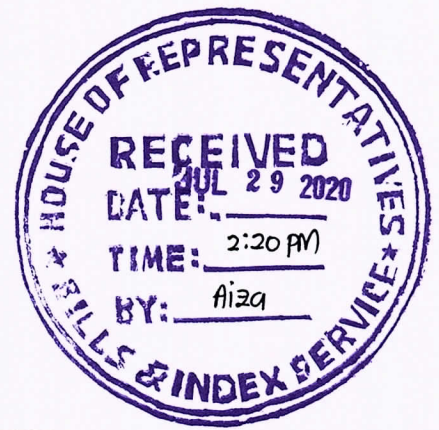


Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session

House Bill No. 7204



Introduced by **Rep. ANGELO MARCOS BARBA**
2nd District, Ilocos Norte

AN ACT IMPROVING AND MAINTAINING FORENSIC SCIENCE FACILITIES, ESTABLISHING FOR THE PURPOSE A FORENSIC DNA DATABASE IN THE PHILIPPINES, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES

EXPLANATORY NOTE

The 1987 Constitution expressly recognized the significance of science and technology in nation building. Section 10, Article XIV of the Constitution reads:

Science and technology are essential for national development and progress. The State shall give priority to research and development, invention, innovation, and their utilization; and to science and technology education, training, and services. It shall support indigenous, appropriate, and self-reliant scientific and technological capabilities, and their application to the country's productive systems and national life.

DNA technology is one of the most important discoveries in the field of science and technology. DNA, or deoxyribonucleic acid, a macromolecule that contains the genetic instructions an organism needs to develop, live and reproduce.

DNA has been used to diagnose genetic disorders through DNA sequencing and testing. It has also proven to be an invaluable tool to identify victims in mass fatalities brought about by mass tragedies, like the Kentex fire and the Maguindanao Massacre, and natural calamities, such as typhoons Ondoy and Yolanda.

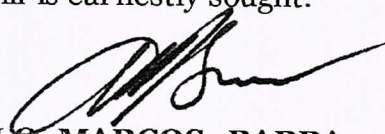
DNA also plays a significant role in the criminal justice system, specifically in criminal investigation, prosecution, exoneration and search for missing persons. Law enforcement capabilities have significantly improved with the use of DNA.

Considering how essential DNA technology is, several countries have established DNA Database in the analysis of genetic diseases, genetic genealogy, and most commonly in DNA profiling, particularly in criminal investigations. The acquisition by the Philippine National Police (PNP) of the Combined DNA Index System (CODIS) in 2013 helped build a DNA profile database in the country, used for routine casework analysis.¹

Establishing a framework for a forensic DNA database is therefore necessary to further boost the country's forensic DNA capabilities. A forensic DNA database is a collection of DNA profiles generated from biological samples, which can be electronically stored for comparison with DNA profiles generated from samples found at a crime scene or from other sources.

Furthermore, legislation is fervently needed to improve the forensic science facilities in the country. The enhancement these facilities would require improving infrastructure and analytic capabilities of crime laboratories in processing and storing DNA samples. These improvements may lead to more breakthroughs in forensic science and the criminal justice system.

In view of the foregoing, the early passage of this bill is earnestly sought.



ANGELO MARCOS BARBA

¹ DIDM Investigative Directive Number 2015-05, Retrieved on July 27, 2020 from http://www.pnp.gov.ph/images/Manuals_and_Guides/DIDM/Investigative_Directive/2015-05-Collection-of-DNA-Samples-from-Arrested-Person-and-Persons-Under-Custody-and-Registration-of-their-DNA-Profiles-into-the-PNP-DNA-Database.pdf

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

ARTICLE I - PRELIMINARY

SECTION 1. Short title. – This Act shall be known as the “*Philippine Forensic DNA Database Act*”.

SECTION 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.

Toward this end, the State shall upgrade forensic science facilities in the country to respond to the increasing demand for DNA sequencing and analysis for various applications, such as criminal investigation, crime prevention and criminal justice, legal proceedings, disaster response, and the enhancement of human capabilities, skills or expertise. The State shall likewise provide a statutory framework for the establishment of a centralized DNA database system for collection, storage, and maintenance of genetic information and empower pertinent government agencies to collect, analyze, type or profile, and record any and all genetic markers contained in or derived from DNA.

SECTION 3. Definitions. – For the purpose of this Act, the following terms shall mean:

- a. *Biological sample or DNA sample* – any organic material originating from a person's body, even if found in inanimate objects that is susceptible to DNA testing;
- b. *Buccal swab* – a sample of cellular material taken from the inside of a person's mouth;

- c. *Certified DNA Collector* – a police officer or a person who has successfully completed the training prescribed by the PNP or NBI Crime Laboratory, with respect to the taking of a buccal sample;
- d. *Crime scene sample* – physical evidence retrieved from the crime scene or any other place where evidence of the crime may be found and may include physical evidence collected from the body of a person;
- e. *Detainee* – a person arrested and detained under existing laws;
- f. *DNA or deoxyribonucleic acid* – a macromolecule that contains the genetic instructions an organism needs to develop, live and reproduce;
- g. *DNA evidence* – constitutes the totality of the DNA profiles, results, and other genetic information directly generated from DNA testing of biological samples;
- h. *DNA profile* – genetic information derived from DNA testing of a biological sample obtained from a person, whose biological sample is clearly identifiable as originating from that person;
- i. *DNA profiling or DNA typing* – a process whereby a minute sample of genetic DNA material is taken from a human tissue and is given a computerized numeric value;
- j. *Drug dependent* – a person, pursuant to the Comprehensive Dangerous Drug 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 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;
- k. *Foreign law enforcement agency* – the law enforcement agency of foreign state and includes an international organization established by the government of states or an international organization;
- l. *Forensic DNA Analysis* – analysis of the DNA from a body sample or crime scene sample to determine forensic DNA profile;
- m. *Forensic DNA Profiles* – the result obtained from forensic DNA analysis from a body sample or crime scene, providing a unique string of alpha numeric characters to provide identity reference;
- n. *Law enforcement personnel* – any employee or personnel of law enforcement agencies;
- o. *Intimate sample* –
 - i. A sample of blood, semen, or any other tissue or fluid taken from a person's body, urine, or public hair; or

- ii. A sample taken from any part of a person's genitals, including pubic hair, or from a person's body orifice other than the mouth.
- p. *Non-intimate sample* –
 - i. A sample of hair other than the pubic hair;
 - ii. A sample taken from a nail or from under the nail;
 - iii. A swab taken from any part of the person's body other than a part from which a swab taken would be an intimate sample; or
 - iv. Saliva
- q. *Offense* – any act of omission punishable by law; and
- r. *Philippine Forensic Database* – the country's central repository of DNA profiles created under this Act

SECTION 4. Forensic Science Enhancement Plan. – The Department of Justice (DOJ), the National Bureau of Investigation (NBI), the Department of Interior and Local Government (DILG), the Philippine National Police (PNP), the scientists and experts at the DNA Analysis Laboratory at the University of the Philippines, and the National Privacy Commission (NPC) shall draw up a five-year Forensic Science Enhancement Plan, that shall:

- A. Assess the prevailing capacities of all crime laboratories in the country in conducting Forensic DNA Analysis in terms of equipment and facility, human resources, and identify inadequacies and areas of improvement;
- B. Propose the acquisition of the necessary equipment units in making Forensic DNA analysis available in crime laboratories all over the country as well as building human capacity through training or workshops that will produce a local talent pool, accompanied by the corresponding budget for its accomplishment to be included in the proposed general appropriation items of the head agencies of the facilities involved herein, whenever applicable;
- C. Promulgate rules and regulations regarding forensic DNA analyses, methods, storage and facilities, including quality assurance protocols and practices that the international scientific community considers adequate to assure the quality of forensic DNA laboratory;
- D. Establish guidelines for better coordination and cooperation between and among law enforcement agencies and government-funded DNA facilities in the country as to provide a more efficient forensic DNA analysis and database which may be useful for disaster risk mitigation and forensic casework; and
- E. Professionalize Forensic DNA Analysts by creating a licensing or accreditation unit under the Professional Regulatory Commission (PRC) to ensure the quality of the talent pool and specialists in forensic DNA analysis in the country.

All concerned agencies shall review and update the Forensic Enhancement Plan every five (5) years to warrant continuous improvement and maintenance of forensic science facilities and ensure coordination and cooperation between and among law enforcement agencies and government-funded DNA facilities in the country.

ARTICLE II – PHILIPPINE FORENSIC DNA DATABASE

SECTION 5. *Establishment of a Philippine Forensic DNA Database.* – A forensic DNA database to be known as the Philippine Forensic DNA Database (PFDD) is hereby established to store Forensic DNA profiles and any information in relation thereto from any forensic DNA analysis in the country. The database shall consist of the following indices classified as follows:

- a. For purposes of criminal identification, a crime scene index, a convicted persons index, and victims index;
- b. For purposes of finding missing persons and identifying human remains, a missing persons index, a relative/s of missing persons index, and unidentified human remains index; and
- c. For purposes set out in (a) and (b), and for other purposes, voluntary index.

SECTION 6. *Objectives of the Philippine Forensic DNA Database.* – The objective of the Forensic DNA Database is to establish, keep and maintain a comprehensive National DNA database in order to perform comparative searches for the following purposes:

- a. To serve as a tool for crime prevention and crime solution;
- b. To identify person who might have been involved in the commission of an offense;
- c. To prove the innocence or guilt of person allegedly involved in the commission of an offense;
- d. To exonerate a person wrongly convicted of an offense; or
- e. To assist in the identification of missing persons or unidentified human remains;

SECTION 7. *Management, Sharing and Access to Information.* – The DNA database and any information contained therein shall only be accessed by authorized personnel of the NBI, PNP and other law enforcement agencies for the following purposes:

- a. Administering the database;

- b. Comparing DNA profiles or information in the course of an investigation conducted by any law enforcement agency and/or during judicial and quasi-judicial proceedings; and
- c. Making the information available to a person to whom the information relates.

The DOJ, DILG, NBI, PNP, and NPC shall promulgate the necessary rules and regulations, subject to the provisions of the Data Privacy Act, for the management and sharing of, and access to the database.

SECTION 8. *Cooperation with Foreign Law Enforcement Agency.* – The NBI or the PNP may, upon request of a foreign law enforcement agency, compare DNA profile received from the requesting foreign law enforcement agency with the DNA profiles in the Philippine forensic DNA database in order to determine whether such DNA profile exists in the database, and communicate relevant information to the said foreign law enforcement agency.

The NBI or the PNP may, upon request of a foreign law enforcement agency, in the course of an investigation or prosecution of a criminal offense in the foreign state, communicate a DNA profile contained in the database to the requesting foreign law enforcement agency.

For the purposes of this Section, *foreign law enforcement agency* shall refer to a law enforcement agency of a foreign state, including an international organization established by the government of states that the Philippines is an official member.

SECTION 9. *Confidentiality of DNA Profiles and Information.* – DNA profiles and all results or other information obtained from DNA testing shall be confidential, subject to the provisions of the Data Privacy Act and Section 11, A.M. No. 06-11-5-SC of the Rule on DNA Evidence.

ARTICLE III – COLLECTION, STORAGE, DISPOSAL

SECTION 10. *Collection of DNA Sample.* – Only a certified DNA collector shall collect a biological sample from any person who on or after the effective day of this Act is:

- a. Convicted of a crime for any offense;
- b. Arrested for and formally charged of the crime before the court for an offense;
- c. Legally detained under the law;
- d. Required to submit a DNA sample pursuant to a judicial or quasi-judicial order;

- e. Required to submit a DNA sample for elimination purposes;
- f. Street child or beggar;
- g. An active member of law enforcement agencies, Armed Forces of the Philippines; and
- h. A person who voluntarily provides a sample;

SECTION 11. *Handling of Collected Biological Sample.* – The integrity of the collected biological sample shall be maintained at all times. The chain of custody shall be clear and well-documented from the time a biological sample is collected until its disposal. The chain of custody document shall be retained in the laboratory record to reflect the integrity of the sample during its receipt, handling, storage, preparation, retention and/or disposal to protect the interest of all parties.

SECTION 12. *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 may be used as evidence in any proceeding and courts of law in the country, subject to the existing rules on DNA evidence.

SECTION 13. *Storage and Disposal of Biological Samples* – DNA Laboratories shall preserve all biological samples, DNA profiles and results, or other genetic information obtained from DNA testing and/or analysis. All biological samples collected under Section 10 must be destroyed not later than six (6) months after the DNA profile has been generated.

SECTION 14. *Deletion of DNA profile from the DNA Database Indices.* – A person whose DNA profile is contained in the voluntary or missing person's indices may request that their DNA profile or any related information, be deleted from the DNA Database at any time. The DNA Laboratory official in charge of the database shall, within six months of being notified of such request, delete the DNA profile and any information related thereto.

SECTION 15. *Biological Sample Voluntarily Given.* – Any person may submit DNA samples or give appropriate consent in written form to a certified DNA collector for taking his or her intimate or non-intimate sample.

Where a written consent is given, a certified DNA collector, before taking the sample, shall inform the person from whom the sample is to be taken that the DNA profiles and any information in relation thereto derived from the intimate sample or non-intimate sample shall be stored in the Philippine Forensic DNA Database and may be used for purposes of forensic DNA analysis, policy inquiry, and for such other purposes provided under this Act; *Provided*, that the person from whom the sample is taken may request access to his or her information; *Provided further*, that the said person may, at any time, withdraw his or her consent and request the deletion of his or her DNA profile and any information related thereto.

ARTICLE IV – CRIMINAL ACTS AND PENALTIES

SECTION 16. *Tampering of Forensic DNA Profiles.* – Any person who shall knowingly make any false entry or falsely alter any sample, record or profile or otherwise contained in the database; or who shall intentionally destroy, mutilate, conceal, remove, or otherwise impair the verity of availability of forensic DNA profile shall suffer the penalty ranging from twelve (12) years to twenty (20) years or a fine not less than One million pesos (PhP1,000,000.00) but not more than Five million pesos (PhP5,000,000.00).

SECTION 17. *Improper Disclosure of Forensic DNA Profiles.* – Any person who, by virtue of employment or official position, has possession of, or access to individually identifiable forensic DNA information indexed or otherwise contained in the database as referred to in this Act and who knowingly and willfully discloses such information in any manner to any person or from whom the said genomics information was taken shall suffer the penalty of imprisonment ranging from six (6) years to twelve (12) years and a fine of not less than Five hundred thousand pesos (PhP500,000.00) but not more than Four million pesos (PhP4,000,000.00).

SECTION 18. *Improper Access to and Use of Forensic DNA Profiles* – Any person who, without proper authorization, knowingly and willfully obtains any individual identifiable information indexed or contained in the database shall suffer the penalty of imprisonment ranging from three (3) years to six (6) years and a fine of not less than Five hundred thousand pesos (PhP500,000.00), but not more the Four million pesos (PhP4,000,000.00).

SECTION 19. *Failure to Deliver Forensic DNA Profiles.* – Any person who shall possess forensic DNA record in the database and refuse to deliver the same upon request of a person lawfully entitled to receive the same shall suffer the penalty ranging from three (3) years to six (6) years or a fine of not less than Four hundred thousand pesos (PhP400,000.00) but not more than Two million pesos (PhP2,000,000.00): *Provided*, That no action, suit, prosecution or other proceedings shall lie or be brought against the aforesaid person if he/she failed to deliver the records for cause(s) outside his/her control.

ARTICLE V – GENERAL PROVISIONS

SECTION 20. *Transitory Provision.* - The DOJ, DILG, NBI, PNP, and other law enforcement agencies shall share, subject to the provisions of the Data Privacy Act, and integrate all existing forensic DNA profiles in their respective databases into the PFDD.

SECTION 21. *Implementing Rules and Regulations.* – Within ninety days (90) days upon effectivity of this Act, DOJ, DILG, NBI, PNP, other law enforcements agencies, and the NPC, shall promulgate the necessary rules and regulations for the implementation of this Act.

SECTION 22. 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.

SECTION 23. Separability Clause. – If any provision or part thereof is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

SECTION 24. Repealing Clause. – All laws, orders, issuances, rules and regulations, or part thereof, inconsistent with the provisions of this Act are hereby repealed, amended, or modified accordingly.

SECTION 25. Effectivity Clause. – This Act shall take effect within fifteen (15) days after its publication in the Official Gazette or in at least two (2) newspapers of general circulation, whichever comes earlier.

Approved,