

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

TWENTIETH CONGRESS
First Regular Session

House Bill No. 2926



Introduced by **Rep. FERDINAND ALEXANDER A. MARCOS**
1st District, Ilocos Norte

EXPLANATORY NOTE

The 1987 Philippine Constitution acknowledges that "Science and technology are essential for national development and progress" (Article XIV, Section 10). In line with this, the fundamental charter mandates the State to "regulate the transfer and promote the adaptation of technology from all sources for the national benefit" (Section 12).

In advanced Western countries, DNA technology has proven to be of significant benefit in their respective criminal justice system. It can identify criminals as well as prove a person's innocence with amazing accuracy. It can even establish filiation (that is, settle questions whether people are related to one another). With access to such a technology, imagine how efficient and effective our law enforcement agencies would become the moment they could establish electronic databases containing indices to crime scenes, arrested persons, convicted offenders (including serial criminals and sex offenders), missing persons, unidentified human remains, etc. This would certainly be a vital tool to ensure accuracy and credibility in criminal investigations. Adopting modern forensics would go a long way in guaranteeing fairness in the Philippine justice system as a whole. •

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


FERDINAND ALEXANDER A. MARCOS

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AN ACT
ESTABLISHING THE PHILIPPINE NATIONAL POLICE FORENSIC DNA DATABASE
AND APPROPRIATING FUNDS THEREFOR

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

ARTICLE I
PRELIMINARY

SECTION 1. *Short Title.* This Act shall be known as the "PNP 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 reaffirms 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 framework for the creation and establishment of a centralized and nationwide deoxyribonucleic acid (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.

SEC. 3. *Definition of Terms.* As used in this Act:

- a. *Biological or deoxyribonucleic acid (DNA) sample* refers to any organic material originating from a person's body, including those found in inanimate objects, that is susceptible to DNA testing;
- b. *Buccal swab* refers to a sample of cellular material taken from the inside of a person's mouth;
- c. *Certified DNA Collector* refers to a police officer or a person who has successfully completed the training prescribed and certified by the PNP Forensic Group, in respect of the taking of buccal sample and biological DNA sample;

- d. *Crime scene sample* refers to 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 involved in an offense or crime;
- e. *DNA* refers to 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;
- f. *DNA evidence* refers to the totality of the DNA profiles, results and other genetic information directly generated from DNA testing of biological samples;
- g. *DNA profile* refers to 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;
- h. *DNA profiling* or *DNA typing* refers to a process where a minute sample of genetic DNA material is taken from a human tissue and is given an analyzed numeric value;
- i. *DNA testing* refers to the generation of DNA profiles and the comparison of the information obtained from the DNA testing of biological samples for the purpose of determining, with reasonable certainty, whether or not the DNA obtained from two or more distinct biological samples originates from the same person (direct identification) or if the biological samples originate from related persons (kinship analysis);
- j. *Foreign law enforcement agency* refers to the law enforcement agency of a foreign state and includes any recognized international organization established by government or states of which the Philippines is an official member, or any international organization;
- k. *Forensic DNA analysis* refers to analysis of the DNA from a body sample or crime scene sample to determine forensic DNA profile;
- l. *Forensic DNA profiles* refer to the result obtained from forensic DNA analysis on body sample or crime scene, providing a unique combination of genotype obtained from DNA analysis testing of multiple loci to provide identity reference;
- m. *Intimate sample* refers to
 - 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.
- n. *Non-intimate sample* refers to
 - 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 a part from which a swab taken would be an intimate sample; or
- iv. Saliva.

ARTICLE II FORENSIC DNA DATABASE

SEC. 4. *Establishment of Philippine National Police Forensic DNA Database.* A forensic DNA database under the Philippine National Police (PNP), to be known as the PNP 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; or
 - ii. 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 or persons deprived of liberty;
- 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 sample of a donor;
- 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, carried or used by a missing person; or
 - ii. biological relatives of a missing person if so required;
- i. **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; and
- j. **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.

SEC. 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/s 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

SEC. 6. *Management of DNA Database.* The PNP Forensic Group - DNA Laboratory Division (PNP-FG 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 functions 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 at all times;
- 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.

SEC. 7. *Access to 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-FG DNA Laboratory Division 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 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, and subject to the provisions of Republic Act No. 10173, otherwise known as the "Data Privacy Act of 2012."

SEC. 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 court or proceeding in the country subject to the judicial rules on DNA Evidence.

ARTICLE IV

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

SEC. 9. *Mandatory Collection of DNA Sample.* The following shall be required to provide biological sample:

- a. those convicted by final judgment for violation of any criminal law;
- b. those persons who have a pending criminal case before any court of competent jurisdiction;
- c. those who are legally detained under law;
- d. those ordered by a judicial or quasi-judicial order to submit their DNA sample in relation to a pending criminal case;
- e. those needed to submit a DNA sample for elimination purposes;
- f. active members of law enforcement agencies; and
- g. active members of the Armed Forces of the Philippines.

SEC. 10. *Voluntary Collection of DNA Sample.* – Any person may voluntarily give written consent for the taking of one's intimate or non-intimate sample.

Before taking any sample, the certified DNA collector shall inform the person from whom the sample is to be taken of the following:

- a. the DNA profile 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;
- b. any person may make a request for access to one's information; and
- c. any person may at any time demand the deletion of one's DNA profile in the database.

Furthermore, any person may submit a written request to the PNP-FG DNA Laboratory Division for DNA testing as defined in this Act: *Provided*, That at least one (1) of the DNA profile to be used in the requested DNA testing is the DNA profile of who requested the test or any person under his/legal guardianship.

For this purpose, the PNP is hereby authorized to collect reasonable fees for the collection of DNA sample, processing, and corresponding issuance of DNA test result and other certifications.

SEC. 11. *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 final 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.

SEC. 12. *Storage and disposal of biological samples.* – The PNP-FG DNA Laboratory Division 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.

SEC. 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 and may request that their DNA profile, and any related information, be deleted from the DNA database 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.

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

ARTICLE V QUALITY ASSURANCE STANDARDS

SEC. 15. *National DNA Database Scientific Advisory Committee.* A National DNA Database Scientific Advisory Committee (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. 16. *Committee Members.* The Committee shall be composed of nine (9) individuals including the Chair, with recognized expertise and competence to understand, develop and adopt DNA quality assurance standards necessary for the maintenance of the DNA database. Committee representatives shall be composed of one (1) representative from the PNP, one (1) representative from the Department of the Interior and Local Government (DILG), one (1) representative from the Department of Justice (DOJ), one (1) representative from the Department of Science and Technology (DOST), one (1) representative from the Department of Health (DOH), one (1) representative from the Data Privacy Commission (DPC), one (1) representative from the Commission on Human Rights (CHR), and two (2) representatives from other government 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. The PNP-FG DNA Laboratory Division shall act as the secretariat of the Committee.

ARTICLE VI PROHIBITED ACTS AND PENALTIES

SEC. 17. *Tampering of DNA Records.* Any person who shall knowingly make any false entry or alter any DNA record or profile indexed or otherwise contained in the DNA database system; or who shall intentionally destroy, mutilate, conceal, remove or otherwise impair the verity or availability of DNA records or profile without authority, 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 of tampering DNA records shall be perpetually disqualified from the right to hold public office.

SEC. 18. *Tampering, Abetting, or Attempting to Tamper DNA Samples.* Any person who shall knowingly tampers or cause the tampering with of any intimate sample or non-intimate sample taken for the purposes of this Act; or any person who aids or abets in the tampering with or in the attempts to tamper with any intimate or non-intimate sample taken for the purposes of this Act, upon conviction, shall suffer the penalty of twelve (12) years and one (1) day imprisonment or a fine not more 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.

SEC. 19. *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 and who knowingly and willfully discloses such information in any manner to any person or agency not legally 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 more than Five Hundred Fifty Thousand Pesos (Php550,000.00) or both, at the discretion of the court.

SEC. 20. *Refusal to give sample.* - If a person from whom a non-intimate sample is to be taken under this Act unjustly refuses to give such sample, or obstructs the taking of such sample from him or her when legally ordered by competent authority to do so, shall, suffer the penalty of six (6) years and one (1) day imprisonment, or a fine not exceeding three hundred thousand pesos (Php300,000.00), or both, at the discretion of the court.

SEC. 21. *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 more 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.

SEC. 22. *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 more than Three Hundred Thousand Pesos (Php300,000.00) or both, at the discretion of the court.

ARTICLE VII GENERAL PROVISIONS

SEC. 23. *Cooperation Between Law Enforcement Agencies.* The PNP, the National Bureau of Investigation (NBI) and other law enforcement agencies shall establish a system to ensure coordination and integration of the DNA database in their respective agencies.

SEC. 24. *Cooperation with Foreign Law Enforcement Agencies.* -

- 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.

SEC. 25. *Transitional Provision.* Any existing DNA profile and any information in relation thereto kept and maintained by the PNP, immediately before the effectivity of this Act shall form part of the PNP Forensic DNA Database established under this Act.

SEC. 26. *Implementing Rules and Regulations.* Within one hundred and twenty (120) days from the effectivity of this Act, the PNP, in consultation with government agencies and other law enforcement offices, shall promulgate the rules and regulations to effectively implement the provisions of this Act.

SEC. 27. *Appropriations.* The amount necessary for the effective implementation of this Act shall be taken from the current year's appropriation of the PNP. Thereafter, such sums as may be needed for the continued implementation of this Act shall be included in annual the General Appropriations Act.

SEC. 28. *Separability Clause.* If any provision of this Act is declared invalid or unconstitutional, the remainder thereof not affected thereby shall remain in force and in effect.

SEC. 29. *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.

SEC. 30. *Effectivity.* This Act shall take effect fifteen (15) days following the completion of its publication in the Official Gazette or in a newspaper of general circulation, whichever comes first.

Approved,