

**CHAPTER 58. DNA DETECTION OF SEXUAL AND VIOLENT
OFFENDERS ACT**

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Authority

The provisions of this Chapter 58 issued under the DNA Detection of Sexual and Violent Offenders Act (35 P. S. §§ 7651.101—7651.1102), unless otherwise noted.

Source

The provisions of this Chapter 58 adopted June 22, 2001, effective June 23, 2001, 31 Pa.B. 3312, unless otherwise noted.

GENERAL STATEMENTS AND DEFINITIONS

§ 58.1. Definitions.

The following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

Act—The DNA Detection of Sexual and Violent Offenders Act (35 P. S. §§ 7651.101—7651.1102).

CODIS—*Combined DNA Index System*—The FBI's National DNA identification index system that allows the storage and exchange of DNA records sub-

mitted by state and local forensic DNA laboratories under the DNA Identification Act of 1994 (Pub. L. 103-322, Title XXI, 6210301, September 13, 1994, 108 Stat. 2069).

Commissioner—The Commissioner of the State Police.

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.

DNA Databank—The repository of DNA samples obtained from offenders covered by the act.

DNA Database—The CODIS computerized collection of DNA profiles obtained from DNA samples.

Database lab—The laboratory which processes DNA samples to obtain a DNA profile on each sample.

DNA record—DNA identification information stored in the SDIS or CODIS—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 the act or submitted to the State Police Laboratory under the act for analysis or storage, or both.

DOC—The Department of Corrections.

EDTA—Ethylene diamine tetracetic acid. An anticoagulant/preservative chemical used to prevent clotting and to preserve blood samples contained in blood collection tubes.

FBI—Federal Bureau of Investigation.

Felony sex offense—A felony offense, or an attempt, conspiracy or solicitation to commit a felony offense, under one or more of the following:

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

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

Juvenile detention facility—A resident facility or shelter care program approved by the Department of Public Welfare for the treatment of adjudicated juveniles under 42 Pa.C.S. § 6327 (relating to place of detention).

Juvenile facility—A facility licensed or approved to receive an adjudicated delinquent for disposition under 42 Pa.C.S. Chapter 63 (relating to juvenile matters).

LDIS—Local DNA Identification System—A system consisting of DNA profiles generated at a local law enforcement laboratory.

NDIS—National DNA Identification System—A system operated by the FBI that is comprised of DNA profiles received from the various SDIS.

Other specified offenses—An offense, or an attempt, conspiracy or solicitation to commit an offense, under one or more of the following:

- (i) 18 Pa.C.S. § 2502 (relating to murder).
- (ii) 18 Pa.C.S. § 2709(c)(2)(ii) (relating to harassment and stalking).
- (iii) 18 Pa.C.S. § 3126 (relating to indecent assault).

Released—Probation, parole, furlough, work release, prerelease or release in any other manner from a prison, jail, juvenile detention facility or any other place of confinement.

SDIS—State DNA Identification System—An individual state DNA profile system comprised of the DNA profiles of convicted offenders and those indices described in NDIS.

SID—State Identification Number—A unique number assigned to each individual whose fingerprints are placed into the Central Repository of the State Police. The SID is used to track individuals for crimes which they commit, no matter how many subsequent fingerprint cards are submitted.

§ 58.2. Authority of law enforcement officers.

The General Assembly has declared that nothing contained in the act shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store and utilize DNA samples for law enforcement purposes. See section 506 of the act (35 P. S. § 7651.506). Failure to comply with this subchapter does not form the basis for suppression of otherwise admissible evidence.

§ 58.3. Limitation on liability.

Persons authorized to draw DNA samples will not be criminally or civilly liable if they perform these functions in good faith and in accordance with accepted medical practice.

§ 58.4. Reasonable use of force.

Authorized law enforcement and corrections personnel and employees may employ reasonable force when an individual refuses to submit to DNA testing. The personnel and employees will not be criminally or civilly liable for the use of reasonable force. Authorized law enforcement and corrections personnel and employees include contractors and other agents whose duties encompass implementation of the act.

§ 58.5. Confidentiality of records.

DNA profiles and samples submitted to the State Police pursuant to the act shall be treated as confidential. Violations or suspected violations of confidentiality of DNA Database information, as described in section 501 of the act (35 P. S. § 7651.501), shall be reported to the Director of the Laboratory Division. Criminal and civil penalties are described in sections 502 and 503 of the act (35 P. S. § 7651.502 and 7651.503).

GENERAL PROVISIONS**§ 58.21. Procedures for regulating the collection, receipt and processing of DNA samples in the DNA database laboratory.**

(a) The responsibility to ensure collection of DNA samples for the DNA Databank is as follows:

(1) DOC will have the responsibility when the offender is sentenced to incarceration within a State correctional facility.

(2) The director of the youth development center or juvenile detention facility will have the responsibility when the offender is sentenced to detainment within a State juvenile correctional facility.

(3) The warden or other official in charge of a county or local correctional facility or the administrator of a county juvenile detention center or other juvenile facility will have the responsibility when the offender is sentenced to incarceration within such correctional facilities.

(4) Individuals given a disposition, other than incarceration, will be the responsibility of the chief county adult or juvenile probation/parole officer. The chief county adult or juvenile probation/parole officer shall also be responsible for transportation of the individual to the prison, jail, juvenile detention facility, or another detention facility or institution. The DNA sample is to be drawn at a prison, jail unit, juvenile facility or other facility designated by the court before release.

(b) DNA samples shall be drawn by persons authorized to do so under Pennsylvania law.

(c) For individuals convicted or adjudicated delinquent prior to November 28, 1996, DNA samples shall be drawn prior to release. Collection of DNA samples shall be prioritized by release/parole date. These DNA samples are to be collected after scheduling a compatible time for receipt by the DNA Database Laboratory.

(d) For individuals convicted or adjudicated delinquent after November 28, 1996, DNA samples shall be drawn at time of intake. To prevent duplication of draw and to ensure a DNA sample is collected, a DNA Sample Tracking Sheet shall accompany the inmate and be placed into the inmate's file.

(e) Prior to collecting the DNA sample, the responsible persons designated under subsection (a) shall determine that the offender is subject to section 306 of the act (35 P. S. § 7651.306). The SID Number associated with an inmate's commitment and sentencing documentation will be used as a tracking number for this purpose. A copy of the DNA Sample Tracking Sheet will be retained by the facility responsible for collecting the DNA sample. A copy of the DNA Sample Tracking Sheet shall be transmitted to the Board of Probation and Parole at the time a recommendation is made for release consideration. A copy of the DNA Sample Tracking Sheet shall also be retained by the Board of Probation and Parole.

(f) DNA samples shall be collected using State Police provided DNA Database Kits. DNA samples will consist of an EDTA tube of blood unless a special written request to the DNA Database Laboratory is made for permission to submit a different tissue sample. Requests shall be in writing, specify good cause, and be subject to verification and approval by the DNA Database Laboratory prior to transmittal of the sample.

(g) The associated forms for the DNA Database Kit shall be completed in full prior to submission. The imprinting of the offender's left and right thumbs, by means of an inked impression in the spaces indicated on the DNA Database Collection Card, shall also be completed. Additionally, a Pennsylvania State Police Arrest and Institution Fingerprint card shall be completed.

(h) The completed kit, DNA Database Collection Card and the Pennsylvania State Police Arrest and Institution Fingerprint Card shall be delivered to the State Police DNA Database Laboratory within 48 hours of collecting the DNA sample.

(i) Receipt of DNA samples in the DNA Databank will apply with the following.

(1) DNA samples received in person, by mail, by parcel post or by a bonded courier service will be accompanied by a DNA Database Sample Inventory and Receipt Form. When received in person, the DNA Database Laboratory will verify that the DNA samples delivered are the same DNA samples as listed on the DNA Database Sample Inventory and Receipt Form. The DNA Database Laboratory will sign and date the chain of custody portion of the form, indicate the manner of receipt and ensure that the correctional officer or courier signs in the appropriate space. The original of this form will be maintained in the DNA Database Laboratory and a copy will be given to the correctional officer or courier as a delivery receipt. A copy of the form will also be mailed to the submitting agency. After inventory of the DNA samples, each DNA sample will receive a unique DNA bar code number. The number will then be entered into a Sample Tracking System.

(2) Associated paperwork with the DNA Database Kit will receive the same bar code number and be placed into the DNA Sample File that is generated at this time.

(3) The DNA Sample File will not contain any sizing information or DNA typing data.

(4) Upon receipt and after assignment of a unique bar code number, the DNA Database Laboratory will break the seal and closely examine each individual DNA sample.

(5) The DNA sample and kit are further processed, and the kit is securely stored.

(6) The DNA Database Laboratory will ensure that the submitting agency is contacted and notified if a DNA sample must be redrawn. The DNA Database Laboratory will also track the DNA sample to ensure it is redrawn as requested.

(7) A DNA Sample Destruction Form will be completed if the DNA Database Laboratory determines that a DNA sample has been received from an individual not covered by the act, and the DNA sample destroyed.

(8) DNA samples in the DNA Databank will be retained in accordance with CODIS standards.

(9) Lab files will not contain offender names. The only identifier will be the unique bar code number.

§ 58.22. Access to data and information.

General operating procedures are as follows:

(1) Access to information in the DNA Database and DNA Databank (including personal identifying information) shall be made available under one of the following:

(i) To criminal justice agencies or approved crime laboratories which serve these agencies.

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

(2) The identity of any person or agency making a request for information shall be verified prior to the release of any information. Requests made through CODIS will be deemed to have met this requirement. Verification shall be made by means of a return phone call to the requestor's supervisor to establish authority to receive the information and the purpose for the request.

(3) Requests for information will only be accepted, after verification, from criminal justice agencies, or approved governmental forensic science laboratories, and only upon written or electronic request and in furtherance of an official investigation of a criminal offense or offender or suspected offender.

(4) A request may be made by personal contact, mail or electronic means. A Request for Database Search Form shall be completed.

(5) The name of the requestor and the purpose for which the information is requested shall be maintained on file in the DNA Database Laboratory.

(6) Only when a DNA profile or sample supplied by the requestor satisfactorily matches a profile in CODIS will the existence of the data be confirmed, or identifying information be disseminated.

(7) The following will be denied:

(i) Requests that do not meet the criteria of paragraphs (1)—(6).

(ii) Requests from private forensic laboratories.

§ 58.23. Prohibition on disclosure.

Violations or suspected violations of disclosure of DNA Database information shall be reported to the Director of the Laboratory Division. Violations are as follows:

(1) *Disclosure.* A person who by virtue of employment or official position or any person contracting to carry out any functions under the act, including

any officers, employees and agents of the contractor, who has possession of or access to individually identifiable DNA information contained in SDIS or in the State DNA Databank may not disclose it in any manner to any person or agency not authorized to receive it knowing that that person or agency is not authorized to receive it.

(2) *Obtaining Information.* A person may not obtain individually identifiable DNA information from SDIS or the State DNA Databank without authorization to do so.

§ 58.24. Criminal penalties.

(a) *Disclosure.* A person who by virtue of employment or official position or any person contracting to carry out any functions under the act, including any officers, employees and agents of the contractor, who has possession of or access to individually identifiable DNA information contained in SDIS or in the State DNA Databank and who for pecuniary gain for the person or for any other person discloses it in any manner to any person or agency not authorized to receive it commits a misdemeanor of the first degree.

(b) *Obtaining information.* A person who violates section 501(b) of the act (35 P. S. § 7651.501(b)) commits a misdemeanor of the first degree.

§ 58.25. Civil actions.

(a) *Injunctions.* The State Police or any other aggrieved individual or agency may institute an action in a court of proper jurisdiction against any person, agency or organization to enjoin any criminal justice agency, noncriminal justice agency, organization or individual from violating the provisions of the act.

(b) *Action for damages.*

(1) A person aggrieved by a knowing violation of section 501 of the act (35 P. S. § 7651.501) shall have the substantive right to bring an action for damages by reason of the violation in a court of competent jurisdiction.

(2) A person found by the court to have been aggrieved by a knowing violation of section 501 of the act shall be entitled to actual and real damages of not less than \$100 for each violation and to reasonable costs of litigation and attorney fees. Exemplary and punitive damages of not less than \$1,000 nor more than \$10,000 shall be imposed for any violation of section 501 of the act.

FORMS

§ 58.31. Forms.

The reporting forms and documents referred to in this chapter are supplied by the State Police.

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