

REPUBLIC OF THE PHILIPPINES
HOUSE OF REPRESENTATIVES
Quezon City

SEVENTEENTH CONGRESS
First Regular Session

House Bill No. 5396



Introduced by **MAGDALO Party-List Representative**
HON. GARY C. ALEJANO

EXPLANATORY NOTE

Article XIV, Section 10 of the Constitution declares the importance of science and technology in national development and progress. It further states that research, development and its utilization shall be prioritized in view of supporting self-reliant scientific and technological capabilities which can contribute to the country's productive systems.

One of the most remarkable advances that science and technology has brought into the light is the Deoxyribonucleic Acid (DNA) technology. This technology has been considered to be a powerful mechanism in determining a person's identity. In countries such as ours, DNA technology has become a useful tool in investigations and establishment of facts to resolve civil, criminal, and other regulatory procedures because of its reliability.

In recognition of the forensic DNA technology's importance, a system of safe storage of the documented results or other relevant data derived from this technology is indispensable. This bill seeks to establish a Forensic DNA Databank which shall keep and maintain DNA profiles for the purpose of human identification in relation to forensic investigation.

This bill also includes the procedures on giving, taking and storing DNA samples that may be used in assisting the recovery or identification of human remains from a disaster or for humanitarian purposes, and identification of living or deceased persons.

In view of the foregoing, the immediate approval of this bill is earnestly sought.


GARY C. ALEJANO

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House Bill No. **5396**

Introduced by **MAGDALO Party-List Representative**
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AN ACT
TO PROVIDE FOR THE ESTABLISHMENT OF A FORENSIC DNA DATABANK, THE
TAKING OF DNA SAMPLES, FORENSIC DNA ANALYSIS, THE USE OF DNA
PROFILES AND INFORMATION IN RELATION THERETO, AND FOR OTHER
PURPOSES

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

ARTICLE I
PRELIMINARY

SECTION 1. Title.- This Act shall be known as the "*Deoxyribonucleic Acid (DNA) Identification Act*".

SEC. 2. Declaration of Policy. - It is hereby declared the policy of the State to adopt and impose policies that shall broaden the national capability to conduct DNA testing and analyses for forensic applications. It shall also be the State's policy to establish a system of storage for these analyses to be kept and maintained for the purpose of human identification in relation to forensic investigation in the country.

SEC. 3. Definition of Terms. - For purposes of this Act, the followings terms shall mean:

- a) "chemist" means any chemist accredited by the Department;
- b) "department" means the Department of Science and Technology (DOST);
- c) "secretary" means the Secretary of the Department of Science and Technology;
- d) "foreign law enforcement agency" means the law enforcement agency of a foreign state and includes an international organization established by the government of states or an international organization.
- e) "forensic DNA analysis" means any analysis carried out for the purpose of determining a person's identity;
- f) "prescribed" means prescribed by the Secretary by regulations made under this Act;
- g) "DNA Databank" means the Forensic DNA Databank established under section 4;
- h) "DNA" means deoxyribonucleic acid;
- i) "appropriate consent" means-

- 1) in relation to a person who is under the age of eighteen years, the consent in writing of his parent or guardian;
 - 2) in relation to a person who has attained the age of eighteen years, the consent in writing of that person; or
 - 3) in relation to a person in whom there is a condition of arrested or incomplete development of mind or body whether such condition arises from inherent causes or is induced by disease or injury and who is incapable of understanding the general nature and effect of a forensic DNA analysis or is incapable of indicating whether he consents or does not consent to give his intimate sample or non-intimate sample, the consent in writing of his parent or guardian.
- j) "offence" means any act or omission punishable by any law for the time being in force;
- k) "Head of DNA Databank" means the Head of Forensic DNA Databank appointed under section 8;
- l) "Secretary" means the Secretary charged with the responsibility for internal security;
- m) "detainee" means a person arrested and detained under existing laws;
- n) "government medical officer" means a registered medical practitioner in the public service and includes a registered medical practitioner in any teaching hospital of a university;
- o) "police officer" means any member of the Philippine National Police;
- p) "drug dependant" means a person, pursuant to the Comprehensive Dangerous Drugs Act of 2002, who possesses a cluster of physiological, behavioral and cognitive phenomena of variable intensity, in which his or her use of psychoactive drug takes on a high priority thereby involving, among others, a strong desire or a sense of compulsion to take the substance and the difficulties in controlling substance-taking behavior in terms of its onset, termination, or levels of use;
- q) "DNA profile" means genetic information derived from a forensic DNA analysis;
- r) "non-intimate sample" means:
- 1) a sample of hair other than the pubic hair;
 - 2) a sample taken from a nail or from under a nail;
 - 3) a swab taken from any part of a person's body other than a part from which a swab taken would be an intimate sample; or
 - 4) saliva;
- s) "intimate sample" means:
- 1) a sample of blood, semen or any other tissue or fluid taken from a person's body, urine or pubic hair; or

SEC. 5. Objectives of DNA Databank. - The primary objective of the DNA Databank is to keep and maintain the indices referred to in Section 4 of this Act for the purpose of human identification in relation to forensic investigation.

The DNA profiles and any information in relation thereto kept and maintained in the DNA Databank may be used in assisting:

- a) the recovery or identification of human remains from a disaster or for humanitarian purposes; and
- b) the identification of living or deceased persons.

SEC. 6. *Function of DNA Databank.* - The function of the DNA Databank is to store DNA profiles and any information in relation thereto from any forensic DNA analysis carried out by the National Bureau of Investigation (NBI) Forensic Chemical Division or the Philippine National Police (PNP) Crime Laboratory or any agency or body as may be designated by the Secretary from time to time.

SEC. 7. *Power of Secretary to Designate Agency or Body to Carry Out Forensic DNA Analysis.* –

- a) The power of the Secretary to designate any agency or body to carry out forensic DNA analysis under Section 6 of this Act shall only be exercised in the event the NBI Forensic Chemical Division or the PNP Crime Laboratory is unable to carry out any forensic DNA analysis.
- b) The Secretary may specify that the forensic DNA analysis to be carried out by the agency or body so designated shall only be for the purposes mentioned in Section 5 of this Act subject to such terms and conditions as he may impose.

ARTICLE III

HEAD OF DNA DATABANK, DEPUTY HEAD OF DNA DATABANK AND DNA DATABANK OFFICERS

SEC. 8. Appointment of Head of DNA Databank, Deputy Head and other Officers.—

- a) The Secretary shall appoint a highly-qualified police officer as Head of the Forensic DNA Databank for such period and on such terms and conditions as may be specified in the instrument of appointment.
- b) The Secretary shall also appoint a highly-qualified police officer as Deputy Head of DNA Databank as may be necessary for the purposes of this Act who shall be subject to the control and direction of the Head of DNA Databank and may exercise the powers and perform the functions of the Head of DNA Databank under this Act.
- c) The Secretary shall appoint such numbers of DNA Databank officers as may be necessary for carrying out the purposes of this Act from amongst members of the police force, chemist and other officers from or attached to the NBI Forensic Chemical Division or the PNP Crime Laboratory who shall be subject to the control, direction and supervision of the Head of DNA Databank.
- d) The Head of DNA Databank may in writing, subject to such conditions, limitations or restrictions as he thinks fit to impose, delegate all or any of his powers or functions under this Act to the Deputy Head of DNA Databank or to DNA Databank officers.

- 1 e) A delegation under subsection (d) may be revoked at any time by the Head of DNA
2 Databank and does not prevent the Head of DNA Databank from exercising the powers or
3 performing the functions so delegated under that subsection.
4

5 **SEC. 9. Functions and Powers of the Head of DNA Databank. –**
6

- 7 a) The Head of DNA Databank shall have the following functions:
8

- 9 1) to be responsible for the general conduct, administration and management of the
10 DNA Databank;
11
12 2) to establish mechanisms to facilitate the collection, storage and dissemination of data
13 in connection with DNA profiles and any information in relation thereto stored in the
14 DNA Databank;
15
16 3) to ensure that DNA profiles and any information in relation thereto are securely
17 stored and remain confidential;
18
19 4) to store and dispose of the intimate sample and non-intimate sample taken for the
20 purposes of forensic DNA analysis in accordance with the provisions of this Act and
21 as prescribed;
22
23 5) to co-operate with foreign law enforcement agency in accordance with the provisions
24 of this Act; and
25
26 6) to carry out any other functions conferred by or under this Act and to perform any
27 other functions that are supplemental, incidental, or consequential to any of the
28 functions specified in this section or in furtherance of the objectives of the DNA
29 Databank.
30

31 The Head of DNA Databank shall have all such powers as may be necessary for, or in
32 connection with, or incidental to, the performance of his functions under this Act.
33

34 **SEC. 10. Rectification of Particulars in DNA Profile and Information. –**
35

- 36 a) The Head of DNA Databank shall be entitled to rectify the particulars in the DNA profiles and
37 any information in relation thereto if:
38

- 39 1) a clerical error has occurred; and
40
41 2) sufficient evidence is produced to satisfy him that the entry made is incorrect, and on
42 making the rectification he shall, where necessary, issue to the person entitled to the
43 information derived from the analysis of sample taken for him, the particulars so
44 rectified.
45

- 46 b) The powers under this section shall be exercised by the Head of DNA Databank alone.
47

- 48 c) Any rectification made pursuant to this section shall not be construed as an act of tampering,
49 abetting or attempting to tamper with any DNA profile or any information in relation thereto
50 contained in the DNA Databank.
51

52 **SEC. 11. Power of Secretary to Give Directions. -** The Secretary may give the Head of
53 DNA Databank directions of general character consistent with the provisions of this Act relating
54 to the performance of the functions and the exercise of the powers of the Head of DNA Databank
55 and the Head of DNA Databank shall give effect to such directions.

SEC. 12. Access of DNA Profile and Information.—

- a) The access to, a communication or use of DNA profiles and any information in relation thereto stored in the DNA Databank by the Head of DNA Databank, Deputy Head of DNA Databank, DNA Databank officers and any chemist shall only for the purposes of:
- 1) forensic comparison with any other DNA profiles or information in the course of an investigation of any offence conducted by any enforcement agency;
 - 2) administering the DNA Databank; or
 - 3) making the information available to the person to whom the information relates.
- b) For the avoidance of doubt, the access to, a communication or use of DNA profiles and any information in relation thereto under subsection (a) by a chemist shall only be for the purpose mentioned in paragraph (1) of that subsection.

ARTICLE IV
TAKING, STORING, DISPOSING OF INTIMATE AND NON-INTIMATE SAMPLES
AND REMOVAL OF DNA PROFILE AND INFORMATION

SEC. 13. *Taking of Intimate Sample.*—

- a) The procedures for the taking of an intimate sample of any person under this Act shall be in accordance with the provisions of this section and as prescribed.
- b) An intimate sample of the following maybe taken for forensic DNA analysis:
 - 1) a person reasonably suspected of having committed an offence;
 - 2) a detainee; or
 - 3) a drug dependent.

The aforementioned may be taken for the said analysis only if:

- (i) an authorized officer authorizes it to be taken; and
 - (ii) an appropriate consent in the prescribed form is given by the person from whom an intimate sample is to be taken.
- c) Subject to an appropriate consent being given under subparagraph (b)(ii), an authorized officer shall only give his authorization under subparagraph (b)(i) if:
 - 1) he has reasonable grounds for:
 - (i) suspecting that the person from whom the intimate sample is to be taken has committed an offence; and
 - (ii) believing that the sample will tend to confirm or disprove the commission of the offence by that person;
 - 2) an arrest has been effected on or a detention order has been made against a detainee under existing laws; or

- 1 3) an order or a decision has been made pursuant to the Comprehensive
2 Dangerous Drugs Act of 2002 against a drug dependent.
3
4 d) An authorized officer:
5
6 1) shall give his authorization under subsection (c) in writing; or
7
8 2) where it is impracticable to comply with paragraph (1), may give such
9 authorization orally, in which case he must confirm it in writing as soon as
10 may be possible.
11
12 e) A person from whom an intimate sample is taken shall be entitled to the information derived
13 from the analysis of the sample taken from him.
14
15 f) An intimate sample shall only be taken by a government medical officer.
16

17 **SEC. 14. Taking of Non-intimate Sample. –**
18

- 19 a) The procedures for the taking of a non-intimate sample of any person under this Act shall be
20 in accordance with the provisions of this section and as prescribed.
21
22 b) A non- intimate sample of:
23
24 1) a person reasonably suspected of having committed an offence;
25
26 2) a detainee; or
27
28 3) a drug dependent, may be taken only if an authorized officer authorizes it to be
29 taken.
30
31 c) An authorized officer shall only give his authorization under subsection (b) if:
32
33 1) he has reasonable grounds for:
34
35 (i) suspecting that the person from whom the non-intimate sample is to be
36 taken has committed an offence; and
37
38 (ii) believing that the sample will tend to confirm or disprove the
39 commission of the offence by that person;
40
41 2) an arrest has been effected on or a detention order has been made against a
42 detainee under existing laws; or
43
44 3) an order of a decision has been made pursuant to the Comprehensive
45 Dangerous Drugs Act of 2002 against a drug dependent.
46
47 d) An authorized officer:
48
49 1) shall give his authorization under subsection (b) in writing; or
50
51 2) where it is impracticable to comply with paragraph (1), may give such
52 authorization orally, in which case he must confirm it in writing as soon as
53 possible.
54
55 e) The person from whom a non-intimate sample is taken shall be entitled to the information
56 derived from the analysis of the sample taken from him.
57

1 f) A non-intimate sample shall only be taken by:

2
3 1) a government medical officer; or

4
5 2) a police officer or a chemist.

6
7 g) A police officer may use all means necessary for the purpose of taking or assisting the taking
8 of a non-intimate sample from a person.

9
10 **SEC. 15. Refusal to Give Sample.** - If a person from whom a non-intimate sample shall
11 be taken shall do the following, he shall commit an offence, and, shall, on conviction, be liable to
12 a fine not exceeding Twenty Thousand Pesos (P20,000.00) or to imprisonment for a term not
13 exceeding one (1) year or to both:

14
15 a) refusal to give such sample;

16
17 b) refusal to allow such sample to be taken from that person; or

18
19 c) obstruction of the taking of such sample from that person.

20
21 **SEC. 16. Sample Given Voluntarily.** -

22
23 a) Any person, other than the person whose intimate sample or non-intimate sample may be
24 taken under Sections 13 and 14, may voluntarily give an appropriate consent in the
25 prescribed form to an authorized police officer for the taking of his intimate sample or non-
26 intimate sample.

27
28 b) Where an appropriate consent is given under subsection (a), an authorized police officer
29 shall, before the taking of the intimate sample or non-intimate sample, 'inform the person
30 from whom the sample is to be taken:

31
32 1) that the DNA profiles and any information in relation thereto derived from the
33 intimate sample or non-intimate sample may be stored in the DNA Databank and may
34 be used for the purposes of forensic DNA analysis, police inquiry and for such
35 purposes referred to in Section 12;

36
37 2) that he may make a request to a police officer for an access to the information; and

38
39 3) that he may at any time withdraw his consent given under subsection (a).

40
41 **SEC. 17. DNA Sample of Prisoner.** - An intimate sample or a non-intimate sample may
42 be taken for forensic DNA analysis from any person who is serving his term of imprisonment in
43 connection with an offence of which he has been convicted.

44
45 **SEC. 18. Storage and Disposal of Intimate and Non-intimate Samples.** -

46
47 a) The Head of DNA Databank shall safely and securely store all intimate samples and non-
48 intimate samples that are collected for the purpose of forensic DNA analysis, the portions of
49 the samples that the Head of DNA Databank consider appropriate and without delay destroy
50 any remaining portions.

51
52 b) The procedures for the storage and disposal of an intimate sample and a non-intimate sample
53 shall be as prescribed.

54
55 **SEC. 19. Removal of DNA Profile and Information from Suspected Persons Index.** -
56 Where an intimate sample or a non-intimate sample has been taken in accordance with this Act
57 from a person reasonably suspected of having committed an offence and:

- a) investigations reveal that he was not involved in the commission of any offence;
- b) the charge against him in respect of any offence is withdrawn;
- c) he is discharged by a court of an offence with which he has been charged, at trial or on appeal;
- d) he is acquitted of an offence with which he has been charged, at trial or on appeal; or
- e) he is not charged in any court for any offence within a period of one year from the date of taking of such sample from him, the Head of DNA Databank shall, within six months of so being notified by the Officer in Charge of a Police District of the fact referred to in paragraph (a), (b), (c), (d), or (e), remove the DNA profile and any information in relation thereto of such person from the DNA Databank.

ARTICLE V OFFENCES

SEC. 20. Offence of Tampering, Abetting or Attempting to Tamper with Sample. –

- a) A person commits an offence if he tampers or causes to be tampered with any intimate sample or non-intimate sample taken for the purposes of this Act.
- b) Any person who contravenes subsection (a) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five (5) years or to a fine not exceeding One Hundred Thousand Pesos (P100,000.00) or to both.
- c) Any person who abets the commission of or who attempts to commit the offence under this section shall be guilty of that offence and shall, on conviction, be liable to the punishment provided for that offence.

Provided, That any term of imprisonment imposed shall not exceed one-half of the maximum term provided for the offence.

SEC. 21. Unauthorized Use or Communication of DNA Profile of Information. –

- a) No person who receives a DNA profile for entry in the DNA Databank or who has access to information contained in the DNA Databank shall; except in accordance with Sections 12 and 24 of this Act, use or communicate such DNA profile or any information in relation thereto to be used or communicated other than for the purpose of this Act.
- b) Any person who contravenes subsection (a) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five (5) years or to a fine not exceeding One Hundred Thousand Pesos (P100,000.00) or to both.

SEC. 22. Obligation of Secrecy. –

- a) The Head of DNA Databank, Deputy Head of DNA Databank and DNA Databank officers or any person who for any reason, has by any means access to any data, record, book, register, correspondence, document whatsoever, or material or information, relating to the DNA profiles and any information in relation thereto in the DNA Databank which he has acquired in the performance of his functions or the exercise of his powers, shall not give, divulge, reveal, publish or otherwise disclose to any person, such document, material or information unless the disclosure is required or authorized:

- 1) under this Act or regulations made under this Act;

2) under any written law;

3) by any court; or

4) for the performance of his functions or the exercise of his powers under this Act or regulations made under this Act.

- b) Any person who contravenes subsection (a) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five (5) years or to a fine not exceeding One Hundred Thousand Pesos (P100,000.00) or to both.

SEC. 23. *Offence of Tampering, Abetting or Attempting to Tamper with DNA Profile or Information.* –

- a) A person commits an offence if he tampers or causes to be tampered with any DNA profile or any information in relation thereto in the possession, custody or control of the DNA Databank.

- b) For the purpose of this section, tampering with any DNA profile or any information in relation thereto includes the following:

1) such DNA profile or any information in relation thereto is altered or erased;

2) any new DNA profile or any information in relation thereto is introduced or added to such DNA profile or any information in relation thereto; or

3) any event occurs which impairs the ability of the Head of DNA Databank, the Deputy Head of DNA Databank or DNA Databank officers to have access to such DNA profiles or any information in relation thereto.

- c) Any person who commits an offence under this section shall, on conviction, be liable to imprisonment for a term not exceeding five (5) years or to a fine not exceeding One Hundred Thousand Pesos (P100,000.00) or to both.

- d) Any person who abets the commission of or who attempts to commit the offence under this section shall be guilty of that offence and shall, on conviction, be liable to the punishment provided for that offence: *Provided*, That any term of imprisonment imposed shall not exceed one-half of the maximum term provided for the offence.

**ARTICLE VI
GENERAL PROVISIONS**

SEC. 24. *Cooperation with Foreign Law Enforcement Agency.* –

- a) The Head of DNA Databank may, upon request by a foreign law enforcement agency, compare a DNA profile received from the foreign law enforcement agency with the DNA profiles in the DNA Databank in order to determine whether such DNA profile is already contained in the DNA Databank and communicate any relevant information to the foreign law enforcement agency.

- b) The Head of DNA Databank may, upon a request by a foreign law enforcement agency in the course of an investigation of an offence or a prosecution of a criminal offence in that foreign state, communicate a DNA profile contained in the DNA Databank to that foreign law enforcement agency.

1 **SEC. 25. Information from the DNA Databank to be Conclusive.** - Notwithstanding any
2 written law to the contrary, any information from the DNA Databank shall be admissible as a
3 conclusive proof of the DNA identification in any proceedings in any court.
4

5 **SEC. 26. Protection Against Actions and Legal Proceedings.** - No action, suit,
6 prosecution or other proceedings shall lie or be brought, instituted or maintained in any court
7 against:
8

- 9 a) the Secretary;
- 10 b) the Head of DNA Databank;
- 11 c) the Deputy Head of DNA Databank;
- 12 d) DNA Databank officers;
- 13 e) a government medical officer; or
- 14 f) a chemist, in respect of any act, neglect, default or omission done by him in good
15 faith in carrying out his powers, functions and responsibilities under this Act in such
16 capacity.
17

18
19 **SEC. 27. Regulations.** -
20

- 21 a) The Secretary may make regulations as may be necessary or expedient to give full effect to,
22 or for carrying out, the provisions of this Act.
- 23 b) Without prejudice to the generality of subsection (a), regulations may be made:
24 1) to prescribe the procedures in taking and disposing of intimate sample and non-
25 intimate sample;
26 2) to prescribe any form for the purpose of this Act;
27 3) to regulate the management, administration and control of the DNA Databank; and
28 4) to provide for any matter which under this Act is required or permitted to be
29 prescribed or which is necessary or expedient to be prescribed.
30

31 **SEC. 28. Savings and Transitional.** - Any existing DNA profile and any information in
32 relation thereto kept and maintained by the Chemistry Department of Malaysia or Royal
33 Malaysia Police, immediately before the coming into operation of this Act shall, on the coming
34 into operation of this Act, be deemed to have been kept and maintained in and to form part of the
35 DNA Databank established under this Act in accordance with indices applying.
36

37 **SEC. 29. Separability Clause.** - If any provision of this Act shall at any time be found to
38 be unconstitutional or invalid, the remainder thereof not affected by such declaration shall
39 remain in full force and effect.
40

41 **SEC. 30. Repealing Clause.** - All laws, decrees, rules or regulations inconsistent with the
42 provisions of this Act are hereby repealed or modified accordingly.
43

44 **SEC. 31. Effectivity Clause.** - This Act shall take effect after fifteen (15) days following
45 its complete publication in two (2) newspapers of general circulation.
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Approved,