

REPUBLIC OF THE PHILIPPINES
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

House Bill No. 5257



Introduced by **MAGDALO Party-List Representative**
HON. MANUEL DG. CABOCHAN III

EXPLANATORY NOTE

Article XIV, Section 10 of the Constitution declares the essentiality 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 database 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.

A handwritten signature in black ink, appearing to be "MDC", written over a circular stamp.

MANUEL DG. CABOCHAN III
Representative
Magdalo Para sa Pilipino Party-List

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Introduced by **MAGDALO Party-List Representative**
HON. MANUEL DG. CABOCHAN III

AN ACT
TO PROVIDE FOR THE ESTABLISHMENT OF THE NATIONAL FORENSIC DNA
DATABASE, 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 "*National Forensic DNA Database 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) "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.

(b) "DNA" means deoxyribonucleic acid

1 (c) "DNA profile" means genetic information derived from DNA testing of a biological
2 sample obtained from a person, which biological sample is clearly identifiable as
3 originating from that person;

4
5 (d) "foreign law enforcement agency" means the law enforcement agency of a foreign
6 state and includes an international organization established by the government of states
7 or an international organization.

8
9 (e) "forensic DNA analysis" means any analysis carried out for the purpose of
10 determining a person's identity;

11
12 (f) "intimate sample" means:

13
14 (1) a sample of blood, semen or any other tissue or fluid taken from a person's
15 body, urine or pubic hair; or

16 (2) a swab taken from any part of a person's genitals (including pubic hair) or
17 from a person's body orifice other than the mouth.

18
19 (g) "non-intimate sample" means:

20
21 (1) a sample of hair other than the pubic hair;

22 (2) a sample taken from a nail or from under a nail;

23 (3) a swab taken from any part of a person's body other than a part from which
24 a swab taken would be an intimate sample; or

25 (4) saliva;

26 27 **ARTICLE II** 28 **NATIONAL FORENSIC DNA DATABASE**

29
30 **SEC. 4. *Establishment of National Forensic DNA Database.*** – A forensic DNA database, to
31 be known as the National Forensic DNA Database (NFDD), shall be established.

32
33 The National Forensic DNA Database shall consist of the following indices:

34 (a) a crime scene index which shall contain DNA profiles and any information in
35 relation thereto derived from an intimate sample or a non-intimate sample that is found-

36 (1) on anything or at any place where an offence was committed;

37 (2) on or within the body of a victim of an offence;

38 (3) on anything worn or carried by the victim of an offence at the time when the
39 offence was committed; or

40 (4) on or within the body of any person reasonably suspected of having
41 committed an offence;

42 (b) a suspected persons index which shall contain DNA profiles and any information in
43 relation thereto derived from an intimate sample or a non-intimate sample taken from
44 persons reasonably suspected of having committed an offence and includes suspects
45 who have not been charged in any court for any offence;

46 (c) a convicted offenders index which shall contain DNA profiles and any information
47 in relation thereto derived from an intimate sample or a non-intimate sample taken from
48 persons convicted of any offence under any written law;

49 (d) a detainee index which shall contain DNA profiles and any information in relation
50 thereto derived from an intimate sample or a non-intimate sample taken from a detainee;

- (e) a drug dependent's index which shall contain DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from a drug dependent;
- (f) a missing persons index which shall contain DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from:
- (1) the body or parts of the body of an unidentified deceased person;
 - (2) anything worn or carried by a missing person; or
 - (3) the next of kin of a missing person if so required; and
- (g) a voluntary index which shall contain DNA profiles and any information in relation thereto derived from an intimate sample or a non-intimate sample taken from a person who volunteers to submit the same for the purpose of storage of the DNA information in the NFDD.

SEC. 5. Objectives of National Forensic DNA Database. – The primary objective of the NFDD 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 NFDD may be also 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.

ARTICLE III NATIONAL FORENSIC DNA CENTER

SEC. 6. National Forensic DNA Center. – The National Forensic DNA Center (NFDC) shall be established which shall manage the NFDD. The NFDC shall be an attached agency of the Department of Justice.

SEC. 7. Powers and Functions of the National Forensic DNA Center. – The NFDC shall have all such powers as may be necessary for, or in connection with, or incidental to the performance of its function under this Act, including the following:

- (a) to be responsible for the general conduct, administration, and management of the NFDD;
- (b) to establish mechanisms to facilitate the collection, storage and dissemination of data in connection with DNA profiles and any information in relation thereto stored in the NFDD;
- (c) to store DNA profiles and any information in relation thereto from any forensic DNA analysis carried out by the National Bureau of Investigation (NBI), the Philippine National Police (PNP), or any law enforcement agency or body;
- (d) to ensure that DNA profiles and any information in relation thereto are securely stored and remain confidential;
- (e) to store and dispose samples taken for the purpose of forensic DNA analysis in accordance with the provisions of this Act;
- (f) to cooperate with foreign law enforcement agencies in accordance with the provisions of this Act; and

- (g) to carry out any other functions conferred by or under this Act and to perform any other functions that are supplemental, incidental, or consequential to any of the functions specified in this section or in furtherance of the objectives of the NFDD.

SEC. 8. *Composition of the National Forensic DNA Center.* – The NFDC shall be composed of organic personnel from the National Bureau of Investigation and the Philippine National Police.

SEC. 9. *Appointment of Director of National Forensic DNA Center.* – The NFDC shall be headed by a Director. The Director of NFDC shall be appointed by the President for such period and on such terms and conditions as may be specified in the instrument of appointment. The Director of NFDC shall report to the Secretary of Justice.

ARTICLE IV MANAGEMENT AND ACCESS TO INFORMATION OF THE NATIONAL FORENSIC DNA DATABASE

SEC. 10. *Rectification of Particulars in DNA Profile and Information.* – The Director of NFDC shall be entitled to rectify the particulars in the DNA profiles and any information in relation thereto if:

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

The powers under this section shall be exercised by the Director of NFDC alone.

Any rectification made pursuant to this section shall not be construed as an act of tampering, abetting or attempting to tamper with any DNA profile or any information in relation thereto stored in the NFDD.

SEC. 11. *Access of DNA Profile and Information.* – The access to or use of DNA profiles and any information in relation thereto stored in the NFDD by its Director, officers and staff shall only for the purposes of:

- (a) forensic comparison with any other DNA profiles or information in the course of an investigation of any offence conducted by any enforcement agency;
- (b) administering the NFDD; or
- (c) making the information available to the person to whom the information relates.

Any other law enforcement agency who may wish to access DNA profiles and any information in relation thereto shall get prior clearance from the Director of NFDC.

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

SEC. 12. *Taking of Intimate Sample.* – 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.

- 1 (a) An intimate sample of the following maybe taken for forensic DNA analysis:
2 (1) a person reasonably suspected of having committed an offence;
3 (2) a detainee; or
4 (3) a drug dependent.
5 The aforementioned may be taken for the said analysis only if:
6 (1) an authorized officer authorizes it to be taken; and
7 (2) an appropriate consent in the prescribed form is given by the person from
8 whom an intimate sample is to be taken.
9 (b) Subject to an appropriate consent being given under subparagraph (b)(ii), an
10 authorized officer shall only give his authorization under subparagraph (b)(i) if:
11 (1) he has reasonable grounds for:
12 (i) suspecting that the person from whom the intimate sample is to be
13 taken has committed an offence; and
14 (ii) believing that the sample will tend to confirm or disprove the
15 commission of the offence by that person;
16 (2) an arrest has been effected on or a detention order has been made against a
17 detainee under existing laws; or
18 (3) an order or a decision has been made pursuant to the Comprehensive
19 Dangerous Drugs Act of 2002 against a drug dependent.
20 (c) An authorized officer:
21 (1) shall give his authorization under subsection (c) in writing; or
22 (2) where it is impracticable to comply with paragraph (1), may give such
23 authorization orally, in which case he must confirm it in writing as soon as
24 may be possible.
25 (d) A person from whom an intimate sample is taken shall be entitled to the
26 information derived from the analysis of the sample taken from him.
27 (e) An intimate sample shall only be taken by a government medical officer.
28

29 **SEC. 13. Taking of Non-intimate Sample.** – The procedures for the taking of a non-intimate
30 sample of any person under this Act shall be in accordance with the provisions of this section
31 and as prescribed.

- 32 (a) A non- intimate sample of:
33 (1) a person reasonably suspected of having committed an offence;
34 (2) a detainee; or
35 (3) a drug dependent, may be taken only if an authorized officer authorizes it to be
36 taken.
37 (b) An authorized officer shall only give his authorization under subsection (b) if:
38 (1) he has reasonable grounds for:
39 i. suspecting that the person from whom the non-intimate sample is to be
40 taken has committed an offence; and
41 ii. believing that the sample will tend to confirm or disprove the
42 commission of the offence by that person;
43 (2) an arrest has been effected on or a detention order has been made against a
44 detainee under existing laws; or
45 (3) an order of a decision has been made pursuant to the Comprehensive Dangerous
46 Drugs Act of 2002 against a drug dependent.
47 (c) An authorized officer:
48 (1) shall give his authorization under subsection (b) in writing; or

- (2) where it is impracticable to comply with paragraph (1), may give such authorization orally, in which case he must confirm it in writing as soon as possible.
- (d) The person from whom a non-intimate sample is taken shall be entitled to the information derived from the analysis of the sample taken from him.
- (e) A non-intimate sample shall only be taken by:
- (1) a government medical officer; or
 - (2) a police officer.
- (f) A police officer may use all means necessary for the purpose of taking or assisting the taking of a non-intimate sample from a person.

SEC. 14. Refusal to Give Sample. – If a person from whom a non-intimate sample shall be taken shall do the following, he shall commit an offence, and, shall, on conviction, be liable to a fine not exceeding Twenty Thousand Pesos (P20,000.00) or to imprisonment for a term not exceeding one (1) year or to both:

- (a) refusal to give such sample;
- (b) refusal to allow such sample to be taken from that person; or
- (c) obstruction of the taking of such sample from that person.

SEC. 15. Sample Given Voluntarily. –

- (a) Any person, other than the person whose intimate sample or non-intimate sample may be taken under Sections 12 and 13, may voluntarily give an appropriate consent in the prescribed form to an authorized officer for the taking of his intimate sample or non-intimate sample.
- (b) Where an appropriate consent is given under subsection (a), an authorized officer shall, before the taking of the intimate sample or non-intimate sample, inform the person from whom the sample is to be taken:
 - (1) that the DNA profiles and any information in relation thereto derived from the intimate sample or non-intimate sample may be stored in the NFDD and may be used for the purposes of forensic DNA analysis, police inquiry and for such purposes referred to in Section 11;
 - (2) that he may make a request to an authorized officer for an access to the information; and
 - (3) that he may at any time withdraw his consent given under subsection (a).

SEC. 16. DNA Sample of Prisoner. – An intimate sample or a non-intimate sample may be taken for forensic DNA analysis from any person who is serving his term of imprisonment in connection with an offence of which he has been convicted.

SEC. 17. Storage and Disposal of Intimate and Non-intimate Samples. –

- (a) The Director of NFDC shall safely and securely store all intimate samples and non-intimate samples that are collected for the purpose of forensic DNA analysis, the portions of the samples that the Director of NFDC consider appropriate and without delay destroy any remaining portions.
- (b) The procedures for the storage and disposal of an intimate sample and a non-intimate sample shall be as prescribed.

1 **SEC. 18. *Removal of DNA Profile and Information from Suspected Persons Index.*** – Where
2 an intimate sample or a non-intimate sample has been taken in accordance with this Act from
3 a person reasonably suspected of having committed an offence and:

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

15
16 **ARTICLE VI**
17 **OFFENCES**
18

19 **SEC. 19. *Offence of Tampering, Abetting or Attempting to Tamper with Sample.*** –

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

28 *Provided*, That any term of imprisonment imposed shall not exceed one-half of the maximum
29 term provided for the offence.
30

31 **SEC. 20. *Unauthorized Use or Communication of DNA Profile of Information.*** – No person
32 who receives a DNA profile for entry in the NFDD or who has access to information stored
33 therein shall; except in accordance with Sections 11 and 23 of this Act, use or communicate
34 such DNA profile or any information in relation thereto to be used or communicated other than
35 for the purpose of this Act.
36

37 Any person who contravenes thereto commits an offence and shall, on conviction, be liable to
38 imprisonment for a term not exceeding five (5) years or to a fine not exceeding One Hundred
39 Thousand Pesos (P100,000.00) or to both.
40

41 **SEC. 21. *Obligation of Secrecy.*** – The Director, officers and staff of the NFDC or any person
42 who for any reason, has by any means access to any data, record, book, register,
43 correspondence, document whatsoever, or material or information, relating to the DNA profiles
44 and any information in relation thereto in the NFDD which he has acquired in the performance
45 of his functions or the exercise of his powers, shall not give, divulge, reveal, publish or
46 otherwise disclose to any person, such document, material or information unless the disclosure
47 is required or authorized under this Act or regulations made under this Act; under any written
48 law; by any court; or for the performance of his functions or the exercise of his powers under
49 this Act or regulations made under this Act.
50

Any person who contravenes thereto 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. *Offence of Tampering, Abetting or Attempting to Tamper with DNA Profile or Information.* – 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 NFDC.

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

- (a) such DNA profile or any information in relation thereto is altered or erased;
- (b) 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
- (c) any event occurs which impairs the ability of the Director, officers and staff of the NFDC to have access to such DNA profiles or any information in relation thereto.

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.

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 VII GENERAL PROVISIONS

SEC. 23. *Cooperation with Foreign Law Enforcement Agency.* – The Director of NFDC 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 NFDD in order to determine whether such DNA profile is already contained in the NFDD and communicate any relevant information to the foreign law enforcement agency.

The Director of NFDC 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 NFDD to that foreign law enforcement agency.

SEC. 24. *Information from the NFDD to be Conclusive.* – Notwithstanding any written law to the contrary, any information from the NFDD shall be admissible as a conclusive proof of the DNA identification in any proceedings in any court.

SEC. 25. *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.

SEC. 26. *Implementing Rules and Regulations.* – The Secretary of Justice, in consultation with the National Bureau of Investigation, Philippine National Police, Department of Interior and Local Government, Department of Health, and Department of Science and Technology,

1 shall promulgate the necessary rules and regulations within one hundred twenty (120) days
2 upon effectivity of this Act for its effective implementation.

3
4 **SEC. 27. *Annual Reports.*** – Within two (2) years after the establishment of the National
5 Forensic DNA Center, its Director shall submit to Congress and the President, through the
6 Secretary of Justice, an annual report on the progress of implementation of this Act.

7
8 **SEC. 28. *Separability Clause.*** – If any provision or part of this Act is declared unconstitutional
9 or invalid, other parts or provisions hereof not otherwise affected shall remain valid and
10 subsisting.

11
12 **SEC. 29. *Repealing Clause.*** – All other laws, decrees, rules or regulations inconsistent with
13 the provisions of this Act are hereby repealed or modified accordingly.

14
15 **SEC. 30. *Effectivity Clause.*** – This Act shall take effect after fifteen (15) days following its
16 complete publication in the Official Gazette or in at least two (2) national newspapers of
17 general circulation.

Approved,