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SENATE

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Introduced by SENATOR EDGARDO J. ANGARA

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EXPLANATORY NOTE

With the exception of identical twins, every person's DNA is uniquely his and his alone – this has made DNA samples one of the most important pieces of evidence from crime scenes.

Any type of organism can be identified by examination of DNA sequences unique to that species. To identify individuals, forensic scientists scan 13 DNA regions that vary from person to person and use the data to create a DNA profile of that individual (sometimes called a DNA fingerprint). A “match” allow DNA experts to identify an individual as a suspect or exclude him from suspicion.

DNA analysis is found to have several uses for forensic investigation, including, but not limited to the: 1) Identification of potential suspects whose DNA may match evidence left at crime scenes; 2) Exoneration of persons wrongly accused of crimes; 3) Identification of crime and catastrophe victims; 4) Establish paternity and other family relationships, through its variable number tandem repeats (VNTR) patterns; 5) Identification of endangered and protected species as an aid to wildlife officials (could be used for prosecuting poachers); 6) Detection of bacteria and other organisms that may pollute air, water, soil, and food; 7) Match organ donors with recipients in transplant programs; and 8) Determination of pedigree for seed or livestock breeds..

This bill will focus mainly on the capacity of forensic DNA technology to contribute to the criminal justice system. Specifically, this bill will provide the statutory authority for the creation of the National DNA Index System (NADIS) in the country. Only the following types of DNA data may be stored in the NADIS, administered by the NBI Director:

- DNA identification records of persons convicted of crimes;
- analyses of DNA samples recovered from crime scenes;
- analyses of DNA samples recovered from unidentified human remains;
- and
- analyses of DNA samples voluntarily contributed from relatives of missing persons.

DNA forensic technology has altered the landscape of the criminal justice system. It can be used to identify criminals with incredible accuracy when biological evidence exists, and it can also be used to clear suspects and exonerate

persons mistakenly accused or convicted of crimes. This is not a panacea to all of society's ills, true. But it has and it continues to place a human face on the statistical probability of error that has always existed in our criminal system. **For the most part (outside of gross human error), the actual technology of DNA typing is considered unquestionably sound and reliable by the scientific community and the courts (*U.S. v. Jakobetz* 1992).**

I am strongly optimistic that enhancing the generation and use of genetic information thru DNA analyses will contribute greatly to the investigation and expeditious resolution of crimes.

For these reasons, I strongly urge the immediate passage of this bill.

  
EDGARDO J. ANGARA  
Senator



1           **SEC.3. Objectives.** This Act shall endeavor to achieve the following:

- 2           1. Establish a comprehensive national DNA database for the country;
- 3           2. Eliminate the substantial backlog of DNA samples collected from crime  
4           scenes and convicted offenders;
- 5           3. Improve and expand the DNA testing capacity of the National Bureau of  
6           Investigation (NBI), Philippine National Police and the University of the  
7           Philippines (UP) local crime laboratories;
- 8           4. Increase research and development of new DNA testing technologies; and
- 9           5. Develop new training programs regarding the collection and use of DNA  
10           evidence, and to provide post-conviction testing of DNA evidence to  
11           exonerate the innocent.

12  
13           **SEC.4. Definitions.** For purposes of this Act,

- 14           (1) **“DNA or Deoxyribonucleic Acid”** is any various nucleic acid found in cell  
15           nuclei and special genes that yield deoxyribose as one product of  
16           hydrolysis, and is associated with the transmission of genetic information;  
17
- 18           (2) **“DNA sample”** means any biological specimen or sample of an individual  
19           which may either be a) **intimate samples**, like blood, semen or any other  
20           tissue fluid, urine or pubic hair, dental impressions, or a swab taken from  
21           a person’s body orifice other than the mouth; or b) **non-intimate samples**,  
22           like a plucked hair other than pubic hair; sample from a nail; or a swab of  
23           saliva on which a DNA analysis can be carried out;  
24
- 25           (3) **“DNA typing”** shall involve extracting the DNA from a specimen such as  
26           blood, semen, or saliva, then amplifying specific regions of the DNA to  
27           determine a DNA profile;  
28
- 29           (4) **“DNA profiling”** is a process where a minute sample of genetic DNA  
30           material is taken from a human tissue and is given a computerized  
31           numeric value in the form of a “bar code;”  
32

1 (5) *“Forensic DNA analysis”* means analysis of the deoxyribonucleic acid  
2 (DNA) identification information in a bodily sample;

3  
4 (6) *“Law enforcement agencies of the Government”* shall refer to the  
5 Philippine National Police Crime Laboratory Group and the National  
6 Bureau of Investigation;

7  
8 (7) *“National Bureau of Investigation (NBI) ”* refers to the government  
9 agency created by virtue of Commonwealth Act No. 181 (13 November  
10 1936), as amended by Republic Act No. 157 (19 June 1947), and Executive  
11 Order No. 94 (4 October 1947);

12  
13 (8) *“National DNA Index System (NADIS)”* is the country’s central  
14 repository of DNA samples created under this Act; and

15  
16 (9) *“UP-NSRI (Natural Sciences Research Institute) DNA Analysis*  
17 *Laboratory”* or the UP-NSRI DAL is the research and extension service  
18 laboratory of the University of the Philippines created in 1997 with funds  
19 from the Office of the President and tasked with pioneering the  
20 development of the national capability for forensic DNA typing.

21  
22 **SEC. 5. Establishment of a National DNA Index System (NADIS).** There  
23 shall be established a National DNA Index System (NADIS) in the country for  
24 the following purposes:

- 25 a) Assist law enforcement agencies of the government in the positive  
26 identification, detection, or exclusion of persons who are the subjects of  
27 investigations or prosecutions of sex-related crimes and other violent  
28 crimes in which biological evidence is received or recovered;
- 29 b) Support identification research and protocol development of DNA  
30 forensic methods;
- 31 c) Create and maintain DNA quality control standards;
- 32 d) Assist in the recovery or identification of human remains from natural or  
33 man-made disasters;

- 1 e) Assist law enforcement agencies in performing DNA analysis of crime  
2 scene evidence in casework for which there are no suspects; and  
3 f) Assist in humanitarian causes, including, but not limited to, the  
4 identification of missing, deceased or unidentified persons.

5 The NADIS shall also contain DNA analyses of samples from crime scenes.

6 To increase the capacity of laboratories owned by the government and to  
7 carry out DNA analyses of samples specified in Section 7, a) a comprehensive  
8 plan for the expeditious DNA analysis of samples shall be formulated; and b) a  
9 certification that each DNA analysis carried out under the plan shall be  
10 maintained pursuant to the privacy requirements.

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14 **SEC. 6. *Quality Assurance Standards.***

15  
16 (A) The Director of the National Bureau of Investigation shall maintain and  
17 make available to the public a description of quality assurance protocols  
18 and practices that the Director considers adequate to assure the quality of  
19 a forensic laboratory;

20 (B) Further, the Director of the National Bureau of Investigation shall  
21 establish requirements for the performance of DNA analyses by private  
22 forensic laboratories, including quality assurance standards, state-of-the-  
23 art testing methods, and other requirements that the Director considers  
24 appropriate; and

25 (C) For purposes of this section, a laboratory satisfies quality assurance  
26 standards if the laboratory satisfies the quality control requirements to be  
27 formulated by the DNA Advisory Board of the Department of Justice  
28 (DOJ).

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30  
31 **SEC 7. *DNA Advisory Board.*** There is hereby created a DNA Advisory  
32 Board, hereinafter referred to as the "BOARD" under the National Bureau of  
33 Investigation of the DOJ, and shall include as members scientists from public and

1 private forensic laboratories; and molecular geneticists and population  
2 geneticists not affiliated with a forensic laboratory.

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5 **SEC. 8. *Functions of the DNA Advisory Board.*** The Board shall perform  
6 the following functions:

7  
8 (1) Develop, and whenever appropriate, periodically revise, recommend  
9 standards for quality assurance, including standards for testing the  
10 proficiency of forensic laboratories, and forensic analysts, in conducting  
11 analysis of DNA;

12  
13 (2) Recommend standards which specify criteria for quality assurance and  
14 proficiency tests to be applied to the various types of DNA analyses used  
15 by forensic laboratories, including statistical and population genetics  
16 issues affecting the evaluation of the frequency or occurrence of DNA  
17 profiles calculated from pertinent population database(s);

18  
19 (3) Recommend standards for acceptance of DNA profiles in the National  
20 DNA Index System (NADIS) which take account of relevant privacy, law  
21 enforcement and technical issues; and

22  
23 (4) To make recommendations for a system for grading proficiency testing  
24 performance to determine whether a laboratory is performing acceptably.

25  
26  
27 The Director of the National Bureau of Investigation, after taking into  
28 consideration such recommended standards, shall issue (and revise from time to  
29 time) standards for quality assurance, including standards for testing the  
30 proficiency of forensic laboratories, and forensic analysts, in conducting analyses  
31 of DNA.

32  
33 The standards described in paragraphs (1), (2), and (3) shall specify  
34 criteria for quality assurance and proficiency tests to be applied to the various  
35 types of DNA analyses used by forensic laboratories. The standards shall also

1 include a system for grading proficiency testing performance to determine  
2 whether a laboratory is performing acceptably.

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6 **SEC.9. *Authorized Personnel to Collect DNA Samples.*** Biological or DNA  
7 samples submitted for forensic analysis shall only be collected by authorized  
8 personnel including, but not limited to a physician, medico-legal officer, a  
9 registered nurse, a laboratory technician, or a phlebotomist, whose qualifications  
10 are determined pursuant to rules and regulations adopted for the purpose.

11  
12 **SEC.10. *Collection and Use of DNA Identification Information from***  
13 ***Convicted Offenders.***

14 **(a) Collection of DNA Samples. -**

15  
16 (a.1) ***From Individuals in Custody.*** The Director of the Bureau of  
17 Prisons shall collect a DNA sample from each individual in the  
18 custody of the Bureau of Prisons who is, or has been, convicted of  
19 an offense;

20  
21 (a.2) ***From Individuals on Release, Parole, or Probation.*** The probation  
22 office responsible for the supervision under Federal law of an  
23 individual on probation, parole, or supervised release shall collect  
24 a DNA sample from each such individual who is, or has been,  
25 convicted of an offense;

26  
27 **(b) Collection Procedures. -**

28  
29 (b.1) The Director of the Bureau of Prisons or the probation office, as  
30 appropriate, may use or authorize the use of such means as are  
31 reasonably necessary to detain, restrain, and collect a DNA  
32 sample from an individual who refuses to cooperate in the  
33 collection of the sample.

34



1 (b.2) The Director of the Bureau of Prisons or the probation office, as  
2 appropriate, may enter into agreements with government  
3 agencies or with private entities to provide for the collection of  
4 the samples described in sub-paragraphs (a.1) or (a.2).  
5

6 **(c) Analysis and Use of Samples.-** The Director of the Bureau of Prisons  
7 or the probation office responsible, as appropriate, shall furnish each  
8 DNA sample collected under subsection (a) to the Director of the  
9 National Bureau of Investigation, who shall carry out a DNA analysis  
10 on each such DNA sample and include the results in the NADIS.  
11

12 **(d) Commencement of Collection.** Collection of DNA samples under  
13 subsection (a) shall, subject to the availability of appropriations,  
14 commence not later than 180 days after the enactment of this Act.  
15  
16

17 **SEC. 11. *Collection and Use of DNA Identification Information from***  
18 ***Certain Offenders in the Armed Forces.***

19 **(a) Collection of DNA Samples.-**  
20

21 (a.1) The Secretary of National Defense shall collect a DNA sample  
22 from each member of the armed forces under the Secretary's  
23 jurisdiction who is, or has been, convicted of a qualifying military  
24 offense.  
25

26 (a.2) The Secretary concerned may enter into agreements with other  
27 government agencies, or private entities to provide for the  
28 collection of samples described in sub-paragraph (1).  
29  
30

31 **(b) Analysis and Use of Samples.-** The Secretary concerned shall furnish  
32 each DNA sample collected under subsection (a) to the Secretary of  
33 Justice. The Secretary of Defense shall carry out a DNA analysis on  
34 each such DNA sample and furnish the results of each such analysis to

1 the Director of the National Bureau of Investigation for inclusion in  
2 the NADIS.

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5 **SEC.12. Powers and Limitations of Authorized Personnel to collect**  
6 **Biological Samples.** A person authorized under this Act to collect biological  
7 sample may use reasonable force for the taking of non-intimate biological sample  
8 which does not require consent.

9  
10 a) Non-intimate samples can be taken only when:

- 11  
12 1. A person gives his consent in writing;  
13 2. A person has been convicted of an offense or a crime;  
14 3. When a person does not give his consent but he is in detention and  
15 there is a reasonable ground to believe that he is involved in the  
16 commission of a crime or offense and where the need of such a  
17 biological sample will tend to confirm or disprove his involvement  
18 in such a crime or offense; or  
19 4. When a person has been charged with or accused of a crime or  
20 offense and during the trial no non-intimate sample has been taken  
21 from him or that his biological sample was insufficient for forensic  
22 DNA testing;

23  
24  
25 b) Intimate samples may only be taken upon consent of the person in writing  
26 and in the presence of his counsel. Said person whose intimate sample  
27 shall be taken must be a suspect in a crime or offense and that taking of  
28 such biological sample will be used to confirm or disprove his  
29 involvement in such an offense or a crime.

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32 **SEC.13. Missing Persons Database.** The Director of the National Bureau  
33 of Investigation shall expand the National DNA Index System (NADIS) to  
34 include information on missing persons, including analyses of DNA samples  
35 voluntarily contributed from relatives of missing persons.

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2           **SEC. 14. *Samples.*** To support the nationwide National DNA Index  
3 System, submission to DNA sampling may be required of all employees of both  
4 public and private institutions.

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7           **SEC. 15. *Privacy Protection Standards.*** DNA records collected and  
8 maintained for the purpose of identification of criminal suspects or offenders  
9 shall be disclosed only:

- 10  
11       a) To criminal justice agencies for law enforcement identification purposes;  
12       b) In judicial proceedings, if otherwise admissible, following applicable laws  
13       and rules of procedure;  
14       c) For criminal defense purpose, to a defendant, who shall have access to  
15       samples and analysis found in connection with the case in which such  
16       defendant is charged; and  
17       d) EXCEPTION: If personally identifiable information is removed, test  
18       results may be disclosed for a population statistics database, for  
19       identification research and protocol development purposes, or for quality  
20       control purposes.

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23           **SEC. 16. *Biological Sample or Genetic Markers derived from DNA as***  
24 ***Evidence.*** Expert testimony or evidence relating to the use of these biological  
25 sample or genetic markers contained in or derived from DNA for identification  
26 shall be admissible and accepted as evidence in all cases arising in all courts or  
27 proceedings in the country, *Provided, however,* That the trial courts or other quasi-  
28 judicial bodies shall be satisfied that the expert testimony or evidence meets the  
29 criteria for admissibility under the existing evidentiary rules.

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32           **SEC.17. *Criminal Penalties.***

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34       A) ***Criminal Penalties for Tampering with DNA Samples and Records.*** Any  
35       person who shall knowingly make any false entry or falsely alter any

1 DNA record or profile indexed or otherwise contained in the DNA  
2 database system or nationwide DNA repository; or who shall  
3 intentionally destroy, mutilate, conceal, remove or otherwise impair the  
4 verity or availability of DNA records or profile with the lack of knowledge  
5 to do so; or who shall possess a DNA record in the DNA database system  
6 or nationwide DNA repository and refuse to deliver such DNA records  
7 upon proper request of a person lawfully entitled to receive the same shall  
8 suffer the penalty of six (6) years imprisonment or a fine not to exceed  
9 Two Hundred Thousand Pesos (P 200,000.00) or both, at the discretion of  
10 the court;

11  
12 **B) *Criminal Penalties for Improper Disclosure of DNA Samples and Records.***

13 Any person who, by virtue of employment or official position, has  
14 possession of, or access to, individually identifiable DNA information  
15 indexed or otherwise contained in the DNA database system as referred to  
16 in this Act and who knowingly and willfully discloses such information in  
17 any manner to any person or agency not entitled to receive it to the  
18 prejudice and detriment of the public or person from whom the said DNA  
19 sample / information was taken shall suffer the penalty of four (4) years  
20 imprisonment or a fine not to exceed One Hundred Fifty Thousand Pesos  
21 (P 150,000.00) or both, at the discretion of the court; and

22  
23 **C) *Criminal Penalties for Improper Access to and Use of DNA Samples and***

24 ***Records.*** Any person who, without authorization from the PNP Crime  
25 Laboratory, the National Bureau of Investigation or the DNA Laboratory  
26 in UP Diliman, knowingly and willfully obtains DNA samples or any  
27 individual identifiable DNA information indexed or contained in the  
28 DNA database system shall suffer the penalty of two (2) years  
29 imprisonment or a fine not exceeding One Hundred Thousand Pesos (P  
30 100,000.00) or both, at the discretion of the court.

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33 **SEC. 18. *Implementing Rules and Regulations.*** Within one hundred and  
34 twenty (120) days, the DNA Advisory Board Except those which are reserved by  
35 the Constitution to the Supreme Court, the necessary rules and regulations for

1 the implementation of this Act shall be jointly promulgated by the Department of  
2 Justice and Department of Social Welfare and Development.

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5  
6 **SEC.19. Appropriations.** The amount necessary for the implementation of  
7 this Act shall be included in the General Appropriations Act of the year  
8 following its enactment into law and thereafter.

9 An initial amount of Fifty Million Pesos (P100,000,000.00) for the purpose  
10 of setting up the NADIS and the DNA Advisory Board shall be taken from the  
11 proceeds of the Philippine Charity Sweepstakes Office (PCSO).

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13  
14 **SEC.20. Separability Clause.** If any provision of this Act or an application  
15 thereof to any person or circumstance is held to be invalid, the other provisions  
16 of this Act, and the application of such provision to other persons or  
17 circumstances, shall not be affected thereby.

18  
19  
20 **SEC.21. Repealing Clause.** All existing laws, orders, rules and regulations  
21 or parts thereof deemed inconsistent with the provisions of this Act are hereby  
22 repealed or modified accordingly.

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25 **SEC.22. Effectivity.** This Act shall take effect fifteen (15) days following  
26 the date of its publication in the Official Gazette or in at least two (2) newspapers  
27 of general circulation, whichever comes first.

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30 *Approved,*