

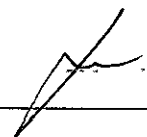
FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)

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9 OCT 14 AM 11:11

SENATE
S.B. No. 3487

RECEIVED BY



Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution, Article 14, Section 10 provides:

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.

In First World countries, DNA technology has been acknowledged as vital to ensuring accuracy and fairness in the criminal justice system. This technology can be used to identify potential suspects whose DNA may match evidence left at crime scenes; exonerate persons wrongly accused of crimes; and identify crime victims. At present, DNA technology is largely used in this country to establish paternity and other family relationships.

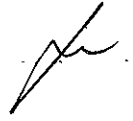
This bill seeks to provide for the establishment of a Forensic DNA Databank, the taking of DNA samples, forensic DNA analysis, and the use of DNA profiles and any information related to it to aid the country's criminal justice system.


MIRIAM DEFENSOR SANTIAGO

OCT 14 2011

SENATE
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Introduced by Senator Miriam Defensor Santiago

1 AN ACT
2 PROVIDING FOR THE ESTABLISHMENT OF A FORENSIC DNA DATABANK

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

3 SECTION 1. *Short Title.* – This Act shall be known as the “Forensic DNA Databank Act
4 of 2009.”

5 SECTION 2. *Declaration of Policy.* – The State recognizes that DNA technology is an
6 indispensable tool to ensure accuracy and fairness in the criminal justice system. When used to
7 its full potential, DNA technology will permit the criminal justice system to identify criminals
8 quickly and accurately. More crimes will be solved and persons mistakenly accused or
9 convicted of crimes will be cleared if the criminal justice system is provided with the necessary
10 funding, technology, and assistance it needs to reap the benefits of DNA technology.

11 SECTION 3. *Definitions.* – In this Act, the term –

12 (a) “Appropriate consent” means (1) in relation to a person who is under the age of
13 eighteen years, the consent in writing of his or her parent or guardian; (2) in relation to a person
14 who has attained the age of eighteen years, the consent in writing of that person; or (3) in relation
15 to a person in whom there is a condition of arrested or incomplete development of mind or body
16 whether such condition arises from inherent causes or is induced by disease or injury, and who is
17 incapable of understanding the general nature and effect of a forensic DNA analysis or is

1 incapable of indicating whether he or she consents or does not consent to give his or her intimate
2 sample or non-intimate sample, the consent in writing of his or her parent or guardian;

3 (b) "Authorized officer" means any police officer not below the rank of Police
4 Superintendent;

5 (c) "DNA" means deoxyribonucleic acid, which is the chain of molecules found in
6 every nucleated cell of the body. The totality of an individual's DNA is unique for the individual,
7 except identical twins;

8 (d) "DNA Databank" means the Forensic DNA Databank established under this Act;

9 (e) "DNA profile" means genetic information derived from DNA testing of a
10 biological sample obtained from a person, which biological sample is clearly identifiable as
11 originating from that person;

12 (f) "Forensic DNA analysis" means any analysis carried out for the purpose of
13 determining a person's identity;

14 (g) "Non-intimate sample" means –

15 (1) A sample of hair other than the pubic hair;

16 (2) A sample taken from a nail or from under a nail;

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

19 (4) Saliva;

20 (h) "Intimate sample" means –

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

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

25 SECTION 4. *Establishment of DNA Databank.* – (a) A DNA databank by the name of
26 "Forensic DNA Databank" is hereby established.

1 (b) The DNA Databank shall be under the management, control, and supervision of
2 the Head of DNA Databank.

3 (c) The DNA Databank shall consist of the following indices:

4 (1) A crime scene index which shall contain DNA profiles and any
5 information in relation thereto derived from an intimate sample or a non-
6 intimate sample that is found—

7 (i) on anything or at any place where an offense was committed;

8 (ii) on or within the body of a victim of an offense;

9 (iii) on any thing worn or carried by the victim of an offense at the
10 time when the offense was committed; or

11 (iv) on or within the body of any person reasonably suspected of
12 having committed an offense;

13 (2) A suspected persons index which shall contain DNA profiles and any
14 information in relation thereto derived from an intimate sample or a non-
15 intimate sample taken from persons reasonably suspected of having
16 committed an offense and includes suspects who have not been charged in
17 any court for any offense;

18 (3) A convicted offenders index which shall contain DNA profiles and any
19 information in relation thereto derived from an intimate sample or
20 a non-intimate sample taken from persons convicted of any offense
21 under any law;

22 (4) A detainee index which shall contain DNA profiles and any information
23 in relation thereto derived from an intimate sample or a non-
24 intimate sample taken from a detainee;

25 (5) A missing persons index which shall contain DNA profiles and any
26 information in relation thereto derived from an intimate sample or a
27 non-intimate sample taken from—

- 1 (i) the body or parts of the body of an unidentified deceased
2 person;
- 3 (ii) anything worn or carried by a missing person; or
4 (iii) the next of kin of a missing person if so required; and
- 5 (6) A voluntary index which shall contain DNA profiles and any information
6 in relation thereto derived from an intimate sample or a non-
7 intimate sample taken from a person who volunteers to submit the
8 same for the purpose of storage of the DNA information in the DNA
9 Databank and for such other purposes referred to in this Act.
- 10 (d) The DNA Databank shall be under the Department of Justice.

11 SECTION 5. *Objectives of DNA Databank.* – The DNA Databank has the following
12 objectives:

- 13 (a) The primary objective of the DNA Databank is to keep and maintain the indices
14 referred to in section 4 (c) for the purpose of human identification in relation to
15 forensic investigation.
- 16 (b) In addition to subsection (a), the DNA profiles and any information in relation
17 thereto kept and maintained in the DNA Databank may be used in assisting –
- 18 (1) The recovery or identification of human remains from a disaster or for
19 humanitarian purposes; and
- 20 (2) The identification of living or deceased persons.

21 SECTION 6. *Function of DNA Databank.* – The DNA Databank shall store DNA profiles
22 and any information in relation thereto from any forensic DNA analysis carried out by the
23 National Bureau of Investigation, the Philippine National Police, or any law enforcement agency
24 or body as may be designated by the Secretary of Justice from time to time by order.

25 SECTION 7. *Appointment of Head and Deputy Head of the DNA Databank.* – (a) The

1 President of the Philippines shall appoint the Head of the Forensic DNA Databank for such
2 period and on such terms and conditions as may be specified in the instrument of appointment.

3 (b) The President shall appoint the Deputy Head of the DNA Databank as may be
4 necessary for the purposes of this Act. The Deputy Head shall be subject to the control and
5 direction of the Head of the DNA Databank.

6 (c) The Head of the DNA Databank shall report to the Secretary of Justice.

7 SECTION 8. *Board of Visitors.* – (a) The President shall appoint a Board of Visitors
8 composed of one (1) representative each from the Commission of Human Rights; the
9 Department of Science and Technology; an accredited nongovernment organization whose main
10 advocacy is human rights, crime prevention, or a similar advocacy; the University of the
11 Philippines; and a retired justice of the Supreme Court.

12 (b) The Board of Visitors shall advise and make recommendations to the President on
13 all matters pertaining to the Forensic DNA Databank and the use of forensic DNA technology in
14 the criminal justice system.

15 SECTION 9. *Functions and Powers of the Head of the DNA Databank.* – (a) The Head of
16 the DNA Databank shall have the following functions:

- 17 (1) To be responsible for the general conduct, administration, and management of the
18 DNA Databank;
- 19 (2) To establish mechanisms to facilitate the collection, storage and dissemination of
20 data in connection with DNA profiles and any information in relation
21 thereto stored in the DNA Databank;
- 22 (3) To ensure that DNA profiles and any information in relation thereto are securely
23 stored and remain confidential;
- 24 (4) To store and dispose of the intimate sample and non-intimate sample taken for
25 the purposes of forensic DNA analysis in accordance with the provisions of
26 this Act and as prescribed;

1 (5) To cooperate with foreign law enforcement agencies in accordance with the
2 provisions of this Act; and

3 (6) To carry out any other functions conferred by or under this Act and to
4 perform any other functions that are supplemental, incidental, or consequential to
5 any of the functions specified in this section or in furtherance of the objectives of
6 the DNA Databank.

7 (b) The Head of the DNA Databank shall have all such powers as may be necessary
8 for, or in connection with, or incidental to, the performance of his or her functions under
9 this Act.

10 SECTION 10. *Rectification of Particulars in DNA Profile and Information.* – (a) The
11 Head of the DNA Databank shall be entitled to rectify the particulars in the DNA profiles and
12 any information in relation thereto if—

13 (1) A clerical error has occurred; and

14 (2) Sufficient evidence is produced to satisfy him or her that the entry made is
15 incorrect,

16 and on making the rectification he or she shall, where necessary, issue to the person entitled to
17 the information derived from the analysis of sample taken for him, the particulars so rectified.

18 (b) The powers under this section shall be exercised by the Head of the DNA
19 Databank alone.

20 (c) Any rectification made pursuant to this section shall not be construed as an act of
21 tampering, abetting, or attempting to tamper with any DNA profile or any information in relation
22 thereto contained in the DNA Databank mentioned in section ___

23 SECTION 11. *Access of DNA Profile and Information.* The access to, a communication,
24 or use of DNA profiles and any information in relation thereto stored in the DNA Databank shall
25 only be for the purposes of—

26 (a) Forensic comparison with any other DNA profiles or information in the course of

1 an investigation of any offense conducted by any enforcement agency;

2 (b) Administering the DNA Databank; or

3 (c) Making the information available to the person to whom the information relates.

4 SECTION 12. *Taking of Intimate Sample* - (a) An intimate sample of (1) a person
5 reasonably suspected of having committed an offense; or (2) a detainee, may be taken for
6 forensic DNA analysis only if --

7 (i) an authorized officer authorizes it to be taken, and an appropriate consent in the
8 prescribed form is given by the person from whom an intimate sample is to be
9 taken; or

10 (ii) a judge of the Regional Trial Court which has jurisdiction over the place where
11 the offense was committed or the place where the detainee is detained orders the
12 taking of the intimate sample.

13 (b) Subject to an appropriate consent being, an authorized officer shall only give his
14 or her authorization if --

15 (1) He or she has reasonable grounds for -

16 (i) suspecting that the person from whom the intimate sample is to be taken
17 has committed an offense; and

18 (ii) believing that the sample will tend to confirm or disprove the commission
19 of the offense by that person; or

20 (2) An arrest has been effected on or a detention order has been made against a
21 detainee under the law.

22 (c) An authorized officer shall give his or her authorization in writing; or where it is
23 impracticable to give his or her authorization in writing, may give such authorization orally, in
24 which case he or she must confirm it in writing as soon as 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 or her.

27 (e) An intimate sample shall only be taken by a government medical officer.

1 SECTION 13. *Taking of Non-Intimate Sample.* – (a) A non-intimate sample of (1) a
2 person reasonably suspected of having committed an offense; or (2) a detainee, may be taken
3 only if an authorized officer authorizes it to be taken.

4 (b) An authorized officer shall only give his or her authorization under subsection (a)
5 if:

6 (1) he has reasonable grounds for –

7 (i) suspecting that the person from whom the non-intimate sample is to be
8 taken has committed an offense; and

9 (ii) believing that the sample will tend to confirm or disprove the commission
10 of the offense by that person;

11 (2) an arrest has been effected on or a detention order has been made against a
12 detainee under the law;

13 (c) An authorized officer shall give his or her authorization under subsection (a) in
14 writing; or where it is impracticable to give his or her authorization in writing, may give such
15 authorization orally, in which case he or she must confirm it in writing as soon as may be
16 possible.

17 (d) The person from whom a non-intimate sample is taken shall be entitled to the
18 information derived from the analysis of the sample taken from him or her.

19 (e) A non-intimate sample shall only be taken by a government medical officer or a
20 police officer.

21 (f) A police officer may use all means reasonably necessary for the purpose of taking
22 or assisting the taking of a non-intimate sample from a person.

23 SECTION 14. *Refusal to Give Sample.* – If a person from whom a non-intimate sample is
24 to be taken under this Act refuses to give such sample, refuses to allow such sample to be taken
25 from him or her, or obstructs the taking of such sample from him or her, he or she commits an
26 offense and shall, on conviction, be liable to a fine not exceeding ten thousand pesos
27 (P10,000.00) or to imprisonment for a term not exceeding one (1) year or both.

1 SECTION 15. *Sample Given Voluntarily.* – (a) Any person, other than the person whose
2 intimate sample or non-intimate sample maybe taken under sections 11 and 12, may voluntarily
3 give an appropriate consent in the prescribed form to a police officer not below the rank of
4 Police Superintendent for the taking of his or her intimate sample or non-intimate sample.

5 (b) Where an appropriate consent is given under subsection (a), a police officer not
6 below the rank of Police Superintendent shall, before the taking of the intimate sample or non-
7 intimate sample, inform the person from whom the sample is to be taken –

8 (1) that the DNA profiles and any information in relation thereto derived from the
9 intimate sample or non-intimate sample may be stored in the DNA Databank and
10 may be used for the purposes of forensic DNA analysis, police inquiry, and for
11 such purposes referred to in this Act;

12 (2) that he or she may make a request to a police officer for an access to the
13 information; and

14 (3) that he or she may at any time withdraw his consent given under subsection (a).

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

18 SECTION 17. *Storage and Disposal of Intimate and Non-Intimate Samples.* – (a) The
19 Head of the DNA Databank shall safely and securely store all intimate samples and non-intimate
20 samples that are collected for the purpose of forensic DNA analysis, the portions of the samples
21 that the Head of the DNA Databank consider appropriate and without delay destroy any
22 remaining portions.

23 (b) The procedures for the storage and disposal of an intimate sample and a non-
24 intimate sample shall be prescribed by the appropriate rules and regulations.

25 SECTION 18. *Removal of DNA Profile and Information from Suspected Persons Index.* –

1 Where an intimate sample or a non-intimate sample has been taken in accordance with this Act
2 from a person reasonably suspected of having committed an offense and —

3 (a) investigations reveal that he or she was not involved in the commission of any
4 offense;

5 (b) the charge against him or her in respect of any offense is withdrawn;

6 (c) he or she is discharged by a court of an offense with which he or she has been
7 charged, at trial or on appeal;

8 (d) he or she is acquitted of an offense with which he or she has been charged, at trial,
9 or on appeal; or

10 (e) he or she is not charged in any court for any offense within a period of one (1)
11 year from the date of taking of such sample from him or her.

12 the Head of the DNA Databank shall, within six (6) months of so being notified by the officer in
13 charge of a police district of the fact referred to in paragraph (a), (b), (c), (d), or (e), remove the
14 DNA profile and any information in relation thereto of such person from the DNA Databank.

15 SECTION 19. *Offense of Tampering, Abetting, or Attempting to Tamper with Sample.*

16 (a) A person commits an offense if he or she tampers or causes to be tampered with any intimate
17 sample or non-intimate sample taken for the purposes of this Act.

18 (b) Any person who contravenes subsection (a) commits an offense and shall, on
19 conviction, be liable to imprisonment for a term not exceeding five (5) years or to a fine not
20 exceeding fifty thousand pesos (P50,000.00) or to both.

21 (c) Any person who abets the commission of or who attempts to commit the offense
22 under this section shall be guilty of that offense and shall, on conviction, be liable to the
23 punishment provided for that offense; *Provided*, that any term of imprisonment imposed shall not
24 exceed one-half of the maximum term provided for the offense.

25 SECTION 20. *Unauthorized Use or Communication of DNA Profile or Information.* - (a)

26 No person who receives a DNA profile for entry in the DNA Databank or who has access to

1 information contained in the DNA Databank shall not use or communicate such DNA profile
2 or any information in relation thereto other than for the purpose of this Act.

3 (b) Any person who contravenes subsection (a) commits an offense and shall, on
4 conviction, be liable to imprisonment for a term not exceeding five (5) years or to a fine not
5 exceeding fifty thousand pesos (P50,000.00) or to both.

6 SECTION 21. *Obligation of Secrecy.* - (a) The Head, Deputy Head, and officers of the
7 DNA Databank, or any person who for any reason, has by any means access to any data, record,
8 book, register, correspondence, document whatsoever, or material or information, relating to the
9 DNA profiles and any information in relation thereto in the DNA Databank which he or she has
10 acquired in the performance of his or her functions or the exercise of his or her powers, shall not
11 give, divulge, reveal, publish, or otherwise disclose to any person, such document, material, or
12 information unless the disclosure is required or authorized—

13 (1) under this Act or regulations made under this Act;

14 (2) under other laws;

15 (3) by any court; or

16 (4) for the performance of his or her functions or the exercise of his or her powers
17 under this Act or regulations made under this Act.

18 (b) Any person who contravenes subsection (a) commits an offense and shall, on
19 conviction, be liable to imprisonment for a term not exceeding five (5) years or to a fine not
20 exceeding fifty thousand pesos (P50,000.00) or to both.

21 SECTION 22. *Offense of Tampering, Abetting, or Attempting to Tamper with DNA*
22 *Profile or Information.* - (a) A person commits an offense if he or she tampers or causes to be
23 tampered with any DNA profile or any information in relation thereto in the possession, custody,
24 or control of the DNA Databank.

25 (b) For the purposes of this section, tampering with any DNA profile or any
26 information in relation thereto includes the following:

- 1 (1) such DNA profile or any information in relation thereto is altered or erased;
- 2 (2) any new DNA profile or any information in relation thereto is introduced or
- 3 added to such DNA profile or any information in relation thereto; or
- 4 (3) any event occurs which impairs the ability of the Head, the Deputy Head, or
- 5 officers of the DNA Databank to have access to such DNA profiles or any
- 6 information in relation thereto.

7 (c) Any person who commits an offense under this section shall, on conviction, be

8 liable to imprisonment for a term not exceeding five (5) years or to a fine not exceeding fifty

9 thousand pesos (P50,000.00) or to both.

10 (d) Any person who abets the commission of or who attempts to commit the offense

11 under this section shall be guilty of that offense and shall, on conviction, be liable to the

12 punishment provided for that offense: *Provided* that any term imprisonment imposed shall not

13 exceed one-half of the maximum term provided for the offense.

14 SECTION 23. *Cooperation with Foreign Law Enforcement Agencies.* – (a) The Head of

15 the DNA Databank may, upon request by a foreign law enforcement agency, compare a DNA

16 profile received from the foreign law enforcement agency with the DNA profiles in the DNA

17 Databank in order to determine whether such DNA profile is already contained in the DNA

18 Databank and communicate any relevant information to the foreign law enforcement agency.

19 (b) The Head of the DNA Databank may, upon a request by a foreign law

20 enforcement agency in the course of an investigation of an offense or a prosecution of a criminal

21 offense in that foreign state, communicate a DNA profile contained in the DNA Databank to that

22 foreign law enforcement agency.

23 (c) For the purposes of this section, “foreign law enforcement agency” means the law

24 enforcement agency of a foreign state and includes an international organization.

25 SECTION 24. *Information from the DNA Databank to be conclusive.* – Any information

26 from the DNA Databank shall be admissible as a conclusive proof of the DNA identification in

1 any proceedings in any court.

2 SECTION 25. *Protection Against Actions and Legal Proceedings* No action, suit,
3 prosecution, or other proceedings shall lie or be brought, instituted, or maintained in any court
4 against the Head, Deputy Head, and officers of the DNA Databank, government medical officer,
5 or any public officer in respect of any act, neglect, default, or omission done by him or her in
6 good faith in carrying out his or her powers, functions, and responsibilities under this Act.

7 SECTION 26. *Rules and Regulations*. – Not later than one hundred twenty (120) days
8 after the date of the enactment of this Act, the Secretary of Justice, in consultation with the
9 Secretary of Science and Technology and the Commissioner of Human Rights, shall promulgate
10 rules and regulations to implement this Act, including, but not limited to –

- 11 (a) the procedures in taking and disposing of intimate sample and non-intimate
12 sample;
- 13 (b) prescribed forms;
- 14 (c) the management, administration, and control of the DNA Databank; and
- 15 (d) any matter which under this Act is required or permitted to be prescribed or
16 which is necessary or expedient to be prescribed.

17 SECTION 27. *Authorization of Appropriations*. – To carry out the provisions of this Act,
18 there are authorized to be appropriated such sums as may be necessary for each fiscal year.

19 The Forensic DNA Databank must be established within two (2) years after the
20 effectivity of this Act.

21 SECTION 28. *Reportorial requirement*. – Within two (2) years after the establishment of
22 the Forensic DNA Databank, its Head shall submit a report to Congress on the costs and means
23 to implement the provisions of this Act. Thereafter, the Head of the Forensic DNA Databank
24 shall submit an annual report to Congress.

1 SECTION 29. *Separability Clause.* – If any provision, or part hereof is held invalid or
2 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain
3 valid and subsisting.

4 SECTION 30. *Repealing Clause.* – Any law, presidential decree or issuance, executive
5 order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent
6 with, the provisions of this Act is hereby repealed, modified, or amended accordingly.

7 SECTION 31. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
8 publication in at least two (2) newspapers of general circulation.

Approved,

/jab121009