

ACLU-PA Position: **Oppose**

Pennsylvania currently collects DNA samples from people convicted of hundreds of different crimes. **SB 988 (PN 1776)** would amend [Title 44](#) (Law and Justice) to expand DNA collection to require anyone **arrested** for one of those offenses, many of which are non-violent crimes, to submit a DNA sample to police—including samples from juveniles.

## BILL DETAILS

### [44 § 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 § 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.

### [44 § 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).

### [44 § 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.

### [44 § 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:
  - DNA must be collected when fingerprints are taken per [18 § 9112](#). Mandatory fingerprinting.
  - DNA must be submitted to the state police within 48 hours per [44 § 2318](#). Procedures for conduct, disposition and use of DNA analysis.
  - 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.”
  - **Juveniles (and adults) are required to submit a DNA sample upon arrest.**
- **Limitations on offenses requiring collection upon arrest:** Adds a new subsection under (c.2) to exclude crimes for which a person is not arrested, but instead receives a summons. (See [234 Pa. Code](#)

[§ 509.](#)) This has the effect of excluding the M1 offenses under Title 75 and all the enumerated M2 offenses (as defined under “Other specified offense”) from **pre-conviction** collection. *Post-conviction* collection for those offenses, however, would still be required.

- **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 988 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.*]

#### [44 § 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 \(c\)](#).

#### [44 § 2319. DNA data base exchange](#)

- Creates a new category in the DNA Data Base for samples collected upon arrest.

#### [44 § 2321. Expungement](#)

- **Does not provide for automatic expungement of DNA samples.**
- **Requires court-ordered expungement:** Requests for expungement are made to the court of common pleas where original charges were filed or where the arrest was made for the offense requiring collection.
- **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 988 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\(d\)](#).

#### [44 § 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.

Comparison of Provisions under <a href="#">SB 988 PN 1776</a>	
PRE-conviction	POST-conviction
<b>Compulsory DNA submission required:</b>	
<ul style="list-style-type: none"> <li>• Upon arrest (adults and juveniles)</li> <li>• To the state <a href="#">DNA Data Base</a> and <a href="#">DNA Data Bank</a></li> <li>• Samples also shared with <a href="#">CODIS / NDIS</a> and <a href="#">NamUS</a></li> </ul>	<ul style="list-style-type: none"> <li>• Upon conviction (adults) or adjudication of delinquency (juveniles)</li> <li>• To the state <a href="#">DNA Data Base</a> and <a href="#">DNA Data Bank</a></li> <li>• Samples also shared with <a href="#">CODIS / NDIS</a> and <a href="#">NamUS</a></li> </ul>
<p><b>Offenses requiring DNA collection:</b></p> <ul style="list-style-type: none"> <li>• All <a href="#">criminal homicide offenses</a></li> <li>• All felony offenses (F1, F2, F3)</li> <li>• <a href="#">Felony sex offenses</a></li> <li>• All misdemeanor offenses requiring <a href="#">registration for a sex offense</a></li> <li>• All first-degree misdemeanor offenses in <a href="#">Title 18</a></li> <li>• All <a href="#">inchoate crimes</a> for each offense listed above (attempt, conspiracy, or solicitation to commit the offense). <i>This multiplies the total number of offenses covered by 3x.</i></li> </ul>	<p><b>Offenses requiring DNA collection:</b></p> <ul style="list-style-type: none"> <li>• All <a href="#">criminal homicide offenses</a></li> <li>• All felony offenses (F1, F2, F3)</li> <li>• <a href="#">Felony sex offenses</a></li> <li>• All misdemeanor offenses requiring <a href="#">registration for a sex offense</a></li> <li>• All first-degree misdemeanor offenses in <a href="#">Title 18</a></li> <li>• All first-degree misdemeanor offenses in <a href="#">Title 75</a></li> <li>• Enumerated <a href="#">second-degree misdemeanor offenses</a></li> <li>• All <a href="#">inchoate crimes</a> for each offense listed above (attempt, conspiracy, or solicitation to commit the offense). <i>This multiplies the total number of offenses covered by 3x.</i></li> </ul>
<ul style="list-style-type: none"> <li>• <b>Prior to release</b> on bail</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Prior to any release</b>, parole, furlough, work release, prerelease or release in any other manner from a prison, jail, juvenile detention facility or any other place of confinement</li> </ul>
<ul style="list-style-type: none"> <li>• As a <b>condition of ARD</b> when charged with: any felony, criminal homicide, a felony sex offense, or a misdemeanor requiring registration for a sex offense</li> </ul>	<ul style="list-style-type: none"> <li>• As a <b>condition of ARD</b> when charged with: any felony, criminal homicide, a felony sex offense, or a misdemeanor requiring registration for a sex offense</li> </ul>
<b>Court-ordered expungement permissible when:</b>	
<ul style="list-style-type: none"> <li>• DNA sample, record, or profile was mistakenly included in the Data Bank or Data Base</li> <li>• Charge was dismissed with no appeal pending and further prosecution is barred</li> <li>• Person was acquitted for a charge with no pending appeal</li> <li>• DNA sample was taken for an offense not authorized for collection</li> <li>• Prosecuting authority has expressly declined to prosecute the charge</li> <li>• Charge was not filed within the statute of limitations</li> </ul>	<ul style="list-style-type: none"> <li>• DNA sample, record, or profile was mistakenly included in the Data Bank or Data Base</li> <li>• Conviction or delinquency adjudication is reversed with no pending appeal</li> <li>• Person is granted an unconditional pardon</li> </ul>
<b>DNA costs covered by:</b>	
<ul style="list-style-type: none"> <li>• Unknown</li> </ul>	<ul style="list-style-type: none"> <li>• \$250 mandatory fee imposed on those convicted, adjudicated delinquent or granted ARD for criminal homicide, felony sex offense or “other specified offense.”</li> </ul>