



SPONSOR: Rep. Dukes & Sen. Sokola & Sen. Cloutier
Reps. D. Short, Michael Smith; Sens. Ennis, Wilson

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 29

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, Title 29 of the Delaware Code by making deletions as shown by strikethrough and
2 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~~
16 ~~Title 11 shall have a biological sample taken by the Department of Correction for DNA (deoxyribonucleic acid) law-~~
17 ~~enforcement identification purposes and inclusion in law enforcement identification databases. Any person convicted~~
18 ~~after July 1, 2003, of such felony offense and who is not sentenced to a term of confinement shall provide a biological~~
19 ~~sample as a condition of such sentence at a time and place specified by the sentencing court.~~

20 (b) For purposes of this section:

(1) “Arrest for a qualifying offense” means any felony offense or attempted felony offense defined in subchapter II, subpart D or subchapter V of Title 11, or any Title 11 offense that is defined and classified as a violent felony under § 4201(c) of Title 11 for which an individual is arrested.

(2) “Biological sample” means a DNA (deoxyribonucleic acid) sample acquired from a blood sample or buccal swab unless specifically identified otherwise.

(3) “Conviction for a qualifying offense” means an offense in paragraph (b)(1) of this section, an offense that is defined and classified as a misdemeanor offense or attempted misdemeanor offense defined in subchapter II, subpart D or subchapter V, subpart A of Title 11, or an offense classified as a non-violent felony offense under Title 11.

(c)(1) An individual who is arrested for a qualifying offense or an individual who is in the custody of the Department of Correction as a result of at least 1 conviction for a qualifying offense, shall have a biological sample taken for DNA law enforcement identification purposes and inclusion in law enforcement identification databases in accordance with the procedures and regulations provided under this section.

(2) A biological sample that is taken upon arrest for a qualifying offense may not be processed or placed in a database under subsection (h) of this section until a finding of probable cause is made either at a preliminary hearing or by return of a true bill by a grand jury.

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

~~(e) The~~ (e) For any biological samples taken using a blood sample, 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.

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

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

51 ~~(e)~~ (h) A centralized database of DNA (deoxyribonucleic acid) identification records for ~~convicted criminals~~
52 individuals arrested or convicted for a qualifying offense shall be established in the Division of Forensic Science. The
53 established system shall be compatible with the procedures set forth in a national DNA identification index to ensure data
54 exchange on a national level.

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

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

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

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

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

72 The Attorney General, or designee, shall promptly notify the Division of Forensic Science when a biological
73 sample must be expunged or destroyed. Nothing in this subsection requires the Division of Forensic Science to destroy an
74 individual's DNA profile that exists in the DNA database before the individual's arrest for a qualifying offense.

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

78 ~~(k)~~ (n) Upon completion of the analysis required by this section, the Division of Forensic Science, shall forward to
79 the State Bureau of Identification the name and other identifying information required by the State Bureau of Identification
80 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.

~~(+)~~ (o) 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.

(p) 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 through the discovery process.

~~(m) For purposes of this section "biological sample" shall mean any evidence collected for the purpose of identifying DNA.~~

Section 2. This Act takes effect 10 days following the date of publication in the Register of Regulations of a notice that both of the following have occurred:

(1) Receipt of a federal grant by the State under the Katie Sepich Enhanced DNA Collection Act of 2012.

(2) The Division of Forensic Science has provided notice to the Registrar of Regulations that the contingency under paragraph (1) has been met.

SYNOPSIS

Establishing a suspect's identity is critical to their processing by law enforcement. DNA analysis provides unparalleled accuracy in establishing identity. The United States Supreme Court held that "DNA identification of arrestees is a reasonable search that can be considered part of a routine booking procedure". *Maryland v. King*, 569 U.S. 435, 465 (2013). The establishment of an individual's DNA may identify the perpetrator of "some heinous crime" and may free "a person wrongfully imprisoned for the same offense". *Id.* at 456. The collection of a DNA sample by buccal swab (cheek swab) of a person is a reasonable and legitimate police booking procedure that should be available for identifying those arrested for serious crimes in Delaware.

This Act creates a constitutionally sound procedure for collecting and analyzing arrestee DNA. First, the Act directs that biological samples only be obtained from those accused of committing designated serious felony offenses. Second, biological samples may only be taken from arrestees by the least intrusive method - a buccal swab. Third, samples may only be submitted for identification analysis after a determination of probable cause by a judge at a preliminary hearing or a grand jury by indictment. Finally, any DNA sample or analysis of a DNA sample shall be destroyed or expunged from a DNA database if probable cause is not determined or if all charges associated with the arrest of the individual are dismissed or the individual is found to be not guilty.

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.