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Second Regular Session )



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SENATE  
S. No. **2497**

RECEIVED BY: *Jr.*

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Introduced by Senator Miriam Defensor Santiago

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AN ACT  
PROVIDING FOR THE ESTABLISHMENT OF A FORENSIC DNA DATABANK

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*  
MIRIAM DEFENSOR SANTIAGO  
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\* This bill was originally filed in the Fourteenth Congress.

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Introduced by Senator Miriam Defensor Santiago

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

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

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

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 from the rank of Police  
4 Superintendent or higher;

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

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

13 (f) "Non-intimate sample" means –

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

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

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

18 (4) Saliva;

19 (g) "Intimate sample" means –

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

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

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

26 (b) The Forensic DNA Databank shall be under the management, control, and  
27 supervision of its Director.

- 1 (c) The Forensic DNA Databank shall consist of the following indices:
- 2 (1) A crime scene index which shall contain DNA profiles and any
- 3 information in relation thereto derived from an intimate sample or a non-
- 4 intimate sample that is found—
- 5 (i) on anything or at any place where an offense was committed;
- 6 (ii) on or within the body of a victim of an offense;
- 7 (iii) on any thing worn or carried by the victim of an offense at the
- 8 time when the offense was committed; or
- 9 (iv) on or within the body of any person reasonably suspected of
- 10 having committed an offense;
- 11 (2) A suspected persons index which shall contain DNA profiles and any
- 12 information in relation thereto derived from an intimate sample or a non-
- 13 intimate sample taken from persons reasonably suspected of having
- 14 committed an offense and includes suspects who have not been charged in
- 15 any court for any offense;
- 16 (3) A convicted offenders index which shall contain DNA profiles and any
- 17 information in relation thereto derived from an intimate sample or
- 18 a non-intimate sample taken from persons convicted of any offense
- 19 under any law;
- 20 (4) A detainee index which shall contain DNA profiles and any information
- 21 in relation thereto derived from an intimate sample or a non-
- 22 intimate sample taken from a detainee;
- 23 (5) A missing persons index which shall contain DNA profiles and any
- 24 information in relation thereto derived from an intimate sample or a
- 25 non-intimate sample taken from—
- 26 (i) the body or parts of the body of an unidentified deceased
- 27 person;
- 28 (ii) anything worn or carried by a missing person; or

1 (iii) the next of kin of a missing person if so required; and  
2 (6) A voluntary index which shall contain DNA profiles and any information  
3 in relation thereto derived from an intimate sample or a non-  
4 intimate sample taken from a person who volunteers to submit the  
5 same for the purpose of storage of the DNA information in the Forensic  
6 DNA Databank and for such other purposes referred to in this Act.

7 (d) The Forensic DNA Databank shall be an attached agency of the Department of  
8 Justice.

9 SECTION 5. *Objectives of Forensic DNA Databank.* – The Forensic DNA Databank  
10 shall have the following objectives:

11 (a) The primary objective of the Forensic DNA Databank is to keep and maintain the  
12 indices referred to in section 4 (c) for the purpose of human identification in relation to forensic  
13 investigation.

14 (b) In addition to subsection (a), the DNA profiles and any information in relation  
15 thereto kept and maintained in the Forensic DNA Databank shall be used in assisting –

16 (1) The recovery or identification of human remains from a disaster or for  
17 humanitarian purposes; and

18 (2) The identification of living or deceased persons.

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

24 SECTION 7. *Appointment of Director of the Forensic DNA Databank.* – (a) The  
25 President of the Philippines shall appoint the Director of the Forensic DNA Databank for such

1 period and on such terms and conditions as may be specified in the instrument of appointment.

2 (b) The Director shall report to the Secretary of Justice.

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

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

11 SECTION 9. *Functions and Powers of the Director of the Forensic DNA Databank.* – (a)

12 The Director of the Forensic DNA Databank shall have the following functions:

- 13 (1) To be responsible for the general conduct, administration, and  
14 management of the Forensic DNA Databank;
- 15 (2) To establish mechanisms to facilitate the collection, storage and  
16 dissemination of data in connection with DNA profiles and any  
17 information in relation thereto stored in the Forensic DNA Databank;
- 18 (3) To ensure that DNA profiles and any information in relation thereto are  
19 securely stored and remain confidential;
- 20 (4) To store and dispose of the intimate sample and non-intimate sample  
21 taken for the purposes of forensic DNA analysis in accordance with  
22 the provisions of this Act and as prescribed;
- 23 (5) To cooperate with foreign law enforcement agencies in accordance with  
24 the provisions of this Act; and
- 25 (6) To carry out any other functions conferred by or under this Act and to  
26 perform any other functions that are supplemental, incidental, or

1 consequential to any of the functions specified in this section or in  
2 furtherance of the objectives of the Forensic DNA Databank.

3 (b) The Director shall have all such powers as may be necessary for, or in  
4 connection with, or incidental to, the performance of his or her functions under this Act.

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

8 (1) A clerical error has occurred; and

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

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

13 (b) The powers under this section shall be exercised by the Director of the Forensic  
14 DNA Databank alone.

15 (c) Any rectification made pursuant to this section shall not be construed as an act of  
16 tampering, abetting, or attempting to tamper with any DNA profile or any information in relation  
17 thereto contained in the Forensic DNA Databank.

18 SECTION 11. *Access of DNA Profile and Information.* – The access to or use of DNA  
19 profiles and any information in relation thereto stored in the Forensic DNA Databank shall only  
20 be for the purposes of—

21 (a) Forensic comparison with any other DNA profiles or information in the course of  
22 an investigation of any offense conducted by any enforcement agency;

23 (b) Administering the Forensic DNA Databank; or

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

25 SECTION 12. *Taking of Intimate Sample.* – (a) An intimate sample of (1) a person

1 reasonably suspected of having committed an offense; or (2) a detainee, may be taken for  
2 forensic DNA analysis only if –

- 3 (i) an authorized officer authorizes it to be taken, and an appropriate  
4 consent in the prescribed form is given by the person from whom  
5 an intimate sample is to be taken; or  
6 (ii) a judge of the Regional Trial Court which has jurisdiction over the  
7 place where the offense was committed or the place where the  
8 detainee is detained orders the taking of the intimate sample.

9 (b) Subject to the appropriate consent being secured, an authorized officer shall only  
10 give his or her authorization if –

- 11 (1) He or she has reasonable grounds for –  
12 (i) suspecting that the person from whom the intimate sample is to be  
13 taken has committed an offense; and  
14 (ii) believing that the sample will tend to confirm or disprove the  
15 commission of the offense by that person; or  
16 (2) An arrest has been effected on or a detention order has been made against  
17 a detainee under the law.

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

21 (d) A person from whom an intimate sample is taken shall be entitled to the  
22 information derived from the analysis of the sample taken from him or her.

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

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

27 (b) An authorized officer shall only give his or her authorization under subsection (a)



1 if –

2 (1) he has reasonable grounds for –

3 (i) suspecting that the person from whom the non-intimate sample  
4 is to be taken has committed an offence; and

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

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

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

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

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

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

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

24 SECTION 15. *Sample Given Voluntarily.* – (a) Any person, other than the person whose  
25 intimate sample or non-intimate sample maybe taken under sections 11 and 12, may voluntarily  
26 give an appropriate consent in the prescribed form to a police officer not below the rank of

1 Police Superintendent for the taking of his or her intimate sample or non-intimate sample.

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

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

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

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

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

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

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

23 SECTION 18. *Removal of DNA Profile and Information from Suspected Persons Index.* –  
24 Where an intimate sample or a non-intimate sample has been taken in accordance with this Act  
25 from a person reasonably suspected of having committed an offense and —

- 1 (a) investigations reveal that he or she was not involved in the commission of any  
2 offense;
- 3 (b) the charge against him or her in respect of any offense is withdrawn;
- 4 (c) he or she is discharged by a court of an offense with which he or she has been  
5 charged, at trial or on appeal;
- 6 (d) he or she is acquitted of an offense with which he or she has been charged, at trial,  
7 or on appeal; or
- 8 (e) he or she is not charged in any court for any offense within a period of one (1)  
9 year from the date of taking of such sample from him or her,
- 10 the Director of the Forensic DNA Databank shall, within six (6) months of so being notified by  
11 the officer in charge of a police district of the fact referred to in paragraph (a), (b), (c), (d), or (e),  
12 remove the DNA profile and any information in relation thereto of such person from the Forensic  
13 DNA Databank.

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

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

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

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

24 SECTION 20. *Unauthorized Use or Communication of DNA Profile or Information.* – (a)

25 No person who receives a DNA profile for entry in the Forensic DNA Databank or who has  
26 access to information contained in the Forensic DNA Databank shall use or communicate

1 such DNA profile or any information in relation thereto other than for the purpose of this  
2 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 both.

6 SECTION 21. *Obligation of Secrecy.* – (a) The Director and staff of the Forensic DNA  
7 Databank, or any person who for any reason, has by any means access to any data, record, book,  
8 register, correspondence, document whatsoever, or material or information, relating to the DNA  
9 profiles and any information in relation thereto in the Forensic DNA Databank which he or she  
10 has acquired in the performance of his or her functions or the exercise of his or her powers, shall  
11 not give, divulge, reveal, publish, or otherwise disclose to any person, such document, material,  
12 or 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  
17 powers 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 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 Forensic 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  
2 erased;
- 3 (2) any new DNA profile or any information in relation thereto is  
4 introduced or added to such DNA profile or any information in  
5 relation thereto; or
- 6 (3) any event occurs which impairs the ability of the Director or staff of the  
7 Forensic DNA Databank to have access to such DNA profiles or any  
8 information in relation thereto.

9 (c) Any person who commits an offense under this section shall, on conviction, be  
10 liable to imprisonment for a term not exceeding five (5) years or to a fine not exceeding fifty  
11 thousand pesos (P50,000.00), or both.

12 (d) Any person who abets the commission of or who attempts to commit the offense  
13 under this section shall be guilty of that offense and shall, on conviction, be liable to the  
14 punishment provided for that offense: *Provided* that any term imprisonment imposed shall not  
15 exceed one-half of the maximum term provided for the offense.

16 SECTION 23. *Cooperation with Foreign Law Enforcement Agencies.* – (a) The Director  
17 of the Forensic DNA Databank may, upon request by a foreign law enforcement agency,  
18 compare a DNA profile received from the foreign law enforcement agency with the DNA  
19 profiles in the Forensic DNA Databank in order to determine whether such DNA profile is  
20 already contained in the Forensic DNA Databank and communicate any relevant information to  
21 the foreign law enforcement agency.

22 (b) The Director of the Forensic DNA Databank may, upon a request by a foreign law  
23 enforcement agency in the course of an investigation of an offense or a prosecution of a criminal  
24 offense in that foreign state, communicate a DNA profile contained in the Forensic DNA  
25 Databank to that foreign law enforcement agency.

26 (c) For the purposes of this section, “foreign law enforcement agency” means the law  
27 enforcement agency of a foreign state and includes an international organization.

1 SECTION 24. *Information from the Forensic DNA Databank Conclusive.* – Any  
2 information from the Forensic DNA Databank shall be admissible as conclusive proof of the  
3 DNA identification in any proceedings in any court.

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

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

14 (a) The procedures in taking and disposing of intimate sample and non-intimate  
15 sample;

16 (b) Prescribed forms;

17 (c) The management, administration, and control of the Forensic DNA Databank;  
18 and

19 (d) Any matter which under this Act is required or permitted to be prescribed or  
20 which is necessary or expedient to be prescribed.

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

23 The Forensic DNA Databank must be established within two (2) years from the date of  
24 effectivity of this Act.

1           SECTION 28. *Reportorial Requirement.* – Within two (2) years after the establishment of  
2 the Forensic DNA Databank, its Director shall submit a report to Congress on the costs and  
3 means to implement the provisions of this Act. Thereafter, the Director shall submit an annual  
4 report to Congress.

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

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

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

Approved,

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