

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

20th CONGRESS
First Regular Session

HOUSE BILL NO. 386



Introduced by. REP. JUAN CARLOS "ARJO" C. ATAYDE

AN ACT
ESTABLISHING A FORENSIC DEOXYRIBONUCLEIC ACID (DNA)
DATABASE IN THE PHILIPPINES, APPROPRIATING FUNDS THEREFOR,
AND FOR OTHER PURPOSES

Deoxyribonucleic Acid, or DNA, is a molecule that encodes the genetic information in all living organisms. A person's DNA is the same in each cell and it does not change throughout a person's lifetime; the DNA in a person's blood is the same as the DNA found in his saliva, sweat, bone, the root and shaft of hair, earwax, mucus, urine, skin tissue, and vaginal and rectal cells. Most importantly, because of polymorphisms in human genetic structure, no two individuals have the same DNA, with the notable exception of identical twins.¹ Over the years, the use of DNA provides a powerful investigative tool for law enforcement agencies.

In 2002, the Supreme Court recognized DNA as admissible and authoritative evidence in the case of *People vs. Vallejo*² wherein the rape and murder victim's DNA samples from the bloodstained clothes of the victim were admitted in evidence. In this case, "*the purpose of DNA testing (was) to ascertain whether an association exist(ed) between the evidence sample and the reference sample. The samples collected (were) subjected to various chemical processes to establish their profile.*"

Considering the fact that the odds of two (2) unrelated persons having the same DNA profile is in the order of one in a billion, this bill proposes the establishment of the national forensic DNA Database system that will benefit in efficiently and

¹ *People vs. Yatar*, G.R. No. 150224, May 19, 2004.

² G.R. No. 144656, May 9, 2002.

effectively solving crimes, identifying missing or deceased persons, ascertaining paternity, and more importantly, exonerating the innocent.

In a catena of cases decided by the Supreme Court, it ruled that the use of DNA in evidence does not violate an individual's right against self-incrimination. With respect to the right to privacy, it was stated that the right does not bar all incursions into individual privacy and is not intended to stifle scientific and technological advancements that enhance public service and common good.³ In fact, no less than the Constitution acknowledges the importance of science and technology in national development and progress.⁴

This measure shall provide a statutory framework for the creation and establishment of a centralized and nationwide DNA database system to be called Philippine National Forensic DNA Database to be administered by the Philippine National Police (PNP). The same includes proper safeguards to ensure not only the integrity of the DNA profiles and information to be stored in the database, but also the legitimacy of the purpose of collection and use thereof.

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

REP. JUAN CARLOS "ARJO" ATAYDE



³ *Ople vs. Torres*, G.R. No. 127685, July 23, 1998.

⁴ Article XIV Section 10, 1987 Constitution.

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AND FOR OTHER PURPOSES

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

SECTION 1. *Short Title.* This Act shall be known as the "*Forensic DNA Database Act.*"

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

Towards this end, the State shall provide a statutory framework for the creation and establishment of a centralized and nationwide DNA database system for the 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.

ARTICLE I
PRELIMINARY

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

- a. *Buccal swab* - a sample of cellular material taken from the inside of a person's mouth;
- b. *Certified PNP DNA Collector* - a police officer or a person who has successfully completed the training prescribed by the PNP Crime Laboratory, with respect to the taking of buccal sample;
- c. *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;
- d. *Detainee* - a person arrested and detained under existing laws;
- e. *Deoxyribonucleic acid (DNA)* - a biochemical molecule found in cells making each species unique;
- f. *DNA profile* - genetic information derived from forensic DNA analysis;
- g. *DNA sample* - any biological specimen or sample taken from an individual which may either be intimate or non-intimate samples, on which a DNA analysis can be carried out;
- h. *DNA profiling or DNA typing* - the process of providing and/or assigning a computerized numeric value in the form of a "bar code" to a minute sample of genetic DNA sample taken from a human tissue;
- i. *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;

j. *Foreign law enforcement agency* - the law enforcement agency or organization of a foreign country or an international organization;

k. *Forensic DNA analysis* - analysis of DNA obtained from a body sample or crime scene sample to determine forensic DNA profile;

l. *Forensic DNA profile* - the result obtained from forensic DNA analysis on body sample or crime scene sample, providing a unique string of alphanumeric characters to provide identity reference;

m. *Law enforcement personnel* - any employee or personnel of law enforcement agencies;

n. *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.

o. *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.

p. *Offense* - any act or omission punishable by law;

- 1 q. *Philippine National Forensic DNA Database* - the country's central repository of
2 DNA profiles and other information relating thereto created pursuant to this
3 Act;

4 ARTICLE II

5 FORENSIC DNA DATABASE

6 SEC. 4. *Establishment of Philippine National Forensic DNA Database.* There shall
7 be established a forensic DNA database under the Philippine National Police, to be
8 known as the Philippine National Forensic DNA Database. The database shall consist
9 of the following indices:

- 10 a. *Crime scene index* which shall contain a forensic DNA profile and any
11 information in relation thereto derived from an intimate sample or a non-
12 intimate sample that is found—
- 13 a. On anything or at any place where an offense was committed;
- 14 b. On or within the body of a victim of an offense; or
- 15 c. On anything worn or carried by the victim or suspect at the time when
16 the offense was committed.
- 17 b. *Arrested person index* which shall contain forensic DNA profiles derived from
18 an intimate or a non-intimate sample taken from arrested persons;
- 19 c. *Convicted offenders index* which shall contain forensic DNA profiles derived
20 from an intimate or a non-intimate sample taken from persons convicted of any
21 offense under any written law;
- 22 d. *Detainee index* which shall contain forensic DNA profiles derived from an
23 intimate or a non-intimate sample taken from a detainee;
- 24 e. *Drug dependent index* which shall contain forensic DNA profiles derived from
25 an intimate or a non-intimate sample taken from a drug dependent;

1 f. *Law enforcement personnel index* which shall contain forensic DNA profiles of all
2 employees of the government's law enforcement agencies, derived by means
3 of forensic DNA analysis, from a buccal or blood swab.

4 g. *Missing person index* which shall contain forensic DNA profiles and any
5 information in relation thereto derived from an intimate or a non-intimate
6 sample taken from—

7 i. The body or parts of the body of an unidentified deceased person;

8 ii. Anything worn or carried by a missing person; or

9 iii. The next of kin of a missing person if so required; and

10 h. *Voluntary person index* which shall contain forensic DNA profiles and any
11 information in relation thereto derived from an intimate or a non-intimate
12 sample taken from a person who volunteers to submit the same for the purpose
13 of storage of the DNA information in the DNA Databank.

14 SEC. 5. *Objective of the DNA Database.* The objective of the DNA Database is to
15 establish, keep and maintain a comprehensive National DNA database in order to
16 perform comparative searches for the following purposes:

17 a. Serve as a tool for crime prevention and crime solution;

18 b. Identify a person who might have been involved in the commission of an
19 offense;

20 c. Prove the innocence or guilt of a person suspected of committing an offense;

21 d. Exonerate a person wrongfully convicted of an offense; or

22 e. Assist in the identification of missing persons or unidentified human remains.

1 SEC. 10. *Storage and disposal of biological samples.* The PNP DNA Laboratory
2 shall safely and securely store all biological samples that are collected for the purpose
3 of this Act. All biological samples collected under Section 9 must be destroyed not
4 later than six (6) months after the DNA profile has been generated.

5 SEC. 12. *Removal of DNA Profile from the DNA Database Indices.* A person whose
6 DNA profile is contained in the volunteer or missing person's indices as defined in
7 Article II, Section 4, Subsections (f) and (g) may request that their DNA profile, and
8 any related information, be removed from the DNA databank at any time. The DNA
9 Laboratory officer in charge of the database shall remove the DNA profile and any
10 information in relation thereto within six months upon notice of said request.

11 SEC. 13. *Voluntary Support from Citizens.* To support the nationwide National
12 DNA Database, employees from both government and private institutions and private
13 citizens may submit DNA samples. Their forensic DNA profiles and any information
14 in relation thereto shall be included in the voluntary person index.

15 SEC. 14. *Consent in Cases of Voluntary Support.* Any person may give his or her
16 consent, in the prescribed manner deemed sufficient, to a certified DNA collector for
17 purposes of collecting or taking his or her intimate or non-intimate. Prior to taking the
18 intimate or non-intimate sample, the certified DNA collector shall inform the persons
19 from whom the sample are to be taken that-

- 20 c. The DNA profile and any information in relation thereto may be stored in the
21 National Forensic DNA Database and may be used for the purposes of forensic
22 DNA analysis, police investigation, and for other purposes referred to in this
23 Act;
- 24 d. They may make a request to access his or her information; and
- 25 e. They may at any time withdraw their consent before collection of intimate or
26 non-intimate samples and have their DNA profile and other information
27 removed from the database in the event that samples were already collected
28 prior to withdrawal of consent.

SEC. 15. *Privacy Protection Standards.* DNA records collected and maintained for the purposes of this Act shall be disclosed only:

- a. To criminal justice agencies for law enforcement investigation or identification purposes;
- b. In judicial proceedings, following applicable laws and rules of procedure; and
- c. To the person whom the intimate or non-intimate sample was collected from or their heir if the person is deceased.

SEC. 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

SEC. 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.

SEC.18. *Committee Members.* The Committee shall be composed of not less than seven but not more than nine, including the Chairperson, individuals scientifically qualified to understand, develop and adopt DNA quality assurance standards. Committee representatives shall include officials from the Philippine National Police, National Bureau of Investigation, University of the Philippines, and other public entities and institutions actively engaged in forensic DNA testing. The Committee shall be chaired by an official from the PNP being the repository of the database.

SEC. 18. *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

SEC. 10. *Refusal to give sample.* Any person who refuses to give, or allow a non-intimate sample be taken from him or her, or obstructs the taking of the same, when the collection or taking is authorized by the provisions of this Act, shall suffer a penalty of six (6) years imprisonment or a fine in the amount of Three Hundred Thousand Pesos (P300,000.00), or both, at the discretion of the court.

SEC. 19. *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 six (6) to twelve (12) years imprisonment or a fine not less than Six Hundred Thousand Pesos (P600,000.00) or both, at the discretion of the court.

SEC. 20. *Tampering, Abetting, or Attempting to Tamper with 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 six (6) to twelve (12) years imprisonment or a fine not less than Six Hundred Thousand Pesos (P600,000.00) or both, at the discretion of the court.

SEC. 21. *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, 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

1 was taken shall suffer the penalty of six (6) months to six (6) years imprisonment or a
2 fine not lower than Five Hundred Fifty Thousand Pesos (P500,000.00) or both, at the
3 discretion of the court.

4 SEC. 22. *Failure to Deliver DNA Records or Samples.* Any person who shall
5 possess a DNA record in the DNA database system or DNA samples and refuse to
6 deliver the same upon request of a person lawfully entitled to receive the same shall
7 suffer the penalty of six (6) months to six (6) years imprisonment or a fine not lower
8 than Four Hundred Thousand Pesos (P400,000.00) or both, at the discretion of the
9 court. Provided that, no action, suit, prosecution or other proceedings shall lie or be
10 brought against the aforesaid person if he or she failed to deliver the DNA records or
11 samples for cause/s outside his or her control.

12 SEC. 23. *Improper Access to and Use of DNA Samples and Records.* Any person
13 who, without proper authorization, knowingly and willfully obtains DNA samples or
14 any individually identifiable DNA information indexed or contained in the DNA
15 database system shall suffer the penalty of six (6) months to six (6) years imprisonment
16 or a fine not lower than Three Hundred Thousand Pesos (P300,000.00) or both, at the
17 discretion of the court.

18 ARTICLE VII 19 GENERAL PROVISIONS

20 SEC. 24. *Sharing of Data Between the PNP and the NBI.* The Philippine National
21 Police and the National Bureau of Investigation shall establish a system to ensure that
22 DNA profiles from each of their respective databases are compared regularly and
23 communicate any relevant information.

24 SEC. 25. *Cooperation with foreign law enforcement agency*

- 25 a. The PNP may, upon request by a foreign law enforcement agency, compare a
26 DNA profile received from the foreign law enforcement agency with the DNA
27 profiles in the DNA Database in order to determine whether such DNA profile
28 is already contained in the DNA Database and communicate any relevant
29 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 offense 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.

SEC. 26. *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.

SEC. 27. *Effect on Existing DNA Profiles.* Any existing DNA profiles 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.

SEC. 28. *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.

SEC. 29. *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. 30. *Separability Clause.* - Any portion or provision of this Act that is declared unconstitutional shall not have the effect of nullifying other portions or provisions hereof as long as such remaining portions can still subsist and be given effect in their entirety.

SEC. 31. *Repealing Clause.* - All laws, ordinances, rules, regulations, other issuances or parts thereof, which are inconsistent with this Act, are hereby repealed or modified accordingly.

SEC. 32. *Effectivity.* - This Act shall take effect after fifteen (15) days following its publication in the official Gazette or in a newspaper of general circulation.

Approved,