 2316 of Title 44 are amended to read:

<< PA ST 44 Pa.C.S.A. § 2302 >>

§ 2302. Policy

The General Assembly finds and declares that:

(1) DNA data banks are **Forensic DNA testing is** an important tool in criminal investigations, in the exclusion of **excluding innocent** individuals who are the subject of criminal investigations or prosecutions and in ~~deterring and detecting recidivist acts~~ **detecting and deterring repeated crimes by the same individual.**

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

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

(4) It is ~~therefore~~ in the best interest of the Commonwealth to establish a DNA data base and a DNA data bank containing DNA samples submitted by individuals convicted of, adjudicated delinquent for or accepted into ARD for felony sex offenses and other specified offenses.

(5) It is in the best interest of the Commonwealth to authorize the State Police to use DNA analysis and to identify these individuals to a criminal justice agency in certain cases.

<< PA ST 44 Pa.C.S.A. § 2303 >>

§ 2303. Definitions

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

“Accredited forensic DNA laboratory.” A forensic DNA laboratory that has received accreditation by an accrediting body nationally recognized within the forensic science community in accordance with the FBI Quality Assurance Standards to perform forensic DNA testing and is in compliance with FBI Quality Assurance Standards.

“ARD.” Accelerated Rehabilitative Disposition.

“CODIS.” The term is derived from Combined DNA Index System, the Federal Bureau of Investigation's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories. **established and maintained by the Federal Bureau of Investigation.**

“Commissioner.” The Commissioner of the Pennsylvania State Police.

“Crime scene DNA profile.” A DNA profile derived from a DNA sample recovered from a victim, crime scene or item linked to a crime, which may have originated from a perpetrator.

“Criminal justice agency.” A criminal justice agency as defined in 18 Pa.C.S. § 9102 (relating to definitions).

“DNA.” Deoxyribonucleic acid. DNA is located in the cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification **located in the chromosomes or mitochondria of a living organism's cells.**

“DNA record.” A forensic DNA profile and identification information stored in the State DNA Data Base or the Combined DNA Index System for the purpose of ~~generating investigative leads~~ **identification** or supporting statistical interpretation of DNA test results. The term includes nuclear and mitochondrial typing. The DNA record is the result obtained from the DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value in establishing the identity of individuals. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the DNA profile of an individual.

“DNA sample.” A blood or tissue sample provided by any person with respect to offenses covered by this chapter or submitted to the Pennsylvania State Police laboratory pursuant to the former act of May 28, 1995 (1st Sp.Sess., P.L. 1009, No. 14), known as the DNA Detection of Sexual and Violent Offenders Act, to the former 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or to this chapter for analysis or storage, or both. **A sample of biological material suitable for forensic DNA testing.**

“FBI.” The Federal Bureau of Investigation.

“Felony sex offense.” A felony offense or an attempt, conspiracy or solicitation to commit a felony offense under any of the following:

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

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

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

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

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

~~18 Pa.C.S. § 6318 (relating to unlawful contact with minor) where the most serious underlying offense for which the defendant contacted the minor is graded as a felony.~~

~~18 Pa.C.S. § 6320 (relating to sexual exploitation of children).~~

Any offense graded as a felony requiring registration under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders).

“Forensic DNA laboratory.” A laboratory that performs forensic DNA testing for the purposes of identification.

“Forensic DNA profile.” The data set derived from forensic DNA testing.

“Forensic DNA testing.” A test that applies techniques from molecular biology to analyze human deoxyribonucleic acid (DNA) to identify data which meets the requirements for inclusion in CODIS and the national DNA identification index system administered by the FBI.

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

“Fund.” The DNA Detection Fund reestablished in section 2335 (relating to DNA Detection Fund).

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

“Law enforcement identification purposes.” Assisting in the determination of the identity of an individual whose DNA is contained in a biological sample.

“Mitochondrial DNA analysis.” A method that applies techniques from molecular biology to analyze DNA found in the mitochondria of cells for the purpose of identification.

“Other specified offense.” Any of the following:

- (1) A felony offense, **other than a felony sex offense**.
- (2) An offense under 18 Pa.C.S. § 2910 (relating to luring a child into a motor vehicle or structure) or 3126 (relating to indecent assault) or an attempt to commit such an offense. **(Reserved)**.
- (3) An offense subject to 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders) **(Reserved)**.
- (4) An offense under 18 Pa.C.S. (relating to crimes and offenses) or 75 Pa.C.S. (relating to vehicles) that is graded as **a misdemeanor of the first degree**.
- (5) A misdemeanor offense requiring registration under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders).
- (6) An offense graded as a misdemeanor of the second degree under any of the following:
 - 18 Pa.C.S. § 2701 (relating to simple assault).
 - 18 Pa.C.S. § 2903 (relating to false imprisonment).
 - 18 Pa.C.S. § 3127 (relating to indecent exposure).
 - 18 Pa.C.S. Ch. 39 (relating to theft and related offenses).
 - 18 Pa.C.S. § 4105 (relating to bad checks).
 - 18 Pa.C.S. § 4106 (relating to access device fraud).
 - 18 Pa.C.S. § 4952 (relating to intimidation of witnesses or victims).
 - 18 Pa.C.S. § 4953 (relating to retaliation against witness, victim or party).
 - 18 Pa.C.S. § 4958 (relating to intimidation, retaliation or obstruction in child abuse cases).
 - 18 Pa.C.S. § 5121 (relating to escape).
 - 18 Pa.C.S. § 5126 (relating to flight to avoid apprehension, trial or punishment).
 - 18 Pa.C.S. § 5131 (relating to recruiting criminal gang members).
 - 18 Pa.C.S. § 5510 (relating to abuse of corpse).
 - 18 Pa.C.S. Ch. 55 Subch. B (relating to cruelty to animals).
 - 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

“State Police.” The Pennsylvania State Police.

“Y chromosome analysis.” A method that applies techniques from molecular biology to examine DNA found on the Y chromosome.

<< PA ST 44 Pa.C.S.A. § 2311 >>

§ 2311. Powers and duties of State Police

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

* * *

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

* * *

<< PA ST 44 Pa.C.S.A. § 2312 >>

§ 2312. State DNA Data Base

The State DNA Data Base is reestablished. It shall be administered by the State Police and provide DNA records to the FBI for storage and maintenance by CODIS. **A Statewide DNA Data Base is reestablished within the State Police to store forensic DNA profiles and records developed by or submitted to the State Police under the former DNA Act, the former provisions of 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this chapter, and to contribute forensic DNA profiles and records to CODIS and the national DNA identification index system.** The State DNA Data Base shall have the capability provided by computer software and procedures administered by the State Police to store and maintain DNA records **forensic DNA profiles and records** related to:

- (1) forensic casework;
- (2) convicted **or delinquency adjudicated** offenders required to provide a DNA sample under this chapter; and
- (3) anonymous DNA records used for **statistical** research or **on the frequency of DNA genotypes**, quality control **or the development of new DNA identification methods**.

<< PA ST 44 Pa.C.S.A. § 2313 >>

§ 2313. State DNA Data Bank

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

<< PA ST 44 Pa.C.S.A. § 2314 >>

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

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

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

- (1) The age, race and sex of those convicted from whom DNA samples were submitted upon conviction.
- (2) The fiscal impact on the State Police of collecting and testing DNA samples from persons convicted of or adjudicated delinquent for offenses.
- (3) The average length of time between the receipt of DNA samples from those convicted of offenses and the completion of forensic DNA testing of each of those categories of DNA samples.
- (4) Recommendations, if any, under this section for the inclusion of additional offenses for which DNA samples must be collected or recommendations for the removal of specific offenses from the categories requiring the collection of DNA samples from arrestees or persons convicted of crimes.

<< PA ST 44 Pa.C.S.A. § 2315 >>

§ 2315. Procedural compatibility with FBI

The DNA identification system as established by the State Police shall be compatible **comply** with the procedures specified by the FBI **Quality Assurance Standards for forensic DNA testing laboratories and DNA data basing laboratories and CODIS policies and procedures**, including use of comparable test procedures, laboratory equipment, supplies and computer software.

<< PA ST 44 Pa.C.S.A. § 2316 >>

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

(a) **General rule.**—A person who is convicted or adjudicated delinquent for a felony sex offense or other specified offense or who is or remains incarcerated for a felony sex offense or other specified offense on or after the effective date of this chapter shall have a DNA sample ~~drawn~~ **collected** as follows:

- (1) A person who is sentenced or receives a delinquency disposition to a term of confinement for an offense covered by this subsection shall have a DNA sample ~~drawn~~ **collected** upon intake to a prison, jail or juvenile detention facility or any other detention facility or institution. If the person is already confined at the time of sentencing or adjudication, the person shall have a DNA sample ~~drawn~~ **collected** immediately after the sentencing or adjudication. If a DNA sample is not timely ~~drawn~~ **collected** in accordance with this section, the DNA sample may be ~~drawn~~ **collected** any time thereafter by the prison, jail, juvenile detention facility, detention facility or institution.
- (2) A person who is convicted or adjudicated delinquent for an offense covered by this subsection shall have a DNA sample ~~drawn~~ **collected** as a condition for any sentence or adjudication which disposition will not involve an intake into a prison, jail, juvenile detention facility or any other detention facility or institution.
- (3) Under no circumstances shall a person who is convicted or adjudicated delinquent for an offense covered by this subsection be released in any manner after such disposition unless and until a DNA sample ~~has been withdrawn~~ **and fingerprints have been collected**.

(b) Condition of release, probation or parole.—

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

(2) This chapter shall apply to incarcerated persons convicted or adjudicated delinquent for a felony sex offense **or other specified offense** prior to June 19, 2002.

(3) ~~This~~ **The following shall apply:**

(i) Except as provided under subparagraph (ii), this chapter shall apply to incarcerated persons and persons on probation or parole who were convicted or adjudicated delinquent for **a felony sex offense** or other specified offenses prior to the effective date of this paragraph.

(ii) Subparagraph (i) shall not apply to persons convicted or adjudicated delinquent of an offense enumerated under paragraph (4) or (6) of the definition of “other specified offense” in section 2303 (relating to definitions).

(c) Certain ARD cases.—Acceptance into ARD as a result of a criminal charge for a felony sex offense or other specified offense, **other than an offense enumerated under paragraph (4) or (6) of the definition of “other specified offense” in section 2303** filed after June 18, 2002, may be conditioned upon the ~~giving~~ **collection** of a DNA sample.

(d) Supervision of DNA samples.—All DNA samples ~~taken~~ **collected** pursuant to this section shall be ~~taken~~ **collected** in accordance with **rules**, regulations **and guidelines** promulgated by the State Police in consultation with the Department of Corrections.

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

(e) Definition.—As used in this section, the term “released” means any release, parole, furlough, work release, prerelease or release in any other manner from a prison, jail, juvenile detention facility or any other place of confinement.

Section 3. Title 44 is amended by adding a section to read:

<< PA ST 44 Pa.C.S.A. § 2316.1 >>

§ 2316.1. Collection from persons accepted from other jurisdictions

(a) **Conditional acceptance.**—When a person is accepted into this Commonwealth for supervision from another jurisdiction under the Interstate Compact for Supervision of Adult Offenders, other reciprocal agreement with a Federal, state or county agency, or a provision of law, whether or not the person is confined or released, the acceptance shall be conditioned on the offender providing a DNA sample under this chapter and fingerprints if the offender has a past or present Federal, state or military court conviction or adjudication that is equivalent to a felony sex offense or other specified offense as determined by the Pennsylvania Board of Probation and Parole. Additional DNA samples may be collected but shall not be required if the supervising agency or place of confinement confirms that a DNA sample is currently on file with the State DNA Data Bank and a DNA record for the person exists in the State DNA Data Base.

(b) **Time period.**—

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

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

Section 4. Sections 2317 heading, (a) and (b), 2318(a) and (c), 2319 and 2321 of Title 44 are amended to read:

<< PA ST 44 Pa.C.S.A. § 2317 >>

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

(a) **~~Drawing~~ Collection of DNA samples.**—

(1) Each DNA sample required to be ~~drawn~~ **collected** pursuant to ~~section~~ **sections** 2316 (relating to DNA sample required upon conviction, delinquency adjudication and certain ARD cases) ~~from persons who are incarcerated or confined shall be drawn at the place of incarceration or confinement as provided for in section 2316. DNA samples from persons who are not ordered or sentenced to a term of confinement shall be drawn at a prison, jail unit, juvenile facility or other facility to be specified by the court. Only~~ **and 2316.1 (relating to collection from persons accepted from other jurisdictions) shall be collected as follows:**

(i) **DNA samples from persons who are incarcerated or confined shall be collected at the place of incarceration or confinement as provided in section 2316 or 2316.1.**

(ii) **DNA samples from persons who are not ordered to be or are not currently incarcerated or confined shall be collected as provided in section 2316 or 2316.1 or at a prison, jail unit, juvenile facility or other facility specified by the court or supervising agency.**

(iii) **For DNA blood samples, only** those individuals qualified to draw DNA **blood** samples in a medically approved manner shall draw a DNA **blood** sample to be submitted for DNA analysis. ~~Such sample~~

(iv) **DNA samples** and the set of fingerprints provided for in paragraph (2) shall be delivered to the State Police within 48 hours of ~~drawing~~ **collecting** the sample.

(2) In addition to the DNA sample, a full set of fingerprints shall be taken from the person from whom the DNA sample is being ~~drawn~~ **collected** for the exclusive purpose of verifying the identity of such person.

(b) Limitation on liability.—Persons authorized to draw **collect** DNA samples under this section shall not be criminally liable for withdrawing a DNA sample and transmitting test results pursuant to this chapter if they perform these activities in good faith and shall not be civilly liable for such activities when the person acted in a reasonable manner according to generally accepted medical and other professional practices.

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<< PA ST 44 Pa.C.S.A. § 2318 >>

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

(a) Procedures.—

(1) The State Police shall ~~prescribe~~ **promulgate, as necessary, rules, regulations and guidelines to implement this chapter, including** procedures to be used in the collection, submission, identification, analysis, storage and disposition of DNA samples and ~~typing results of~~ **forensic DNA profiles and records from** DNA samples submitted under the former DNA Act, former **provisions of** 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this chapter.

(2) The ~~DNA sample typing~~ results **of forensic DNA testing** shall be securely stored in the State DNA Data Base, and records of testing shall be retained on file with the State Police consistent with the procedures established by the FBI- **Quality Assurance Standards for forensic DNA testing laboratories and DNA data basing laboratories and CODIS policies and procedures.**

(3) These procedures shall also include quality assurance guidelines ~~to ensure that DNA identification records meet standards for~~ **for samples and forensic DNA profiles and records from accredited forensic DNA** laboratories which submit DNA records to the State DNA Data Base.

(4) The rules, regulations and guidelines shall address the following:

(i) Verification of accreditation.

(ii) Compliance with FBI Quality Assurance Standards, including continuing education requirements for the personnel of forensics DNA testing laboratories.

* * *

(c) Use of tests.—

(1) Except as otherwise provided in section 2319(c) (relating to DNA data base exchange), the tests to be performed on each DNA sample shall be used only for law enforcement identification purposes or to assist in the recovery or identification of human remains from disasters or for other humanitarian identification purposes, including identification of missing persons.

(2) A DNA sample or DNA record acquired under this chapter may not be used for human behavioral genetic research or for non-law enforcement or nonhumanitarian identification purposes.

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<< PA ST 44 Pa.C.S.A. § 2319 >>

§ 2319. DNA data base exchange

(a) Receipt of DNA samples by State Police.—It shall be the duty of the State Police to receive :

(1) Receive and store DNA samples, to store, to perform analysis **forensic DNA testing** or to contract for DNA typing analysis **testing** with a qualified **an accredited forensic** DNA laboratory that meets the guidelines **rules, regulations and guidelines under section 2318 (relating to procedures for conduct, disposition and use of DNA analysis)** as established by the State Police, to classify and to file the DNA record of identification characteristic **PROFILES OF** .

(2) Store forensic DNA records from DNA samples submitted under the former DNA Act, former **provisions of** 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this chapter and to make such information available as provided in this section.

(a.1) Contracts.—The State Police may contract out the storage of DNA typing analysis and may contract out **for** DNA typing analysis **testing** to a qualified **an accredited forensic** DNA laboratory that meets **the rules, regulations and guidelines** as established by the State Police **under section 2318**. The results of the DNA profile of individuals **DNA records** in the State DNA Data Base shall be made available:

(1) to criminal justice agencies or approved crime **CODIS-participating DNA** laboratories which serve these agencies;
or

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

(b) Methods of obtaining information.—The State Police shall adopt **promulgate, as necessary, rules, regulations and** guidelines governing the methods of obtaining information from the State DNA Data Base and CODIS and procedures for verification of the identity and authority of the requester.

(c) Population data base.—

(1) The State Police may establish a separate population data base comprised of **forensic** DNA samples **profiles** obtained under this chapter after all personal identification is removed.

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

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

<< PA ST 44 Pa.C.S.A. § 2321 >>

§ 2321. Expungement

(a) General rule.—A person whose DNA sample, record or profile has been included in the State DNA Data Bank or the State DNA Data Base pursuant to the former DNA Act, former 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this chapter may request expungement on the grounds that the conviction or delinquency adjudication on which the authority for including that person's DNA sample, record or profile was based has been reversed and the case dismissed

or that the DNA sample, record or profile was included in the State DNA Data Bank or the State DNA Data Base by mistake.

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

- (1) receipt of a written request for expungement pursuant to this section and a certified copy of the final court order reversing and dismissing the conviction; or
- (2) clear and convincing proof that the sample record or profile was included by mistake.

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

(b) Removal by request.—A person whose DNA sample, record or profile has been included in the State DNA Data Bank or the State DNA Data Base under the former DNA Act, former provisions of 42 Pa.C.S. Ch. 47 or this chapter may file a written request with the State Police that the DNA sample, record or profile be removed on the grounds that the DNA sample, record or profile was included in the State DNA Data Bank or the State DNA Data Base by mistake. If the State Police grants the request, the request shall be processed at no cost and the State Police shall provide written notice of the removal to the person and his attorney of record, if any, within 60 days after destroying the DNA sample, record or profile. If the State Police denies the request, the person may request expungement of the DNA sample, record or profile under subsection (b.1).

(b.1) Expungement by court order.—The following shall apply:

- (1) Except as provided under paragraph (2), a person may request the court of common pleas of the county where the original charges were filed to issue an order directing the expungement of the DNA sample, record or profile pertaining to the person in the State DNA Data Bank or the State DNA Data Base in the following instances:
 - (i) the conviction or delinquency adjudication for which the person's DNA sample was collected has been reversed and no appeal is pending;
 - (ii) the person was granted an unconditional pardon for the crime for which the DNA sample was taken; or
 - (iii) the DNA sample, record or profile was included in the State DNA Data Bank or State DNA Data Base by mistake and the State Police has erroneously refused to grant the person's request for removal under subsection (b).
- (2) Paragraph (1) shall not apply if the person has been convicted or adjudicated delinquent for any other crime for which a DNA sample is required to be collected under this chapter.
- (3) The court shall give 10 days' prior notice to the district attorney of the county where the original charges were filed of an application for expungement under this subsection.
- (4) Notwithstanding any other law or rule of court, the court shall have no authority to order the expungement of a DNA sample, record or profile in the State DNA Data Bank or the State DNA Data Base except as provided under this subsection.

(b.2) Expungement reporting.—The court shall forward a certified copy of an expungement order issued under subsection (b.1) to the State Police.

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

(1) Upon receipt of an expungement order issued under subsection (b.1), the State Police shall destroy the DNA sample, record or profile in the State DNA Data Bank and the State DNA Data Base pertaining to a person identified in an expungement order.

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

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

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

(c) Limitations.—

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

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

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

Section 5. This act shall take effect as follows:

(1) This section shall take effect immediately.

(2) The amendment of 42 Pa.C.S. § 9543.1 shall take effect in 60 days.

(3) The addition of paragraphs (4) and (6) of the definition of “other specified offense” in 44 Pa.C.S. § 2303 shall take effect December 1, 2019.

(4) The remainder of this act shall take effect in 360 days.

Approved October 24, 2018.