

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

H. B. No. 432

Introduced by HONORABLE JUAN EDGARDO “SONNY” M. ANGARA

EXPLANATORY NOTE

With the exception of identical twins, every person's DNA is uniquely his and his alone —this has made DNA samples one of the most important pieces of evidence from crime scenes.

Any type of organism can be identified by examination of DNA sequences unique to that species. To identify individuals, forensic scientists scan 13 DNA regions that vary from person to person and use the data to create a DNA profile of that individual (sometimes called a DNA fingerprint). A “match” allow DNA experts to identify an individual as a suspect or exclude him from suspicion.

DNA analysis is found to have several uses for forensic investigation, including, but not limited to the: 1) Identification of potential suspects whose DNA may match evidence left at crime scenes; 2) Exoneration of persons wrongly accused of crimes; 3) Identification of crime and catastrophe victims; 4) Establish paternity and other family relationships, through its variable number tandem repeats (VNTR) patterns; 5) Identification of endangered and protected species as an aid to wildlife officials (could be used for prosecuting poachers); 6) Detection of bacteria and other organisms that may pollute air, water, soil, and food; 7) Match organ donors with recipients in transplant programs; and 8) Determination of pedigree for seed or livestock breeds..

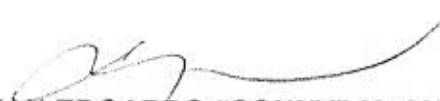
This bill will focus mainly on the capacity of forensic DNA technology to contribute to the criminal justice system. Specifically, this bill will provide the statutory authority for the creation of the National DNA Index System (NADIS) in the country. Only the following types of DNA data may be stored in the NADIS, administered by the NBI Director:

- DNA identification records of persons convicted of crimes;
- analyses of DNA samples recovered from crime scenes;
- analyses of DNA samples recovered from unidentified human remains; and
- analyses of DNA samples voluntarily contributed from relatives of missing persons.

DNA forensic technology has altered the landscape of the criminal justice system. It can be used to identify criminals with incredible accuracy when biological evidence exists, and it can also be used to clear suspects and exonerate persons mistakenly accused or convicted of crimes. This is not a panacea to all of society's ills, true. But it has and it continues to place a human face on the statistical probability of error that has always existed in our criminal system. **For the most part (outside of gross human error), the actual technology of DNA typing is considered unquestionably sound and reliable by the scientific community and the courts (U.S. v. Jakobetz 1992).**

I am strongly optimistic that enhancing the generation and use of genetic information thru DNA analyses will contribute greatly to the investigation and expeditious resolution of crimes.

For these reasons, I strongly urge the immediate passage of this bill.



JUAN EDGARDO "SONNY" M. ANGARA
Representative
Lone District, Province of Aurora

Introduced by Honorable JUAN EDGARDO "SONNY" M. ANGARA

AN ACT
AN ACT INSTITUTING REFORMS IN THE CRIMINAL JUSTICE SYSTEM BY
ENHANCING DNA TECHNOLOGY ANALYSIS AS A POTENT INVESTIGATIVE
TOOL, CREATING THE DNA ADVISORY BOARD UNDER THE NATIONAL BUREAU
OF INVESTIGATION, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* This Act may be cited as the "*DNA Analysis Enhancement Act of 2010.*"

SEC. 2. *Declaration of Policy.* It is hereby declared the policy of the State to establish and maintain a fair, responsible, ethical and efficient criminal justice system. The State likewise reaffirm the goals of the United Nations in the field of crime prevention and criminal justice, specifically, more efficient and effective law enforcement and administration of justice, respect for human rights and fundamental freedoms, and the promotion of the highest standards of fairness, humanity, and professional conduct.

Towards this end, the State shall provide a statutory framework for the creation and establishment of a centralized and nationwide DNA database system for collection, storage, and maintenance of genetic identification information and empower pertinent government agencies to analyze, sample, type, and record any and all genetic markers contained in or derived from DNA.

SEC. 3. *Objectives.* This Act shall endeavor to achieve the following:

- (1) Establish a comprehensive national DNA database for the country;
- (2) Eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders;
- (3) Improve and expand the DNA testing capacity of the National Bureau of Investigation (NBI), Philippine National Police and the University of the Philippines (UP) local crime laboratories;
- (4) Increase research and development of new DNA testing technologies; and
- (5) Develop new training programs regarding the collection and use of DNA evidence, and to provide post-conviction testing of DNA evidence to exonerate the innocent.

SEC. 4. Definitions. For purposes of this Act,

- a) **"DNA or Deoxyribonucleic Acid"** is any various nucleic acid found in cell nuclei and special genes that yield deoxyribose as one product of hydrolysis, and is associated with the transmission of genetic information;
- b) **"DNA sample"** means any biological specimen or sample of an individual which may either be a) **intimate samples**, like blood, semen or any other tissue fluid, urine or pubic hair, dental impressions, or a swab taken from a person's body orifice other than the mouth; or b) **non-intimate samples**, like a plucked hair other than pubic hair; sample from a nail; or a swab of saliva on which a DNA analysis can be carried out;
- c) **"DNA typing"** shall involve extracting the DNA from a specimen such as blood, semen, or saliva, then amplifying specific regions of the DNA to determine a DNA profile;
- d) **"DNA profiling"** is a process where a minute sample of genetic DNA material is taken from a human tissue and is given a computerized numeric value in the form of a "bar code;"
- e) **"Forensic DNA analysis"** means analysis of the deoxyribonucleic acid (DNA) identification information in a bodily sample;
- f) **"Law enforcement agencies of the Government"** shall refer to the Philippine National Police Crime Laboratory Group and the National Bureau of Investigation;
- g) **"National Bureau of Investigation (NBI)"** refers to the government agency created by virtue of Commonwealth Act No. 181 (13 November 1936), as amended by Republic Act No. 157 (19 June 1947), and Executive Order No. 94 (4 October 1947);
- h) **"National DNA Index System (NADIS)"** is the country's central repository of DNA samples created under this Act; and
- i) **"UP-NSRI (Natural Sciences Research Institute) DNA Analysis Laboratory"** or the UP-NSRI DAL is the research and extension service laboratory of the University of the Philippines created in 1997 with funds from the Office of the President and tasked with pioneering the development of the national capability for forensic DNA typing.

SEC. 5. Establishment of a National DNA Index System (NADIS). There shall be established a National DNA Index System (NADIS) in the country for the following purposes:

- a) Assist law enforcement agencies of the government in the positive identification, detection, or exclusion of persons who are the subjects of investigations or prosecutions of sex-related crimes and other violent crimes in which biological evidence is received or recovered;
- b) Support identification research and protocol development of DNA forensic methods;
- c) Create and maintain DNA quality control standards;

- d) Assist in the recovery or identification of human remains from natural or man-made disasters;
- e) Assist law enforcement agencies in performing DNA analysis of crime scene evidence in casework for which there are no suspects; and
- f) Assist in humanitarian causes, including, but not limited to, the identification of missing, deceased or unidentified persons.

The NADIS shall also contain DNA analyses of samples from crime scenes.

To increase the capacity of laboratories owned by the government and to carry out DNA analyses of samples specified in Section 7, a) a comprehensive plan for the expeditious DNA analysis of samples shall be formulated; and b) a certification that each DNA analysis carried out under the plan shall be maintained pursuant to the privacy requirements.

SECTION 6. *Quality Assurance Standards.*

- a) The Director of the National Bureau of Investigation shall maintain and make available to the public a description of quality assurance protocols and practices that the Director considers adequate to assure the quality of a forensic laboratory;
- b) Further, the Director of the National Bureau of Investigation shall establish requirements for the performance of DNA analyses by private forensic laboratories, including quality assurance standards, state-of-the-art testing methods, and other requirements that the Director considers appropriate; and
- c) For purposes of this section, a laboratory satisfies quality assurance standards if the laboratory satisfies the quality control requirements to be formulated by the DNA Advisory Board of the Department of Justice (DOJ).

SEC. 7. *DNA Advisory Board.* There is hereby created a DNA Advisory Board, hereinafter referred to as the "BOARD" under the National Bureau of Investigation of the DOJ, and shall include as members scientists from public and private forensic laboratories; and molecular geneticists and population geneticists not affiliated with a forensic laboratory.

SEC. 8. *Functions of the DNA Advisory Board.* The Board shall perform the following functions:

- a) Develop, and whenever appropriate, periodically revise, recommend standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analysis of DNA;
- b) Recommend standards which specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories, including statistical and population genetics issues affecting the evaluation of the frequency or occurrence of DNA profiles calculated from pertinent population database(s);

- c) Recommend standards for acceptance of DNA profiles in the National DNA Index System (NADIS) which take account of relevant privacy, law enforcement and technical issues; and
- d) To make recommendations for a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

The Director of the National Bureau of Investigation, after taking into consideration such recommended standards, shall issue (and revise from time to time) standards for quality assurance, including standards for testing the proficiency of forensic laboratories, and forensic analysts, in conducting analyses of DNA.

The standards described in paragraphs (a), (b), and (c) shall specify criteria for quality assurance and proficiency tests to be applied to the various types of DNA analyses used by forensic laboratories. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory is performing acceptably.

SEC. 9. *Authorized Personnel to Collect DNA Samples.* Biological or DNA samples submitted for forensic analysis shall only be collected by authorized personnel including, but not limited to a physician, medico-legal officer, a registered nurse, a laboratory technician, or a phlebotomist, whose qualifications are determined pursuant to rules and regulations adopted for the purpose.

SEC. 10. *Collection and Use of DNA Identification Information from Convicted Offenders.*

a) Collection of DNA Samples.

- (a.1) ***From Individuals in Custody.*** The Director of the Bureau of Prisons shall collect a DNA sample from each individual in the custody of the Bureau of Prisons who is, or has been, convicted of an offense;
- (a.2) ***From Individuals on Release, Parole, or Probation.*** The probation office responsible for the supervision under Federal law of an individual on probation, parole, or supervised release shall collect a DNA sample from each such individual who is, or has been, convicted of an offense;

b) Collection Procedures.

- (b.1) The Director of the Bureau of Prisons or the probation office, as appropriate, may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample.
- (b.2) The Director of the Bureau of Prisons or the probation office, as appropriate, may enter into agreements with government agencies or with private entities to provide for the collection of the samples described in sub-paragraphs (a.1) or (a.2).

- c) **Analysis and Use of Samples.** The Director of the Bureau of Prisons or the probation office responsible, as appropriate, shall furnish each DNA sample collected under subsection (a) to the Director of the National Bureau of Investigation, who shall carry out a DNA analysis on each such DNA sample and include the results in the NADIS.
- d) **Commencement of Collection.** Collection of DNA samples under subsection (a) shall, subject to the availability of appropriations, commence not later than 180 days after the enactment of this Act.

SEC. 11. *Collection and Use of DNA Identification Information from Certain Offenders in the Armed Forces.*

a) Collection of DNA Samples.

- (a.1) The Secretary of National Defense shall collect a DNA sample from each member of the armed forces under the Secretary's jurisdiction who is, or has been, convicted of a qualifying military offense.
- (a.2) The Secretary concerned may enter into agreements with other government agencies, or private entities to provide for the collection of samples described in sub-paragraph (1).

- b) Analysis and Use of Samples.** The Secretary concerned shall furnish each DNA sample collected under subsection (a) to the Secretary of Justice. The Secretary of Defense shall carry out a DNA analysis on each such DNA sample and furnish the results of each such analysis to the Director of the National Bureau of Investigation for inclusion in the NADIS.

SEC. 12. *Powers and Limitations of Authorized Personnel to collect Biological Samples.* A person authorized under this Act to collect biological sample may use reasonable force for the taking of non-intimate biological sample which does not require consent.

- a) Non-intimate samples can be taken only when:

a)

1. A person gives his consent in writing;
2. A person has been convicted of an offense or a crime;
3. When a person does not give his consent but he is in detention and there is a reasonable ground to believe that he is involved in the commission of a crime or offense and where the need of such a biological sample will tend to confirm or disprove his involvement in such a crime or offense; or
4. When a person has been charged with or accused of a crime or offense and during the trial no non-intimate sample has been taken from him or that his biological sample was insufficient for forensic DNA testing;

b)

Intimate samples may only be taken upon consent of the person in writing and in the presence of his counsel. Said person whose intimate sample shall be taken must be a suspect

in a crime or offense and that taking of such biological sample will be used to confirm or disprove his involvement in such an offense or a crime.

SEC. 13. *Missing Persons Database.* The Director of the National Bureau of Investigation shall expand the NADIS to include information on missing persons, including analyses of DNA samples voluntarily contributed from relatives of missing persons.

SEC. 14. *Samples.* To support the nationwide National DNA Index System, submission to DNA sampling may be required of all employees of both public and private institutions.

SEC. 15. *Privacy Protection Standards.* DNA records collected and maintained for the purpose of identification of criminal suspects or offenders shall be disclosed only:

- a) To criminal justice agencies for law enforcement identification purposes;
- b) In judicial proceedings, if otherwise admissible, following applicable laws and rules of procedure;
- c) For criminal defense purpose, to a defendant, who shall have access to samples and analysis found in connection with the case in which such defendant is charged; and
- d) EXCEPTION: If personally identifiable information is removed, test results may be disclosed for a population statistics database, for identification research and protocol development purposes, or for quality control purposes.

SEC. 16. *Biological Sample or Genetic Markers Derived from DNA as Evidence.* Expert testimony or evidence relating to the use of these biological sample or genetic markers contained in or derived from DNA for identification shall be admissible and accepted as evidence in all cases arising in all courts or proceedings in the country, *Provided, however,* That the trial courts or other quasi-judicial bodies shall be satisfied that the expert testimony or evidence meets the criteria for admissibility under the existing evidentiary rules.

SEC. 17. *Criminal Penalties.*

- a) ***Criminal Penalties for Tampering with DNA Samples and Records.*** Any person who shall knowingly make any false entry or falsely alter any DNA record or profile indexed or otherwise contained in the DNA database system or nationwide DNA repository; or who shall intentionally destroy, mutilate, conceal, remove or otherwise impair the verity or availability of DNA records or profile with the lack of knowledge to do so; or who shall possess a DNA record in the DNA database system or nationwide DNA repository and refuse to deliver such DNA records upon proper request of a person lawfully entitled to receive the same shall suffer the penalty of six (6) years imprisonment or a fine not to exceed Two Hundred Thousand Pesos (P 200,000.00) or both, at the discretion of the court;
- b) ***Criminal Penalties for Improper Disclosure of DNA Samples and Records.*** Any person who, by virtue of employment or official position, has possession of, or access to, individually identifiable DNA information indexed or otherwise contained in the DNA

database system as referred to in this Act and who knowingly and willfully discloses such information in any manner to any person or agency not entitled to receive it to the prejudice and detriment of the public or person from whom the said DNA sample/information was taken shall suffer the penalty of four (4) years imprisonment or a fine not to exceed One Hundred Fifty Thousand Pesos (P 150,000.00) or both, at the discretion of the court; and

- c) ***Criminal Penalties for Improper Access to and Use of DNA Samples and Records.*** Any person who, without authorization from the PNP Crime Laboratory, the National Bureau of Investigation or the DNA Laboratory in UP Diliman, knowingly and willfully obtains DNA samples or any individual identifiable DNA information indexed or contained in the DNA database system shall suffer the penalty of two (2) years imprisonment or a fine not exceeding One Hundred Thousand Pesos (P 100,000.00) or both, at the discretion of the court.

SEC. 18. *Implementing Rules and Regulations.* Within one hundred and twenty (120) days, the DNA Advisory Board Except those which are reserved by the Constitution to the Supreme Court, the necessary rules and regulations for the implementation of this Act shall be jointly promulgated by the Department of Justice and Department of Social Welfare and Development.

SEC. 19. *Appropriations.* The amount necessary for the implementation of this Act shall be included in the General Appropriations Act of the year following its enactment into law and thereafter.

An initial amount of Fifty Million Pesos (P 50,000,000.00) for the purpose of setting up the NADIS and the DNA Advisory Board shall be taken from the proceeds of the Philippine Charity Sweepstakes Office (PCSO).

SEC. 20. *Separability Clause.* If any provision of this Act or an application thereof to any person or circumstance is held to be invalid, the other provisions of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 21. *Repealing Clause.* All existing laws, orders, rules and regulations or parts thereof deemed inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 22. *Effectivity.* This Act shall take effect fifteen (15) days following the date of its publication in the Official Gazette or in at least two (2) newspapers of general circulation, whichever comes first.

Approved,