

ACLU-PA Position: Oppose

Pennsylvania currently collects DNA samples from people convicted of hundreds of different crimes.

SB 912 (PN 1088) would amend [Title 44](#) (Law and Justice) to expand DNA collection to require anyone **arrested for** or **charged with** one of those offenses, many of which are minor crimes, to submit a DNA sample to police—including samples from juveniles.

Qualifying Offenses**44 Pa.C.S. § 2303. Definitions.**

- Adds a definition for “Criminal homicide” ([Title 18, Chapter 25](#)) **AND** the [inchoate crimes](#)—the “attempt, conspiracy or solicitation to commit” one of those offenses.
- Amends the definition of “Other specified offense” to include the [inchoate crimes](#) for each of the “other specified offenses” listed in the bill.

Required DNA Collection

44 Pa.C.S. § 2302. Policy. Expands the legislative intent to include the state’s interest in collecting “DNA samples submitted by individuals arrested for, charged with, convicted of, adjudicated delinquent for or accepted into ARD for criminal homicide, felony sex offenses and other specified offenses”.

44 Pa.C.S. § 2316. DNA sample required.

- **Collection upon arrest:** Adds a new subsection under (c.1) to require DNA samples be collected from anyone arrested for criminal homicide, felony sex offense, or other specified offense, requiring that:
 - **Juveniles and adults are required to submit a DNA sample upon arrest.**
 - DNA must be collected when mandatory fingerprints are taken per [18 § 9112](#).
 - DNA must be submitted to the state police within 48 hours per [44 § 2318](#).
 - Adds DNA collected **upon arrest** to the list of samples that must be submitted to the state DNA Data Base ([44 § 2312](#)) and DNA Data Bank ([44 § 2313](#)).
 - **A person may not be released** until a DNA sample and fingerprints are collected.
 - **Adds “bail” to the definition of “released,”** i.e., “any release, parole, furlough, work release, **bail**, prerelease or release in any other manner from a prison, jail, juvenile detention facility or any other place of confinement.”
- **Limitations on offenses requiring collection upon arrest:** Excludes DNA collection for crimes for which a person is not arrested, but instead receives a summons. (See [234 Pa. Code § 509](#).)
- **Criminal homicide:** Adds criminal homicide to the list of offenses that currently require DNA collection upon conviction, adjudication, or as a condition of release, probation, or parole.
- **Accelerated Rehabilitative Disposition (ARD):** SB 912 would **prohibit acceptance into ARD** unless the person provides a DNA sample for a charge for any felony, criminal homicide, a felony sex offense, or a misdemeanor requiring registration for a sex offense. [*Currently, submitting a DNA sample as a condition of ARD is discretionary.*]

Refusal to Provide a DNA Sample

44 Pa.C.S. § 2317. Procedures for collection and transmission of DNA samples. Makes the DNA collection process applicable to all collections—upon arrest, conviction, or adjudication of delinquency. This includes permission to use **reasonable force** to collect DNA from a person who refuses and shields those who collect the sample from criminal liability under [44 § 2317\(b\) and \(c\)](#).

Expungement of DNA

[44 Pa.C.S. § 2321. Expungement.](#)

- **Does not provide for automatic or state-initiated expungement of DNA samples.**
- **Requires court-ordered expungement:** Defendants must submit a DNA expungement request to the court of common pleas where original charges were filed or where the arrest was made.
- **Allows requests for expungement in the following instances:**
 - Currently, expungements may be granted when:
 - Conviction or delinquency adjudication is reversed with no pending appeal.
 - The person is granted an unconditional pardon.
 - The DNA sample, record, or profile was mistakenly included in the Data Bank or Data Base.
 - New conditions eligible for expungement under SB 912 include when:
 - The charge was dismissed with no appeal pending and further prosecution is barred.
 - The person was acquitted for a charge with no pending appeal.
 - The DNA sample was taken for an offense not authorized for collection.
 - The prosecuting authority has expressly declined to prosecute the charge.
 - The charge was not filed within the statute of limitations.
 - Expungement exception: A person **cannot request** expungement if they were previously arrested, convicted or adjudicated delinquent for any other crime requiring DNA collection.
- **Notification of application to expunge:** Within 30 days of receiving an application for expungement, the court must notify the district attorney in the county where the original charges were filed.
- **When a request is granted**, the state police must destroy the DNA sample at no cost and must notify the person and their attorney within 60 days after destroying the sample.
- **Judicial discretion:** Limits the court's power to expunge DNA only as it is authorized under the bill.
- However, **expungement has no effect** if the sample was matched prior to being granted expungement. *"The expungement of a DNA sample, record or profile pursuant to this section shall have no effect on any data bank or data base match or partial match occurring prior to the expungement of the sample, record or profile."* [44 § 2321\(d\)](#).

Where DNA Samples are Stored

[44 Pa.C.S. § 2312. State DNA Data Base](#)

- Adds samples from those who are arrested for covered offenses to the DNA Data Base, which stores and maintains forensic DNA profiles and records.
- Samples from arrests will also be shared with [CODIS](#) (Combined DNA Index System), [NDIS](#) (National DNA Index System), and [NamUS](#) (National Missing and Unidentified Persons System).
- Creates a new category in the DNA Data Base for samples collected upon arrest under [44 § 2319](#).

DNA Cost and Reporting

[44 Pa.C.S. § 2322. Mandatory cost](#)

- Adds criminal homicide to the list of offenses that require a mandatory \$250 fee for DNA collection. The fee is imposed on those "convicted, adjudicated delinquent or granted ARD for criminal homicide, a felony sex offense or other specified offense." Fees are transmitted to the [DNA Detection Fund](#).
- The bill does not, however, impose the fee on those whose DNA is collected at arrest.

[44 Pa.C.S. § 2314. State Police recommendation of additional offenses and annual report](#)

- Requires PSP to report data on all samples collected (from those arrested, convicted and adjudicated delinquent), including age, race, and sex of samples; the fiscal impact of collecting DNA samples; the average length of time between the receipt of DNA samples and the completion of forensic DNA testing.
- Adds a new data point to the report—**number of samples expunged** from the DNA database.

Comparison of Provisions under <u>SB 912 (PN 1088)</u>	
PRE-conviction	POST-conviction
Compulsory DNA submission required under SB 912 PN 1088:	
<ul style="list-style-type: none"> • Upon arrest or charge (adults and juveniles) • To the state DNA Data Base and DNA Data Bank • Samples also shared with CODIS / NDIS and NamUS 	<ul style="list-style-type: none"> • Upon conviction (adults) or adjudication of delinquency (juveniles) • To the state DNA Data Base and DNA Data Bank • Samples also shared with CODIS / NDIS and NamUS
Offenses requiring DNA collection upon arrest: <ul style="list-style-type: none"> • All criminal homicide offenses • All felony offenses (F1, F2, F3) • Felony sex offenses • All misdemeanor offenses requiring registration for a sex offense • All first-degree misdemeanor offenses in Title 18 • All arrestable first-degree misdemeanor offenses in Title 75 • All inchoate crimes for each offense listed above (attempt, conspiracy, or solicitation to commit the offense). <i>This multiplies the total number of qualifying offenses by 3x.</i> 	Offenses requiring DNA collection upon conviction: <ul style="list-style-type: none"> • All criminal homicide offenses • All felony offenses (F1, F2, F3) • Felony sex offenses • All misdemeanor offenses requiring registration for a sex offense • All first-degree misdemeanor offenses in Title 18 • All first-degree misdemeanor offenses in Title 75 • Enumerated second-degree misdemeanor offenses • All inchoate crimes for each offense listed above (attempt, conspiracy, or solicitation to commit the offense). <i>This multiplies the total number of qualifying offenses by 3x.</i>
<ul style="list-style-type: none"> • Prior to release on bail 	<ul style="list-style-type: none"> • Prior to any release, parole, furlough, work release, prerelease or release in any other manner from a prison, jail, juvenile detention facility or any other place of confinement
<ul style="list-style-type: none"> • As a condition of ARD when charged with: any felony, criminal homicide, a felony sex offense, or a misdemeanor requiring registration for a sex offense 	<ul style="list-style-type: none"> • As a condition of ARD when charged with: any felony, criminal homicide, a felony sex offense, or a misdemeanor requiring registration for a sex offense
Defendants can request their DNA sample be expunged when/if:	
<ul style="list-style-type: none"> • DNA sample, record, or profile was mistakenly included in the Data Bank or Data Base • Charge was dismissed with no appeal pending and further prosecution is barred • Person was acquitted for a charge with no pending appeal • DNA sample was taken for an offense not authorized for collection • Prosecuting authority has expressly declined to prosecute the charge • Charge was not filed within the statute of limitations 	<ul style="list-style-type: none"> • DNA sample, record, or profile was mistakenly included in the Data Bank or Data Base • Conviction or delinquency adjudication is reversed with no pending appeal • Person is granted an unconditional pardon
DNA costs covered by:	
<ul style="list-style-type: none"> • Unknown 	<ul style="list-style-type: none"> • \$250 mandatory fee imposed on those convicted, adjudicated delinquent or granted ARD for criminal homicide, felony sex offense or “other specified offense.”