

LAWS OF DELAWARE  
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CHAPTER 143  
153rd GENERAL ASSEMBLY  
FORMERLY  
SENATE BILL NO. 139

AN ACT TO AMEND TITLE 11 AND TITLE 29 OF THE DELAWARE CODE RELATING TO BIOLOGICAL EVIDENCE.

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

Section 1. Amend § 4701A, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 4701A. Definitions.

For purposes of this chapter:

- (1) “Biological sample” means any evidence collected for the purpose of identifying DNA.
- (2) “Buccal swab” means a swab taken from the inside of an individual’s cheek.
- (3) “CODIS” means the Federal Bureau of Investigation’s Combined DNA Index System.
- (4) “Consensual partner elimination standard” means a blood or buccal swab taken from the consensual partner of an individual that is used to determine if the DNA profile obtained from evidence in a SAK was from a consensual partner or a possible perpetrator of a crime.
- (5) “Deoxyribonucleic acid” or “DNA” means the molecules in all cellular forms that contain genetic information in a patterned chemical structure of each individual.
- (6) “DFS” means the Division of Forensic Science.
- (7) “DNA profile” means an analysis utilizing the Short Tandem Repeat analysis of DNA that results in the identification of an individual’s genetic information.
- (8) “Law-enforcement agency” means any of the following:
  - a. A police department.
  - b. The Department of Correction, including Probation and Parole.
- (11) “NDIS” means the Federal Bureau of Investigation’s National DNA Index System.
- (12) “Sexual assault kit” or “SAK” means a sexual assault or rape evidence collection kit.
- (13) “State DNA Index System” or “SDIS” means the centralized database of DNA identification records for this State.

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

§ 4713. DNA analysis and data bank.

(a) In any criminal proceeding, DNA ~~(deoxyribonucleic acid)~~ testing shall be deemed to be a reliable scientific technique, and the evidence of a DNA profile comparison ~~shall be admitted~~ is admissible under § 3515 of Title 11 to prove or disprove the identity of any person. This section ~~shall~~ does not otherwise limit the introduction

of any relevant evidence bearing upon any question at issue before the court. The court shall, regardless of the results of the DNA analysis, if any, consider such other relevant evidence of the identity of the person as shall be admissible in evidence.

(b)(1) ~~Any~~ a. The Department of Correction shall take a biological sample for DNA from any person convicted on or after June 16, 1994, and sentenced to a term of confinement, of any offense or attempted offense defined in subchapter II, subpart D or subchapter V of Chapter 5, Title 11 or who is in the custody of the Department of Correction after June 16, 1994, as a result of a conviction on one of the above for 1 or more of the offenses shall have a biological sample taken by the Department of Correction for DNA (deoxyribonucleic acid) listed under this paragraph (b)(1) for law-enforcement identification purposes and inclusion in law-enforcement identification databases. Any

b. A person convicted for 1 or more of the offenses listed under this paragraph (b)(1) on or after June 16, 1994, who is not sentenced to a term of confinement shall provide a biological sample as a condition of such sentence at a time and place specified by the sentencing court.

(2) ~~Any~~ a. The Department of Correction shall take a biological sample for DNA from any person convicted after July 1, 2003, and sentenced to a term of confinement, of any offense that is defined and classified as a felony under Title 11 shall have a biological sample taken by the Department of Correction for DNA (deoxyribonucleic acid) for law-enforcement identification purposes and inclusion in law-enforcement identification databases. Any

b. A person convicted after July 1, 2003, of such a felony offense that is defined and classified as a felony under Title 11 and who is not sentenced to a term of confinement shall provide a biological sample as a condition of such sentence at a time and place specified by the sentencing court.

(c) ~~The biological (1) Biological samples shall must be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist or other by 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.~~

(2) No civil liability shall attach to any person authorized to obtain a biological sample as provided by under 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.

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

(e) A The Division of Forensic Science shall establish and maintain the State DNA Index System, 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 that is compatible with the procedures set forth in a national DNA identification index to ensure data exchange on a national level. NDIS policies and procedures.

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

(g)(1)a. The Division of Forensic Science shall receive, ~~analyze~~ analyze, and classify biological samples in compliance with ~~subsections (b) and (c) of this section,~~ NDIS policies and procedures and shall record the DNA results in ~~a centralized database~~ CODIS for identification and statistical purposes. ~~Except~~

b. The Department of Justice, or a law-enforcement agency authorized by the Department of Justice, must inform DFS if the investigation has determined that no crime occurred in the case connected to a biological sample submitted for analysis and classification under paragraph (g)(1)a. of this section. If notice that no crime occurred is provided under this paragraph (g)(1)b., paragraph (g)(1)a. of this section does not apply to a biological sample connected to that case.

(2) DFS must also comply with the requirements under § 4713A of this title when a DNA analysis is of a biological sample from a sexual assault kit.

(3) The results of an analysis under this section are confidential, except as specifically provided in this section, the under this section and under all of the following:

a. Section 4713A of this title,

b. Section 9403B(d) of Title 11. Unless otherwise permitted under the law of this State, information provided to a victim or a victim's designee under § 9403B(d) of Title 11 should not include the name of the individual identified using the DNA profile.

(4) DFS shall securely store the results of the analysis shall be securely stored and shall remain confidential. an analysis.

(h) ~~Records produced from the biological samples shall~~ samples received by DFS, including the results of analysis under subsection (g) of this section, may be used only for law enforcement purposes and ~~shall be~~ are exempt from ~~the provisions of~~ disclosure under the Freedom of Information Act ~~[Chapter Act, Chapter 100 of this title]. title.~~

(i) ~~A person~~ (1) An individual whose DNA profile has been included in ~~the data bank pursuant to this section~~ SDIS 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~~

(2) Upon receipt of a certified court order granted under paragraph (i)(1) of this section, the Division of Forensic Science, Science shall expunge all identifiable information in the data bank CODIS pertaining to the person individual and destroy all biological samples from the person upon receipt of a certified court order. that individual.

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

(k)(1) Upon completion of the analysis required by under this section, the Division of Forensic Science, ~~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 upload a notation of the existence of such a DNA identification record in the Delaware Criminal Justice Information System (DELJIS) criminal history record information file for such individual maintained pursuant to Chapter 85 of Title 11. ~~Such information shall~~ the individual. This information must 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.

(2) If there is a verified association between the DNA profile and an individual, DFS shall provide this information to the Delaware Information Analysis Center (DIAC).

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

(m) ~~For purposes of this section "biological sample" shall mean any evidence collected for the purpose of identifying DNA.~~ (1)a. DFS and law-enforcement agencies may not destroy or dispose of biological samples from an unsolved sexual assault case until 20 years after the collection of the evidence of the crime.

b. Notwithstanding paragraph (m)(1)a. of this section, if the victim was under 18 years of age at the time of the alleged offense, biological samples from an unsolved sexual assault case may not be destroyed or disposed before the victim is 40 years of age.

(2) Before destroying or disposing of a biological sample from an unsolved sexual assault case under § 2311 of Title 11, DFS and law-enforcement agencies must comply with the requirements under § 9403B(e) of Title 11.

Section 3. Amend Chapter 47, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4713A. DNA analysis, sexual assault kit testing.

(a)(1) A law-enforcement agency shall submit a SAK to the DFS laboratory no more than 30 days after the law-enforcement agency contacts DFS to discuss the evidence the law-enforcement agency has collected and what will be submitted for DNA analysis.

(2) If available, a law-enforcement agency shall submit a suspect standard or consensual partner elimination standard to the DFS laboratory with the SAK, or as soon as possible after submitting the SAK.

(3) A law-enforcement agency shall submit additional evidence items associated with a victim, suspect, or crime scene to the DFS laboratory with the SAK, or as soon as possible after submitting the SAK.

(b)(1) The DFS laboratory shall conduct DNA analysis of sexual assault kits submitted by law-enforcement agencies under § 4713(g)(1) of this title.

(2) The DFS laboratory shall complete the DNA analysis under paragraph (b)(1) of this section no more than 90 days after receipt.

(3) Each year, the average amount of time between when the DFS laboratory receives a SAK and when the complete DNA analysis and classification required under this section is completed must not exceed 90 days.

(c)(1) After completing the DNA analysis and classification, the Division of Forensic Science shall update the investigating law-enforcement agency on testing dates and outcomes of the evidence submitted under this section.

(2) The investigating law-enforcement agency shall update the Law Enforcement Investigative Support System (LEISS) with the evidence testing dates and upload the status and results received under paragraph (b)(2) of this section.

(d)(1) If a DNA profile is not eligible for NDIS under § 4713(g)(1) of this title due to inferior quality but the DNA profile has enough alleles present for inclusion within the SDIS, the DFS shall retain the DNA profile as a forensic sample for statewide comparison.

(2) If the Division of Forensic Science is unable to obtain an autosomal CODIS-eligible DNA profile, the investigating law-enforcement agency and the Department of Justice, in consultation with the DFS laboratory, must evaluate the case and determine if any other DNA-typing results could be used for investigative purposes.

(e) If the Division of Forensic Science is unable to meet the deadlines required under this section, the testing and analysis of untested sexual assault kits must be conducted by a federal or accredited, private crime laboratory, at the state's expense.

(f) The failure to comply a time requirement under this section does not provide a basis for any of the following:

(1) Grounds to challenge the validity of DNA evidence or the lack of DNA evidence in any criminal or civil proceeding.

(2) For a court to exclude any evidence generated from a SAK.

(3) For an individual who is accused or convicted of committing a crime to request that the individual's case be dismissed or conviction be set aside.

(4) A claim for damages against a government employee, official, or entity.

Section 4. Amend § 9401, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9401. Definitions.

(15) The following terms mean as defined in § 4701A of Title 29:

a. "Biological sample".

b. "Deoxyribonucleic acid" or "DNA".

c. "DNA profile".

d. "Sexual assault kit" or "SAK".

Section 5. Amend Subchapter I, Chapter 94, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9403B. Rights of victims; location, status, and preservation of biological evidence.

(a)(1) A law-enforcement agency must submit all sexual assault kits to the Division of Forensic Science laboratory for analysis under Chapter 47 of Title 29, unless § 4713(g)(1)b. of Title 29 applies to the case connected to the SAK.

(2) Upon receipt of a sexual assault kit, the investigating law-enforcement agency shall do all of the following as soon as possible:

a. Contact the Division of Forensic Science to schedule an appointment to discuss the evidence collected and what will be submitted for testing.

b. Submit the SAK, and any additional evidence, to the Division of Forensic Science under § 4713A(a) of Title 29.

(b) Upon the request of a victim or the victim's designee, the law-enforcement agency that is investigating the victim's case shall inform the victim of any of the following:

(1) The location of biological samples, including the sexual assault kit, from the victim's case.

(2) The status of the DNA testing of the biological samples from the victim's case.

(c) A law-enforcement agency shall respond to the victim's request under subsection (b) of this section as soon as possible, but no more than 7 calendar days after the request.

(d) In addition to the rights provided under §§ 9402 through 9403A of this title, a victim has the following rights:

(1) To be informed by the law-enforcement agency handling the case whether a DNA profile was obtained from the testing of the biological sample.

(2) To be informed whether the DNA profile developed from the biological evidence has been entered into the State DNA Index System (SDIS) or the National DNA Index System (NDIS) under § 4713 or § 4713A of Title 29.

(3) To be informed whether there is a match between the DNA profile developed from the biological sample and a DNA profile contained in SDIS or NDIS, if this disclosure would not impede or compromise an ongoing investigation.

(e)(1) If a law-enforcement agency or the Division of Forensic Science intends to destroy or dispose of a biological sample from an unsolved sexual assault case, the law-enforcement agency must provide the victim with written notice of the intent to destroy or dispose of the evidence at least 20 days before the evidence is destroyed or disposed.

(2) The written notice under paragraph (e)(1) of this section must explain that the victim may request that the biological sample or its probative contents be preserved and how the victim can make that request.

(3) If a victim requests that the biological sample or its probative contents be preserved, the law-enforcement must not destroy or dispose of the evidence.

(4) Paragraphs (e)(1) through (e)(3) of this section do not apply to information expunged under § 4713(i) of Title 29.

(f) A sexual assault victim may designate a sexual assault victim advocate, or other support person of the victim's choosing, to act as a recipient of the information a law-enforcement agency is required to provide under this section.

Section 6. Amend § 9414, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignate accordingly:

§ 9414. General requirements for ~~information~~. information from law-enforcement agencies.

(a)(1) Unless the form of notice is ~~expressly set forth by this chapter~~, specifically required, information required ~~to be furnished~~ under this chapter may be ~~furnished orally or in written form~~. provided verbally, electronically, or as printed material.

(2) A victim is responsible for providing a law-enforcement agency with any changes to the victim's contact information.

(3) A victim may indicate and change their preferred method of contact by law-enforcement agencies, including a preference not to be contacted. A law-enforcement agency must use the victim's preferred method of contact when possible.

(b) A person responsible for ~~furnishing~~ information required under this chapter must make all reasonable efforts to provide the information required under this chapter to victims, and may rely upon the most recent ~~name, address and telephone number furnished~~ information provided by the ~~victim~~. victim.

Section 7. Amend § 1703, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignate accordingly:

§ 1703. Definitions.

For purposes of this part:

(1) "Deoxyribonucleic acid" or "DNA" means as defined in § 4701A of Title 29.

(2) "DNA profile" means as defined in § 4701A of Title 29.

Section 8. Amend § 3107, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3107. DNA.

(b) *Definitions.*—~~In this section the following words have the meanings indicated.~~

(1) ~~"Deoxyribonucleic acid (DNA)" means the molecules in all cellular forms that contain genetic information in a patterned chemical structure of each individual.~~

(2) ~~"DNA profile" means an analysis that utilizes the restriction fragment length polymorphism analysis or polymerase chain reaction analysis of DNA resulting in the identification of an individual's patterned chemical structure of genetic information. [Transferred.]~~

Section 9. Amend § 3515, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3515. Admissibility of DNA profiles.

(a) *Definitions.*—~~In this section the following words have the meanings indicated.~~

(1) ~~“Deoxyribonucleic acid (DNA)” means the molecules in all cellular forms that contain genetic information in a patterned chemical structure of each individual.~~

(2) ~~“DNA profile” means an analysis that utilizes the restriction fragment length polymorphism analysis of DNA resulting in the identification of an individual’s patterned chemical structure of genetic information.~~ [Transferred.]

Approved August 20, 2025