

No. 2002-57

AN ACT

SB 1089

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for DNA testing of certain offenders; reestablishing the State DNA Data Base and the State DNA Data Bank; further providing for duties of the Pennsylvania State Police; imposing costs on certain offenders; reestablishing the DNA Detection Fund; further providing for the apportionment of liability and damages; imposing penalties; and making a repeal.

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

Section 1. Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a chapter to read:

CHAPTER 47
DNA DATA AND TESTING

Subchapter

- A. Preliminary Provisions
- B. General Provisions
- C. Enforcement and Other Provisions
- D. Miscellaneous Provisions

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

4701. Scope of chapter.

4702. Policy.

4703. Definitions.

§ 4701. Scope of chapter.

This chapter provides for DNA detection of sexual and violent offenders.

§ 4702. Policy.

The General Assembly finds and declares that:

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

(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 this 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 felony sex offenses and other specified offenses.

§ 4703. 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:

“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.

“Commissioner.” The Commissioner of the Pennsylvania 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 record.” DNA identification information stored in the State DNA Data Base or the Combined DNA Index System for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. 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, or to this chapter for analysis or storage, or both.

“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(c)(1)(iii) and (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 or communication with minor) where the most serious underlying offense for which the

defendant contacted or communicated with the minor is graded as a felony.

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

“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 4735 (relating to DNA Detection Fund).

“Other specified offense.” An offense or an attempt, conspiracy or solicitation to commit an offense under any of the following:

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

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

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

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

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

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

18 Pa.C.S. § 3701 (relating to robbery).

“State Police.” The Pennsylvania State Police.

SUBCHAPTER B GENERAL PROVISIONS

Sec.

4711. Powers and duties of State Police.

4712. State DNA Data Base.

4713. State DNA Data Bank.

4714. State Police recommendation of additional offenses.

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4716. DNA sample required upon conviction, delinquency adjudication and certain ARD cases.

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4718. Procedures for conduct, disposition and use of DNA analysis.

4719. DNA data base exchange.

4720. Cancellation of authority to access or exchange DNA records.

4721. Expungement.

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§ 4711. Powers and duties of State Police.

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

(1) Be responsible for the policy management and administration of the State DNA identification record system to support law enforcement agencies and other criminal justice agencies.

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

(3) Provide for liaison with the FBI and other criminal justice agencies in regard to the Commonwealth's participation in CODIS or in any DNA data base designated by the State Police.

§ 4712. 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. 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 related to:

(1) forensic casework;

(2) convicted offenders required to provide a DNA sample under this chapter; and

(3) anonymous DNA records used for research or quality control.

§ 4713. State DNA Data Bank.

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

§ 4714. State Police recommendation of additional offenses.

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 offenders.

§ 4715. Procedural compatibility with FBI.

The DNA identification system as established by the State Police shall be compatible with the procedures specified by the FBI, including use of comparable test procedures, laboratory equipment, supplies and computer software.

§ 4716. 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 and is or remains incarcerated on or after the effective date of this chapter shall have a DNA sample drawn 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 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 immediately after the sentencing or adjudication. If a DNA sample is not timely drawn in accordance with this section, the DNA sample may be drawn 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 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.

(b) Condition of release.—

(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 on or after the effective date of this chapter shall not be released in any manner unless and until a DNA sample has been withdrawn.

(2) This chapter shall apply to incarcerated persons convicted or adjudicated delinquent for a felony sex offense prior to the effective date of this chapter.

(c) Certain ARD cases.—Acceptance into ARD as a result of a criminal charge for a felony sex offense or other specified offense filed on or after the effective date of this section may be conditioned upon the giving of a DNA sample.

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

(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.

§ 4717. Procedures for withdrawal, collection and transmission of DNA samples.

(a) Drawing of DNA samples.—

(1) Each DNA sample required to be drawn pursuant to section 4716 (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 4716. 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 those individuals qualified to draw DNA samples in a medically approved manner shall draw a DNA sample to be submitted for DNA analysis. Such sample and the set of fingerprints provided for in paragraph (2) shall be delivered to the State Police within 48 hours of drawing 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 for the exclusive purpose of verifying the identity of such person.

(b) **Limitation on liability.**—Persons authorized to draw 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.

(c) **Reasonable use of force.**—Duly authorized law enforcement and corrections personnel may employ reasonable force in cases where an individual refuses to submit to DNA testing authorized under this chapter, and no such employee shall be criminally or civilly liable for the use of reasonable force.

§ 4718. Procedures for conduct, disposition and use of DNA analysis.

(a) **Procedures.**—The State Police shall prescribe procedures to be used in the collection, submission, identification, analysis, storage and disposition of DNA samples and typing results of DNA samples submitted under the former DNA Act or this chapter. The DNA sample typing results 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. These procedures shall also include quality assurance guidelines to ensure that DNA identification records meet standards for laboratories which submit DNA records to the State DNA Data Base.

(b) **Contracting.**—The State Police are authorized to contract with third parties for purposes of this chapter.

(c) **Use of tests.**—Except as otherwise provided in section 4719(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.

(d) **Restrictions and requirements on contracting party.**—Any other party contracting to carry out the functions of this chapter shall be subject to the same restrictions and requirements of this chapter, insofar as applicable, as the State Police as well as any additional restrictions imposed by the State Police.

§ 4719. DNA data base exchange.

(a) **Receipt of DNA samples by State Police.**—It shall be the duty of the State Police to receive DNA samples, to store, to perform analysis or to contract for DNA typing analysis with a qualified DNA laboratory that meets the guidelines as established by the State Police, to classify and to file the DNA record of identification characteristic profiles of DNA samples submitted under the former DNA Act or this chapter and to make such

information available as provided in this section. The State Police may contract out the storage of DNA typing analysis and may contract out DNA typing analysis to a qualified DNA laboratory that meets guidelines as established by the State Police. The results of the DNA profile of individuals in the State DNA Data Base shall be made available:

(1) to criminal justice agencies or approved crime 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 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.—The State Police may establish a separate population data base comprised of DNA samples obtained under this chapter after all personal identification is removed. The State Police may share or disseminate the population data base with other criminal justice agencies or crime laboratories that serve to assist the State Police with statistical data bases. The population data base may be made available to and searched by other agencies participating in the CODIS system.

§ 4720. Cancellation of authority to access or exchange DNA records.

The State Police shall be authorized, for good cause shown, to revoke or suspend the right of a forensic DNA laboratory within this Commonwealth to access or exchange DNA identification records with criminal justice agencies.

§ 4721. Expungement.

(a) General rule.—A person whose DNA record or profile has been included in the data bank pursuant to the former DNA Act 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 record or profile was based has been reversed and the case dismissed.

(b) Duty of State Police.—The State Police shall purge all records and identifiable information in the data base pertaining to the person and destroy all samples from the person upon 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.

(c) Limitation.—An incarcerated or previously incarcerated person may not seek expungement of a DNA record or profile on the ground that that person was convicted or adjudicated delinquent for a felony sex offense prior to the effective date of the former DNA Act or prior to the effective date of this chapter.

§ 4722. Mandatory cost.

Unless the court finds that undue hardship would result, a mandatory cost of \$250, which shall be in addition to any other costs imposed pursuant to statutory authority, shall automatically be assessed on any person

convicted, adjudicated delinquent or granted ARD for a felony sex offense or other specified offense, and all proceeds derived from this section shall be transmitted to the fund.

SUBCHAPTER C
ENFORCEMENT AND OTHER PROVISIONS

Sec.

4731. Prohibition on disclosure.

4732. Criminal penalties.

4733. Civil actions.

4734. Confidentiality of records.

4735. DNA Detection Fund.

4736. Authority of law enforcement officers.

§ 4731. Prohibition on disclosure.

(a) Disclosure.—Any person who by virtue of employment or official position or any person contracting to carry out any functions under this chapter, including any officers, employees and agents of such contractor, who has possession of or access to individually identifiable DNA information contained in the State DNA Data Base or in the State DNA Data Bank shall not disclose it in any manner to any person or agency not authorized to receive it knowing that such person or agency is not authorized to receive it.

(b) Obtaining information.—No person shall obtain individually identifiable DNA information from the State DNA Data Base or the State DNA Data Bank without authorization to do so.

§ 4732. Criminal penalties.

(a) Disclosure.—Any person who by virtue of employment or official position or any person contracting to carry out any functions under this chapter, including any officers, employees and agents of such contractor, who has possession of or access to individually identifiable DNA information contained in the State DNA Data Base or in the State DNA Data Bank and who for pecuniary gain for such 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.—Any person who knowingly violates section 4731(b) (relating to prohibition on disclosure) commits a misdemeanor of the first degree.

§ 4733. 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 this chapter or to compel such agency, organization or person to comply with the provisions of this chapter.

(b) Action for damages.—

(1) Any person aggrieved by a knowing violation of section 4731 (relating to prohibition on disclosure) shall have the substantive right to bring an action for damages by reason of such violation in a court of competent jurisdiction.

(2) A person found by the court to have been aggrieved by a knowing violation of section 4731 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 4731.

§ 4734. Confidentiality of records.

All DNA profiles and samples submitted to the State Police pursuant to the former DNA Act or this chapter shall be treated as confidential except as otherwise provided in this chapter.

§ 4735. DNA Detection Fund.

The DNA Detection Fund is reestablished in the State Treasury as a restricted fund. All costs collected under section 4722 (relating to mandatory cost) shall be paid into the fund. All moneys in the fund and the interest accruing thereon are hereby appropriated to the Pennsylvania State Police on a continuing basis to carry out the provisions of this chapter upon authorization of the Governor for each fiscal year.

§ 4736. Authority of law enforcement officers.

Nothing in this chapter shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store and utilize DNA samples for law enforcement purposes.

SUBCHAPTER D MISCELLANEOUS PROVISIONS

Sec.

4741. State Police notice of capability to carry out chapter.

§ 4741. State Police notice of capability to carry out chapter.

When the commissioner determines that the State Police possess the capabilities to carry out this chapter, the commissioner shall publish a notice to this effect in the Pennsylvania Bulletin.

Section 2. Section 7102 of Title 42 is amended to read:

§ 7102. Comparative negligence.

(a) General rule.—In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been guilty of contributory negligence shall not bar a recovery by the plaintiff or his legal representative where such negligence was not greater than the causal negligence of the defendant or defendants against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

[(b) Recovery against joint defendant; contribution.—Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed. The plaintiff may recover the full amount of the allowed recovery from any defendant against whom the plaintiff is not barred from recovery. Any defendant who is so compelled to pay more than his percentage share may seek contribution.]

(b.1) Recovery against joint defendant; contribution.—

(1) Where recovery is allowed against more than one person, including actions for strict liability, and where liability is attributed to more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of that defendant's liability to the amount of liability attributed to all defendants and other persons to whom liability is apportioned under subsection (b.2).

(2) Except as set forth in paragraph (3), a defendant's liability shall be several and not joint, and the court shall enter a separate and several judgment in favor of the plaintiff and against each defendant for the apportioned amount of that defendant's liability.

(3) A defendant's liability in any of the following actions shall be joint and several, and the court shall enter a joint and several judgment in favor of the plaintiff and against the defendant for the total dollar amount awarded as damages:

(i) Intentional misrepresentation.

(ii) An intentional tort.

(iii) Where a defendant has been held liable for not less than 60% of the total liability apportioned to all parties.

(iv) A release or threatened release of a hazardous substance under section 702 of the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act.

(v) A civil action in which a defendant has violated section 497 of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

(4) Where a defendant has been held jointly and severally liable under this subsection and discharges by payment more than that defendant's proportionate share of the total liability, that defendant is entitled to recover contribution from defendants who have paid less than their proportionate share. Further, in any case, any defendant may recover from any other person all or a portion of the damages assessed that defendant pursuant to the terms of a contractual agreement.

(b.2) Apportionment of responsibility among certain nonparties and effect.—For purposes of apportioning liability only, the question of

liability of any defendant or other person who has entered into a release with the plaintiff with respect to the action and who is not a party shall be transmitted to the trier of fact upon appropriate requests and proofs by any party. A person whose liability may be determined pursuant to this section does not include an employer to the extent that the employer is granted immunity from liability or suit pursuant to the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act. An attribution of responsibility to any person or entity as provided in this subsection shall not be admissible or relied upon in any other action or proceeding for any purpose. Nothing in this section shall affect the admissibility or nonadmissibility of evidence regarding releases, settlements, offers to compromise or compromises as set forth in the Pennsylvania Rules of Evidence. Nothing in this section shall affect the rules of joinder of parties as set forth in the Pennsylvania Rules of Civil Procedure.

(c) Downhill skiing.—

(1) The General Assembly finds that the sport of downhill skiing is practiced by a large number of citizens of this Commonwealth and also attracts to this Commonwealth large numbers of nonresidents significantly contributing to the economy of this Commonwealth. It is recognized that as in some other sports, there are inherent risks in the sport of downhill skiing.

(2) The doctrine of voluntary assumption of risk as it applies to downhill skiing injuries and damages is not modified by subsections (a) and [(b)] (b.1).

(c.1) Savings provisions.—Nothing in this section shall be construed in any way to create, abolish or modify a cause of action or to limit a party's right to join another potentially responsible party.

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

“Defendant or defendants [against whom recovery is sought].” Includes impleaded defendants.

“Plaintiff.” Includes counter claimants and cross-claimants.

Section 3. Nothing in this act shall be construed to diminish the immunity of an employer to the extent that the employer is granted immunity from liability or suit pursuant to the act of June 2, 1915 (P.L.736, No.338), known as the Workers' Compensation Act.

Section 4. Chapter 47 of Title 42 is a continuation of the act of May 28, 1995 (1st Sp.Sess., P.L.1009, No.14), known as the DNA Detection of Sexual and Violent Offenders Act.

Section 5. The act of May 28, 1995 (1st Sp.Sess., P.L.1009, No.14), known as the DNA Detection of Sexual and Violent Offenders Act, is repealed.

Section 6. The amendment of 42 Pa.C.S. § 7102 shall apply to all causes of action that accrue after the effective date of this section.

Section 6.1. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 7. This act shall take effect as follows:

(1) The references to 18 Pa.C.S. §§ 2901, 2910, 3502, 3701, 4302, 5902(c)(1)(iii) and (iv), 5903(a), 6318 and 6320 in the definitions of “felony sex offense” and “other specified offenses” in 42 Pa.C.S. § 4703 shall take effect in 180 days.

(2) The following provisions shall take effect in 60 days:

(i) The amendment of 42 Pa.C.S. § 7102.

(ii) Section 3 of this act.

(iii) Section 6 of this act.

(3) The remainder of this act shall take effect immediately.

APPROVED—The 19th day of June, A.D. 2002.

MARK S. SCHWEIKER