

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

Nineteenth Congress
First Regular Session

HOUSE BILL NO. 540



Introduced by Honorable Dan S. Fernandez

**EXPLANATORY
NOTE**

The experience in advanced Western countries is that DNA (deoxyribonucleic acid) can be used as an accurate test to identify criminals when biological specimen exists. At the same time, DNA can help to prove a person's innocence. DNA technology therefore is a vital tool in the proper administration of our criminal justice system, and an important instrument to prevent a miscarriage of justice. With obsolescence in police investigative methodology, we occasionally run the risk of verdicts "acquitting the raven but condemning the dove", so to speak (*dat veniam corvis, vexat, censura columbas*).

With the advancements in DNA technology, it is vital that the Philippines has its own forensic DNA database. With this database, criminal investigations will have another tool at its disposal to ensure accuracy and credibility.

In view of the foregoing, the early approval of this measure is earnestly requested.

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AN ACT
ESTABLISHING A FORENSIC DNA DATABASE IN THE PHILIPPINES

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 "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. 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 collect, analyze, type or profile, and record any and all genetic markers contained in or derived from DNA.

SECTION 3. *Definitions.* For purposes of this Act, the following terms shall mean:

a

- 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*** - sample of cellular material taken from the inside of a person's mouth;
- c. ***Certified PNP DNA Collector*** - a police officer or a person who has successfully completed the training prescribed by the PNP Crime Laboratory, in respect of the taking of 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** - means deoxyribonucleic acid, which is the chain of molecules found in every nucleated cell of the body. The totality of an individual's DNA is unique for the individual, except identical twins;
- 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, which biological sample is clearly identifiable as originating from that person;
- i. **DNA profiling or DNA typing** - a process where 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 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;
- 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 on 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 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 pubic hair; or
 - ii. A swab 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 a nail;
 - iii. A swab taken from any part of a person's body other than apart from which a swab taken would be an intimate sample; or
 - iv. Saliva.
- q. **Offense** - any act or omission punishable by law;
- r. **Philippine National Forensic DNA Database** - is the country's central repository of DNA profiles created under this Act.
- l. **Street Children** - Homeless children/minors who live and spend significant amount of time on the streets, parks, premises of malls, and other public areas of a city, municipality or any

open space as their shelter who are under the custody of Department Social Welfare and Development and their field office.

ARTICLE II FORENSIC DNA DATABASE

SECTION 4. *Establishment of Philippine National Forensic DNA Database.* A forensic DNA database through the Philippine National Police, to be known as the Philippine National Forensic DNA Database shall be established. The database shall consist of the following indices:

- a. ***Crime scene index*** which shall contain DNA profile derived from an intimate sample or a non-intimate sample that is found-
 - i. on anything or at any place where an offense was committed;
 - ii. on or within the body of a victim of an offense; or
 - iii. on anything worn or carried by the victim or suspect at the time when the offense was committed.
- b. ***Arrested person index*** which shall contain forensic DNA profiles derived from an intimate or a non-intimate sample taken from arrested persons;
- c. ***Convicted offenders index*** which shall contain DNA profiles derived from an intimate or a non-intimate sample taken from persons convicted of any offense under any written law;
- d. ***Detainee index*** which shall contain DNA profiles derived from an intimate or a non-intimate sample taken from a detainee;
- e. ***Elimination person index*** which shall contain DNA profiles derived from an intimate or non-intimate sample taken from persons who had lawful access to the crime scene to be used for comparison with evidence for elimination purposes;
- f. ***Law Enforcement Personnel index*** which shall contain DNA profiles of all employees of the government's law enforcement agencies, derived by means of forensic DNA analysis, from a buccal or blood swab;
- g. ***Military personnel index*** - which shall contain DNA profiles of all members of the Armed Forces of the Philippines derived by means of forensic DNA analysis, from a buccal or blood swab;
- h. ***Missing person index*** which shall contain DNA profiles and any information in relation thereto derived from an intimate or a non-intimate sample taken from-
 - i. anything worn or carried by a missing person; or
 - ii. the next of kin of a missing person if so required;
- i. ***Street Children and beggars index*** which shall contain DNA profiles of street children and beggars, derived by means of forensic DNA analysis, from a buccal or blood swab;
- j. ***Unidentified Human Remains Index*** -which shall contain DNA profiles and any information in relation thereto derived from an intimate or a non-intimate sample taken from the body or parts of the body of an unidentified deceased person;
- k. ***Voluntary person index*** which shall contain DNA profiles and any information in relation thereto derived from an intimate 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 DNA Databank.

SECTION 5. *Objectives of the DNA Database.* The objective of the 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.

ARTICLE III MANAGEMENT OF DATABASE AND ACCESS TO INFORMATION

SECTION 6. *Management.* The PNP Crime Laboratory (CL) DNA Laboratory Division shall manage the DNA databases established in Article II of this Act, and shall have all such powers as may be necessary for, 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 DNA database;
- b. To establish mechanisms to facilitate the connection, storage, and dissemination of data in connection with DNA profiles and any information in relation thereto stored in the DNA Database;
- c. To ensure that DNA profiles and any information in relation thereto are securely stored and remain confidential;
- d. To store and dispose samples taken for the purpose of forensic DNA analysis in accordance with the provisions of this Act;
- e. To cooperate with both local and foreign law enforcement agencies in accordance with the provisions of this Act; and
- f. 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 Philippine National Forensic DNA Database.

SECTION 7. *Access and Confidentiality of DNA profiles and information.* The DNA database and any information contained therein shall only be accessed by authorized personnel of the PNP CL DNA Laboratory on 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 the judicial and quasi-judicial proceedings; and
- c. making the information available to a person to whom the information relates.

DNA profiles and all results or other information obtained from DNA testing shall be confidential, subject to the provisions of Section 11, A.M. No. 06-11-5-SC (Rule on DNA Evidence).

SECTION 8. *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 courts or proceedings in the country subject to the existing Rules on DNA Evidence.

ARTICLE IV
TAKING, STORING, DISPOSING OF DNA SAMPLES, REMOVAL OF DNA
PROFILE, AND CONFIDENTIALITY

SECTION 9. *Collection of DNA Sample.* Only a certified PNP DNA Collector shall collect a biological sample from any person who on or after the effective date of this Act

- a. Is convicted of a crime for any offense;
- b. Is arrested for and formally charged of the crime before the court for an offense;
- c. Is legally detained under law;
- d. Is required to submit a DNA sample due to a judicial or quasi-judicial order because they are a suspect in a crime;
- e. Is needed to submit a DNA sample for elimination purposes;
- f. Is a street child or a beggar;
- g. Is an active member of law enforcement agency;
- h. Is an active member of the Armed Forces of the Philippines; and
- i. Is a person who is voluntarily providing a sample to be placed into the DNA database.

SECTION 10. *Handling of Collected Biological Sample.* The integrity of the collected biological sample shall be maintained at all times through a clear, well documented chain of custody from the time a biological sample is collected until its disposal. Such 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 11. *Refusal to give sample* - If a person whom a non-intimate sample is to be taken under this Act refuses to give such sample, refuses to allow such sample to be taken from him or her, or obstructs the taking of such sample from him or her, he or she commits an offence and shall, on conviction, be liable to a fine not exceeding three hundred thousand pesos (Php300,000.00) or to imprisonment for a term not exceeding six (6) years, or both.

SECTION 12. *Storage and disposal of biological samples* - PNP DNA Laboratory shall preserve all biological samples, DNA profiles and results or other genetic information obtained from the DNA testing. All biological samples collected under Section 9 must be destroyed not later than six months after the DNA profile has been generated.

SECTION 13. *Deletion of DNA Profile from the DNA Database Indices.* A person whose DNA profile is contained in the voluntary or missing person's indices as defined in Article II, Section 4, Subsections g and h may request that their DNA profile, and any related information, be deleted from the DNA databank at any time. Member/s of law enforcement agencies and the Armed Forces of the Philippines may request the same upon retirement or resignation from the service. 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 in relation to the profile.

SECTION 14. *Support from Voluntary Citizens.* To support the nationwide National DNA Database, employees of both government and private institutions and private citizens may submit DNA samples. Their forensic DNA profiles and any information in relation thereto shall be included in the voluntary person index.

SECTION 15. *Sample Given Voluntarily.* Any person may voluntarily give an appropriate consent in a written form to a certified DNA collector for the taking of his or her intimate or non-intimate sample:

- a. Where a written consent is given, a certified DNA collector, before the taking of the intimate or non-intimate sample, inform the person from whom the sample is to be taken -

- i. that the DNA profiles and any information in relation thereto derived from the intimate sample or non-intimate sample may be stored in the National Forensic DNA Database and may be used for the purposes of forensic DNA analysis, police inquiry, and for such purposes referred to in this act;
- ii. that he or she may make a request for an access to his or her information; and
- iii. that he or she may at any time withdraw his consent.

SECTION 16. *Population Statistics Database.* 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.

ARTICLE V QUALITY ASSURANCE STANDARDS

SECTION 17. *National DNA Database Scientific Advisory Committee.* A National DNA Database Scientific Advisory Committee shall be established for purposes of developing DNA testing database quality assurance standards for DNA testing and databasing including standards for testing the proficiency of forensic laboratories and forensic analysts conducting forensic DNA analysis.

SECTION 18. *Committee Members.* The Committee shall be composed of nine individuals including the Chair, scientifically qualified to understand, develop and adopt DNA quality assurance standards. Committee representatives shall include three (3) officials from the PNP, two from the NBI, one from the DOST, one from the DOH and two from other agencies or institutions actively engaged in forensic DNA testing. The Committee shall be chaired by an official from the PNP being the repository of the database.

SECTION 19. *Laboratory Standards.* The Committee shall develop, adopt, and recommend standards for quality management, including standards for testing the proficiency of Assurance Standards for forensic DNA testing laboratories, including standards for testing proficiency of laboratories and forensic analysts conducting forensic DNA test. Once adopted, these standards shall be required for any forensic laboratory in the Philippines that produces samples to be included in the national DNA database.

ARTICLE VI CRIMINAL ACTS AND PENALTIES

SECTION 20. *Tampering of DNA 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; or who shall intentionally destroy, mutilate, conceal, remove or otherwise impair the verity or availability of DNA records or profile; shall suffer the penalty of twelve (12) years and one (1) day imprisonment and a fine not less than Six Hundred Thousand Pesos (Php600,000.00) at the discretion of the court.
A person convicted of tampering DNA records shall be perpetually disqualified from the right to hold public office.

SECTION 21. *Tampering, Abetting, or Attempting to Tamper DNA Samples.* Any person who shall knowingly tampers or causes to be tampered with any intimate sample or non-intimate sample taken for the purposes of this Act; or any person who abets the commission of or who attempts to tamper any intimate or non-intimate sample taken for the purposes of this Act, on conviction, shall suffer the penalty of twelve (12) years and one (1) day imprisonment or a fine not less than Six Hundred Thousand Pesos (Php600,000.00) or both, at the discretion of the court.

A person convicted tampering, abetting, or attempting to tamper DNA samples shall be perpetually disqualified from the right to hold public office.

SECTION 22. *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 or information was taken shall suffer the penalty of eight (8) years and one (1) day imprisonment or a fine not lower than Five Hundred Fifty Thousand Pesos (Php500,000.00) or both, at the discretion of the court.

SECTION 23. *Failure to Deliver DNA Records or Samples.* Any person who shall possess a DNA record in the DNA database system or DNA samples and refuse to deliver the same upon request of a person lawfully entitled to receive the same without justifiable reason shall suffer the penalty of six (6) years and one (1) day imprisonment or a fine not lower than Four Hundred Thousand Pesos (Php400,000.00) or both, at the discretion of the court. 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 DNA records or samples for cause/s outside his/her control.

SECTION 24. *Improper Access to and Use of DNA Samples and Records.* Any person who, without proper authorization, 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 four (4) years and one (1) day of imprisonment or a fine not lower than Three Hundred Thousand Pesos (Php300,000.00) or both, at the discretion of the court.

ARTICLE VII GENERAL PROVISIONS

SECTION 25. *Sharing of Data Between the PNP and the NB/.* The Philippine National Police and the National Bureau of Investigation shall establish a system to ensure that DNA profiles from each of their respective databases are compared regularly and communicate any relevant information.

SECTION 26. *Cooperation with foreign law enforcement agency*

- a. The PNP 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 Database in order to determine whether such DNA profile is already contained in the DNA Database and communicate any relevant information to the foreign law enforcement agency.
- b. The PNP may, upon 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 Database to that foreign law enforcement agency.
- c. For the purposes of this section, "foreign law enforcement agency" means the law enforcement agency of a foreign state and includes an international organization established by the government of states that Philippines is an official member, or an international organization.

SECTION 27. *Regulations.* The PNP shall work with other relevant Philippine government agencies and interests to develop regulations as necessary to give full effect to, or for carrying out, the provisions of this Act.

SECTION 28. *Savings and Transitional.* Any existing DNA profile and any information in relation thereto kept and maintained by the Philippine National Police, immediately before the coming into operation of this Act shall, on the coming into operations of this Act, form part of the Philippine Forensic DNA Database established under this Act in accordance with indices applying.

SECTION 29. *Implementing Rules and Regulations.* Within one hundred and twenty (120) days, the necessary rules and regulations for the implementation of this Act shall be promulgated by the Department of Interior and Local Government.

SECTION 30. *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 31. *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.

SECTION 32. *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.

SECTION 33. *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,