



SPONSOR: Rep. Miro & Sen. Cloutier
Reps. Dukes, Ramone, Wilson; Sens. Hocker, Richardson

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 46

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO DNA ANALYSIS AND DATA BANK.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 4713, Chapter 47, Title 29, Delaware Code by making deletions as shown by strike through
2 and insertions as shown by underline as follows:

3 § 4713 DNA analysis and data bank.

4 (a) In any criminal proceeding, DNA (deoxyribonucleic acid) testing shall be deemed to be a reliable scientific
5 technique, and the evidence of a DNA profile comparison shall be admitted to prove or disprove the identity of any person.
6 This section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before
7 the court. The court shall, regardless of the results of the DNA analysis, if any, consider such other relevant evidence of the
8 identity of the person as shall be admissible in evidence.

9 ~~(b)(1) Any person convicted on or after June 16, 1994, of any offense or attempted offense defined in subchapter~~
10 ~~H, subpart D or subchapter V of Chapter 5, Title 11 or who is in the custody of the Department of Correction after June 16,~~
11 ~~1994, as a result of a conviction on one of the above offenses shall have a biological sample taken by the Department of~~
12 ~~Correction for DNA (deoxyribonucleic acid) law enforcement identification purposes and inclusion in law enforcement~~
13 ~~identification databases. Any person convicted on or after June 16, 1994, who is not sentenced to a term of confinement~~
14 ~~shall provide a biological sample as a condition of such sentence at a time and place specified by the sentencing court.~~

15 ~~(2) Any person convicted after July 1, 2003, of any offense that is defined and classified as a felony under Title 11~~
16 ~~shall have a biological sample taken by the Department of Correction for DNA (deoxyribonucleic acid) law enforcement~~
17 ~~identification purposes and inclusion in law enforcement identification databases. Any person convicted after July 1, 2003,~~
18 ~~of such felony offense and who is not sentenced to a term of confinement shall provide a biological sample as a condition~~
19 ~~of such sentence at a time and place specified by the sentencing court.~~

20 (b) For purposes of this section a “qualifying offense” means any offense or attempted offense defined in
21 subchapter II, subpart D or subchapter V of Chapter 5, Title 11, or any offense that is defined and classified as a violent
22 felony under Title 11.

(c) For purposes of this section "biological sample" means a DNA sample acquired from a blood sample or a buccal swab, unless specifically identified otherwise.

(d)(1) Any person who is arrested for a qualifying offense, or for any person who is in the custody of the Department of Correction that is the result of a conviction of at least one (1) qualifying offense shall have a biological sample taken for DNA (deoxyribonucleic acid) law enforcement identification purposes and inclusion in law enforcement identification databases in accordance with the procedures and regulations provided under this section.

(2) No biological sample that is taken shall be processed or placed in a database until the person has been arraigned and a finding of probable cause is found for a qualifying offense. If no probable cause is found the biological sample shall be immediately destroyed.

(e) Any individual required to have a biological sample taken following an arrest but prior to a conviction of a qualifying offense shall only have the biological sample administered using the buccal swab method. Following conviction of a qualifying offense, the biological sample may be administered using either the buccal swab or blood sample method.

~~(e)~~ (f) For any biological samples taken using a blood sample, The the biological samples shall be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist or other qualified personnel approved by the Director of the Division of Forensic Science, and packaged and submitted in containers provided or approved by the Division of Forensic Science in accordance with administrative regulations promulgated by the Division of Forensic Science. No civil liability shall attach to any person authorized to obtain a biological sample as provided by this section as a result of obtaining a biological sample from any person, provided the biological sample was obtained according to generally accepted medical procedures.

(g) For any biological samples taken using a buccal swab, the biological samples shall be obtained by an individual who is trained in the collection procedures established by the Division of Forensic Science.

~~(d)~~ (h) Any person who tampers or attempts to tamper with any biological sample or the container collected pursuant to subsection (b) or (c) without lawful authority shall be guilty of a Class D felony.

~~(e)~~ (i) A centralized database of DNA (deoxyribonucleic acid) identification records for convicted criminals shall be established in the Division of Forensic Science. The established system shall be compatible with the procedures set forth in a national DNA identification index to ensure data exchange on a national level.

~~(f)~~ (j) The purpose of the centralized DNA database is to assist federal, state and local criminal justice and law enforcement agencies within and outside the State in the identification, detection or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes or other crimes and the identification of missing and unidentified persons.

~~(g)~~ (k) The Division of Forensic Science shall receive, analyze and classify biological samples in compliance with this section, and shall record the DNA results in a centralized database for identification and statistical purposes. Except as specifically provided in this section, the results of the analysis shall be securely stored and shall remain confidential.

~~(h)~~ (l) Records produced from the biological samples shall be used only for law enforcement identification purposes and shall be exempt from the provisions of the Freedom of Information Act [Chapter 100 of this title].

~~(i)~~ (m) A person whose DNA profile has been included in the data bank pursuant to this section may petition Superior Court for expungement on the grounds that the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The Division of Forensic Science, shall expunge all identifiable information in the data bank pertaining to the person and destroy all biological samples from the person upon receipt of a certified court order.

(n) Any DNA samples and records generated as a result of biological sample obtained under this section shall be destroyed or expunged automatically from the State DNA database if the individual is not convicted of any qualifying offense and no new trial is permitted.

~~(j)~~ (o) The Division of Forensic Science shall promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system to include procedures for the collection of biological samples and the database system usage and integrity.

~~(k)~~ (p) Upon completion of the analysis required by this section, the Division of Forensic Science, shall forward to the State Bureau of Identification the name and other identifying information required by the State Bureau of Identification of each individual for whom a DNA identification record is developed. Upon receipt of such information the State Bureau of Identification shall make a notation of the existence of such DNA identification record in the criminal history record information file for such individual maintained pursuant to Chapter 85 of Title 11. Such information shall be available to all requesting criminal justice agencies in the same manner and under the same conditions as all other criminal record information maintained by the State Bureau of Identification.

~~(l)~~ (q) Any person who disseminates, receives or otherwise uses or attempts to use information in the database, knowing that such dissemination, receipt or use is for a purpose other than authorized by law, shall be guilty of a Class A misdemeanor.

(r) The results and personal identification information of the DNA profile of an individual in the DNA database provided for under this section shall be made available to a defendant or defendant's counsel upon the issuance of a subpoena or court order.

~~(m) For purposes of this section "biological sample" shall mean a blood sample or a buccal swab.~~

- 83 (s) No DNA sample shall be required under this section if a DNA profile already exists in the DNA database.
- 84 Section 2. This act shall become effective upon the receipt of a federal grant to the State pursuant to the Katie
- 85 Sepich Enhanced DNA Collection Act of 2012, or upon a specific annual appropriation in the Annual Appropriations Act.

SYNOPSIS

Currently the law requires that any person convicted of a crime identified under the section identifying sexual offenses, or offenses relating to children and incompetents must submit to DNA testing. The DNA testing is compiled and stored in the state DNA database. As many of these individuals are prone to repeat offenses, this database has proven to be a useful crime solving tool. This bill will provide that any person arrested [vs convicted] for any of these specific crimes will now be subject to DNA testing. This bill will also require testing of any individual who is currently incarcerated and convicted of a violent felony under Title 11. Additional safeguards and protections have been included in the law to balance the state's interest in solving crimes against the rights of the arrested individuals, as discussed and approved by the U.S. Supreme Court in *Maryland v. King*, 133 S. Ct. 1958 (U.S. 2013). This act shall become effective upon the receipt of a federal grant to the State pursuant to the Katie Sepich Enhanced DNA Collection Act of 2012, or upon a specific annual appropriation in the Annual Appropriations Act.