

STATEMENTS OF POLICY

Title 4—ADMINISTRATION

DEPARTMENT OF GENERAL SERVICES
[4 PA. CODE CH. 86]

[Correction]

Use of the Public Areas of the Capitol Complex

An error appeared in the map found in Appendix A of a document which appeared at 26 Pa.B. 4906, 4911 (October 12, 1996). Appendix A is being reprinted as set forth in Annex A.

Annex A

TITLE 4. ADMINISTRATION

PART III. DEPARTMENT OF GENERAL SERVICES

Subpart F. COMMONWEALTH BUILDINGS

CHAPTER 86. USE OF THE PUBLIC AREAS OF THE CAPITOL COMPLEX—STATEMENT OF POLICY

APPENDIX A

STATEMENTS OF POLICY

[Pa.B. Doc. No. 96-1706. Filed for public inspection October 11, 1996, 9:00 a.m.]

Title 37—LAW

STATE POLICE

[37 PA. CODE CH. 59]

Receipt and Processing of DNA Samples for the State DNA Database

As a requirement of the DNA Detection of Sexual and Violent Offenders Act (35 P. S. §§ 7651.101—7651.1102) (act), the State Police is adopting this statement of policy which is necessary for the general administration of the act. Certain provisions of the act take effect 18 months after the date of final enactment. The statement of policy sets forth the administration, policies and procedures designed to carry out the provisions of this act.

Benefits

The benefits include the identification of repeat offenders by identification of their forensic DNA profile obtained from evidentiary material, the linking of serial offenders within this Commonwealth and across the country, the solving of cases of unidentified perpetrators in sexual assaults and homicides, and the identification of missing persons and victims of mass disasters. These DNA profiles are from regions of the DNA that do not identify physical, sociological or psychological characteristics.

Effect

The statement of policy will affect various criminal justice agencies.

Paperwork Requirements

The statement of policy will require the completion of additional forms, reports, kits or other paperwork as prescribed and provided by the State Police.

Sunset Date

No sunset date has been assigned; however, every facet of the statement of policy will be continuously reviewed for effectiveness, clarity and whether it is serving the greater interests of citizens of this Commonwealth.

Public Hearings

This statement of policy has been written in consultation with the Department of Corrections, Warden's Association, Board of Probation and Parole, District Attorney's Association, Juvenile Court Judges Commission and Juvenile Detention Centers Association. Regional meetings to update and inform those affected are in the planning stages.

Public Comment

Interested parties wishing to comment are invited to submit a written statement within 30 days of the publication of this statement of policy in the *Pennsylvania Bulletin*. Each written statement must include the name, address and telephone number of the interested party, and a concise statement with sufficient detail on the subject. Written statements may be directed to the State Police, Attention: Director, Bureau of Research and Development, 1800 Elmerton Avenue, Harrisburg, PA 17110.

Contact Person

The contact person is Trooper R. M. Van Buskirk, State Police, Bureau of Research and Development, 1800 Elmerton Avenue, Harrisburg, PA 17110, (717) 772-4898.

Effective Date: The statement of policy shall take effect upon publication in the *Pennsylvania Bulletin*.

COLONEL PAUL J. EVANKO,
Commissioner

(Editor's Note: The regulations of the State Police are amended by adding a statement of policy at 37 Pa. Code §§ 59.1—59.3, 59.11, 59.12 and 59.21 to read as set forth in Annex A.)

Fiscal Note: 17-61. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 37. LAW

PART I. STATE POLICE

Subpart I. DNA DETECTION OF SEXUAL AND VIOLENT OFFENDERS

CHAPTER 59. PROCEDURES FOR THE RECEIPT AND PROCESSING OF DNA SAMPLES FOR THE STATE DNA DATABASE

PRELIMINARY PROVISIONS

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PRELIMINARY PROVISIONS

§ 59.1. Definitions.

The following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

Act—The DNA Detection of Sexual and Violent Offenders Act (35 P. S. §§ 7651.101—7651.1102).

CODIS—Combined DNA Index System—This term is derived from the Combined DNA Index System, the National DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories. It is comprised of three indexes, the Local DNA Identification System (LDIS), the State DNA Identification System (SDIS), and the National DNA Identification System (NDIS).

Commissioner—The Commissioner of the State Police.

Criminal justice agency—A criminal justice agency as defined in 18 Pa.C.S. § 9102 (relating to definitions).

DNA Databank—The repository of DNA samples obtained from offenders covered by the act.

DNA Database—The CODIS computerized collection of the DNA profiles obtained from the DNA samples.

Database lab—The laboratory processing the DNA samples to achieve a DNA profile on each.

DNA—Deoxyribonucleic Acid.

DNA sample—A body fluid sample provided by a person with respect to offenses covered by the act or submitted to the State Police Laboratory under the act for analysis or storage, or both.

DOC—The Department of Corrections of the Commonwealth.

EDTA—Ethylene diamine tetracetic acid. An anti-coagulant contained in lavender top blood collection tubes.

Effective date—As specified in section 1102(1) of the act (35 P. S. § 7651.1102(1)), November 28, 1996.

FBI—Federal Bureau of Investigation.

Felony sex offense—A felony offense, or an attempt, conspiracy or solicitation to commit a felony offense, under one or more of the following:

- (i) 18 Pa.C.S. Chapter 31 (relating to sexual offenses).
- (ii) 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

Intake—The facility at which the sentences will be served or, in the case of juveniles, the facility where a juvenile is committed under 42 Pa.C.S. Chapter 63 (relating to juvenile matters).

Juvenile detention facility—A resident facility/shelter care program approved by the Department of Public Welfare for the treatment of adjudicated juveniles under 42 Pa.C.S. § 6327 (relating to place of detention).

Juvenile facility—A facility licensed or approved to receive an adjudicated delinquent for disposition under 42 Pa.C.S. Chapter 63.

LDIS—Local DNA Identification System—A system consisting of profiles generated at a local law enforcement laboratory.

NDIS—National DNA Identification System—This is the CODIS National DNA Database. Policy and procedures for maintenance of this system are set by the FBI and are covered in the NDIS Privacy Act Notification (Justice/FBI-Q17). The NDIS is comprised of DNA profiles received from the various SDIS. Computer linkage is through secured modems by encrypted data.

Other specified offenses—An offense, or an attempt, conspiracy or solicitation to commit an offense, under one or more of the following:

- (i) 18 Pa.C.S. § 2502 (relating to murder).
- (ii) 18 Pa.C.S. § 2709 (relating to harassment and stalking).
- (iii) 18 Pa.C.S. § 3126 (relating to indecent assault).

Place of incarceration—The facility where a sentence is served.

Release—To set free from confinement.

Released prisoner—One who has been released into the public sector, not transported from one correctional facility to another or from a local lock up to a DOC facility.

SDIS—State DNA Identification System—This is the individual state DNA profile system that is comprised of the DNA convicted offender profiles and those indices as described in NDIS. The local laboratory DNA profiles feed into SDIS. The SDIS in this Commonwealth is operated by the State Police in compliance with CODIS rules and regulations.

§ 59.2. Scope.

This chapter sets forth policy and procedures for regulating the collection, submission, preservation, analysis and dissemination of information or records relating to DNA samples from individuals convicted or adjudicated delinquent under the act.

§ 59.3. Goals and objectives.

(a) The purpose of the State Police DNA Database Laboratory is to:

(1) Provide a databank for DNA specimens obtained from persons convicted or adjudicated delinquent under the act.

(2) Analyze samples from the specimens in the databank to develop their DNA profile for entry into CODIS.

(b) The information contained in both the DNA Databank and the DNA Database will be used by forensic scientists assigned to the DNA Database Laboratory to provide both exculpatory and inculpatory information useful in the investigation of violent crimes and to identify remains of missing persons and victims of mass disaster.

GENERAL PROVISIONS

§ 59.11. Procedures for regulating the collection, receipt and processing of DNA samples in the DNA database laboratory.

The procedures for regulating this subchapter have been promulgated in consultation with the DOC, in accordance with section 306(d) of the act (35 P. S. § 7651.306(d)), the Juvenile Court Judges Commission, the Juvenile Detention Centers Association, the Board of Probation and Parole, the District Attorney's Association and Warden's Association.

(1) *Sample origin.*

(i) *Convicted or adjudicated delinquent after November 28, 1996.*

(A) Samples for entry into the DNA Databank will originate from the DOC, local jail facilities and juvenile facilities throughout this Commonwealth, and any other facility specified by the court to withdraw a sample from an offender. DNA samples will consist of an EDTA tube of blood unless a special written request is made for a different tissue sample. These requests shall be in writing and due to a medical reason.

(B) Individuals from whom samples must be drawn for inclusion in the DNA Databank are selected under sections 306 and 307 of the act (35 P. S. §§ 7651.306 and 7651.307). Individual samples shall be drawn at the facility where the sentence is served. Samples shall be drawn at time of intake. If the sentence is served at the local level, the sample shall be drawn there. In the case of juveniles, the sample shall be drawn at the juvenile detention facility or at a facility specified by the court. To prevent duplication of draw and to ensure a sample is collected, a DNA Sample Tracking Sheet, Form SP 4-244, shall accompany the inmate and be placed into the inmate's file. A copy of the DNA Sample Tracking Sheet will be attached to the Reclassification Summary, DOC Form DC-13A, at the time the recommendation is made to the Board of Probation and Parole for release consideration. A copy of the DNA Sample Tracking Sheet will also be attached to the Institution Parole Summary, Form PB245A.

(C) If the disposition of a person covered by the act will not involve an intake into a prison, jail, juvenile detention facility, or another detention facility, or institution, the sample shall be drawn before release at a prison, jail unit, juvenile facility or other facility designated by the court.

(ii) *Conviction of adjudicated delinquent before November 28, 1996.* Individuals incarcerated before November

28, 1996, shall have samples drawn at the facility where the sentence/commitment is served. Samples shall be drawn prior to release or parole. Collection of samples from individuals already incarcerated shall be prioritized by release/parole date. These samples shall be collected after scheduling a compatible time for receipt by the DNA Database Laboratory.

(2) *Collection of DNA samples for the DNA Databank.*

(i) The responsibility for this section is as follows:

(A) The DOC will have the responsibility when the offender is sentenced to incarceration within a State correctional facility.

(B) The director of the youth development center or juvenile detention facility will have the responsibility when the offender is sentenced to detainment within a State juvenile correctional facility.

(C) The warden/official in charge of a county or local correctional facility or the administrator of a county juvenile detention center or other juvenile facility will have the responsibility for compliance with collection of the DNA samples under the act when the offender is sentenced to incarceration within these correctional facilities.

(D) Individuals given a disposition, other than incarceration, such as probation, will be the responsibility of the Chief County Adult or Juvenile Probation/Parole Officer. The sample will be drawn at a facility designated by the court.

(ii) The facility collecting the blood sample shall determine that the offender is subject to section 306 of the act prior to taking the blood sample. The SID Number associated with an inmate's commitment and sentencing documentation will be used as a tracking number for this purpose.

(iii) Blood samples will be collected by using the State Police provided DNA Database Kits. The kits will include an EDTA (lavender top) blood tube, seals, packing material, DNA Database Collection Card and a self-addressed, postage-paid, mailing carton.

(iv) Only those individuals qualified to draw blood samples in a medically approved manner shall draw a blood sample to be submitted for DNA analysis.

(v) Each form, card and blood tube inside the kit shall be completed in full and properly sealed. The imprinting of the offender's left and right thumbs, by means of an inked impression in the spaces indicated on the DNA Database Collection Card shall also be completed. In addition, a Pennsylvania State Police Arrest and Institution Fingerprint Card, Form SP 4-123, shall be completed. This card is supplied with a self-addressed, postage-paid, envelope.

(vi) The completed kit, including tube of blood and DNA Database Collection Card, and the fingerprint card shall be delivered to the State Police DNA Database Laboratory within 48 hours of drawing the sample.

(3) *Receipt of DNA samples in the DNA Databank.*

(i) DNA samples received in person, by mail, by parcel post or by a bonded courier service will be accompanied by a DNA Database Sample Inventory and Receipt Form. When received in person, the DNA Database Laboratory will verify that the samples delivered are the same samples as listed on the DNA Database Sample Inventory and Receipt Form. The DNA Database Laboratory will sign and date the chain of custody portion of the form, indicate the manner of receipt and ensure that the

correctional officer or courier signs in the appropriate space. The original of this form will be maintained in the DNA Database Laboratory and a copy will be given to the correctional officer or courier as a delivery receipt. A copy of the form will also be mailed to the submitting agency. After inventory of the samples, each sample will receive a unique DNA bar code number. The number will then be entered into a Sample Tracking System.

(ii) Associated paperwork with the sample kit will receive the same bar code number and be placed into the DNA Sample File that is generated at this time.

(iii) The DNA Sample File will not contain sizing information or DNA typing data.

(iv) Upon receipt and after assignment of a unique bar code number, the DNA Database Laboratory will break the seal and closely examine each individual sample received to determine that:

(A) The name and other identifying information on the DNA Database Collection Card has been included and that this information matches that on the label of the blood tube.

(B) The offense listed on the DNA Database Collection Card is an offense covered by the act.

(C) The tube of blood is not broken or putrid or does not contain a sufficient amount of blood for analysis.

(v) The sample and kit are further processed, and the kit is then resealed, initialed, dated and placed into a secured refrigerator to await preparation of a bloodstain.

(vi) All components of the DNA Database kit will be checked for any problems by the DNA Database Laboratory.

(A) If the sample needs to be redrawn, the kit will be placed in a special location in the refrigerator/freezer and labeled "REDRAW."

(B) The DNA Database Laboratory will ensure that the submitting agency is contacted and notified if a sample needs to be redrawn. It will also track the sample to ensure it is indeed redrawn as requested.

(C) A DNA Sample Destruction Form will be completed if the DNA Database Laboratory determines that a sample has been received from an individual not covered by the act, and the sample will be destroyed.

(vii) Specimens in the DNA Databank will be retained for a minimum of 50 years.

(viii) Lab files will not contain offender names. The only identifier will be the unique bar code number.

§ 59.12. Access to data and information.

General operating procedures:

(1) Access to information in the DNA Database and DNA Databank (including personal identifying information) is permitted only as specified in section 309(a)(1) and (2) of the act (35 P.S. § 7651.309(a)(1) and (2)). Other requests for information will be denied.

(2) The identity of any person/agency making a request for information shall be verified prior to the release of any information.

(3) Requests for information will only be accepted from law enforcement or criminal justice agencies, or approved governmental forensic science laboratories or upon written or electronic request and in furtherance of an official

investigation of a criminal offense or offender or suspected offender. Requests from private forensic laboratories will not be honored.

(4) A request may be made by personal contact, mail or electronic means. A Request for Database Search Form shall be completed.

(5) The name of the requestor and the purpose for which the information is requested shall be maintained on file in the DNA Database Laboratory.

(6) Other requests on information in the Convicted Offender DNA Database in CODIS may only be released upon written court order.

(7) Only when a sample or DNA profile supplied by the requestor satisfactorily matches a profile in the Convicted Offender DNA Database shall the existence of data in the Convicted Offender DNA Database be confirmed or identifying information from the DNA Database be disseminated.

(8) Violations or suspected violations of disclosure of DNA Database information shall be reported to the Director of the Laboratory Division. Violations are described in section 501 of the act (35 P. S. § 7651.501). Criminal and civil penalties are described in sections 502 and 503 of the act (35 P. S. §§ 7651.502 and 7651.503).

FORMS

§ 59.21. Forms.

The reporting forms/documents referred to in this subpart will be prescribed by the State Police and be in compliance with the FBI CODIS standards. Forms/documents and their related instructions will be furnished to the applicable criminal justice agencies.

[Pa.B. Doc. No. 96-1743. Filed for public inspection October 18, 1996, 9:00 a.m.]