

Republic of the Philippines  
HOUSE OF REPRESENTATIVES  
Quezon City

19<sup>th</sup> CONGRESS  
First Regular Session

HOUSE BILL NO. 5270



Introduced by. REP. JUAN CARLOS "ARJO" ATAYDE

AN ACT  
ESTABLISHING A FORENSIC DEOXYRIBONUCLEIC ACID (DNA) DATABASE IN  
THE PHILIPPINES, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER  
PURPOSES

Deoxyribonucleic Acid, or DNA, is a molecule that encodes the genetic information in all living organisms. A person's DNA is the same in each cell and it does not change throughout a person's lifetime; the DNA in a person's blood is the same as the DNA found in his saliva, sweat, bone, the root and shaft of hair, earwax, mucus, urine, skin tissue, and vaginal and rectal cells. Most importantly, because of polymorphisms in human genetic structure, no two individuals have the same DNA, with the notable exception of identical twins.<sup>1</sup> Over the years, the use of DNA provides a powerful investigative tool for law enforcement agencies.

In 2002, the Supreme Court recognized DNA as admissible and authoritative evidence in the case of *People vs. Vallejo*<sup>2</sup> wherein the rape and murder victim's DNA samples from the bloodstained clothes of the victim were admitted in evidence. In this case, "*the purpose of DNA testing (was) to ascertain whether an association exist(ed) between the evidence sample and the reference sample. The samples collected (were) subjected to various chemical processes to establish their profile.*"

Considering the fact that the odds of two (2) unrelated persons having the same DNA profile is in the order of one in a billion, this bill proposes the establishment of the national forensic DNA Database system that will benefit in efficiently and effectively solving crimes, identifying missing or deceased persons, ascertaining paternity, and more importantly, exonerating the innocent.

<sup>1</sup> *People vs. Yatar*, G.R. No. 150224, May 19, 2004.

<sup>2</sup> G.R. No. 144656, May 9, 2002.

In a catena of cases decided by the Supreme Court, it ruled that the use of DNA in evidence does not violate an individual's right against self-incrimination. With respect to the right to privacy, it was stated that the right does not bar all incursions into individual privacy and is not intended to stifle scientific and technological advancements that enhance public service and common good.<sup>3</sup> In fact, no less than the Constitution acknowledges the importance of science and technology in national development and progress.<sup>4</sup>

This measure shall provide a statutory framework for the creation and establishment of a centralized and nationwide DNA database system to be called Philippine National Forensic DNA Database to be administered by the Philippine National Police (PNP). The same includes proper safeguards to ensure not only the integrity of the DNA profiles and information to be stored in the database, but also the legitimacy of the purpose of collection and use thereof.

In view of the foregoing, early passage of the bill is earnestly requested.

REP. JUAN CARLOS "ARJO" ATAYDE



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<sup>3</sup> *Ople vs. Torres*, G.R. No. 127685, July 23, 1998.

<sup>4</sup> Article XIV Section 10, 1987 Constitution.

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Introduced by. REP. JUAN CARLOS "AR-IO" ATAYDE

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

5 SECTION 1. *Short Title.* This Act shall be known as the "Forensic DNA  
6 Database Act."

7 SEC. 2. *Declaration of Policy.* It is hereby declared the policy of the State to  
8 establish and maintain a fair, responsible, ethical and efficient criminal justice system.  
9 The State likewise reaffirm the goals of the United Nations in the field of crime  
10 prevention and criminal justice, specifically, more efficient and effective law  
11 enforcement and administration of justice, respect for human rights and fundamental  
12 freedoms, and the promotion of the highest standards of fairness, humanity, and  
13 professional conduct.

14        Towards this end, the State shall provide a statutory framework for the creation  
15 and establishment of a centralized and nationwide DNA database system for the  
16 collection, storage, and maintenance of genetic identification information and  
17 empower pertinent government agencies to collect, analyze, type or profile, and record  
18 any and all genetic markers contained in or derived from DNA.

## ARTICLE I

PRELIMINARY

3 SEC. 3. *Definition of Terms.* For purposes of this Act, the following terms shall  
4 mean:

- a. *Buccal swab* - a sample of cellular material taken from the inside of a person's mouth;
  - b. *Certified PNP DNA Collector* - a police officer or a person who has successfully completed the training prescribed by the PNP Crime Laboratory, with respect to the taking of buccal sample;
  - c. *Crime scene sample* - physical evidence retrieved from the crime scene or any other place where evidence of the crime may be found and may include physical evidence collected from the body of a person;
  - d. *Detainee* - a person arrested and detained under existing laws;
  - e. *Deoxyribonucleic acid (DNA)* - a biochemical molecule found in cells making each species unique;
  - f. *DNA profile* - genetic information derived from forensic DNA analysis;
  - g. *DNA sample* - any biological specimen or sample taken from an individual which may either be intimate or non-intimate samples, on which a DNA analysis can be carried out;
  - h. *DNA profiling or DNA typing* – the process of providing and/or assigning a computerized numeric value in the form of a "bar code" to a minute sample of genetic DNA sample taken from a human tissue;
  - i. *Drug dependent* - a person, pursuant to the Comprehensive Dangerous Drug Act of 2002, who possesses a cluster of physiological, behavioral and cognitive phenomena of variable intensity, in which his or her use of psychoactive drug takes on a high priority thereby involving, among others, a strong desire or a

- 1       sense of compulsion to take the substance and the difficulties in controlling  
2       substance-taking behavior in terms of its onset, termination, or levels of use;
- 3       j. *Foreign law enforcement agency* - the law enforcement agency or organization  
4       of a foreign country or an international organization;
- 5       k. *Forensic DNA analysis* - analysis of DNA obtained from a body sample or crime  
6       scene sample to determine forensic DNA profile;
- 7       l. *Forensic DNA profile* - the result obtained from forensic DNA analysis on body  
8       sample or crime scene sample, providing a unique string of alphanumeric  
9       characters to provide identity reference;
- 10      m. *Law enforcement personnel* – any employee or personnel of law enforcement  
11      agencies;
- 12      n. *Intimate sample* -
- 13       i. A sample of blood, semen or any other tissue or fluid taken from a  
14       person's body, urine or pubic hair; or
- 15       ii. A swab taken from any part of a person's genitals, including pubic hair,  
16       or from a person's body orifice other than the mouth.
- 17      o. *Non-intimate sample*-
- 18       i. A sample of hair other than the pubic hair;
- 19       ii. A sample taken from a nail or from under a nail;
- 20       iii. A swab taken from any part of a person's body other than apart from  
21       which a swab taken would be an intimate sample; or
- 22       iv. Saliva.
- 23      p. *Offense* - any act or omission punishable by law;
- 24      q. *Philippine National Forensic DNA Database* - the country's central repository of  
25      DNA profiles and other information relating thereto created pursuant to this Act;

## ARTICLE II

FORENSIC DNA DATABASE

3 SEC. 4. *Establishment of Philippine National Forensic DNA Database.* There  
4 shall be established a forensic DNA database under the Philippine National Police, to  
5 be known as the Philippine National Forensic DNA Database. The database shall  
6 consist of the following indices:

- a. *Crime scene index* which shall contain a forensic DNA profile and any information in relation thereto derived from an intimate sample or a non-intimate sample that is found—
    - a. On anything or at any place where an offense was committed;
    - b. On or within the body of a victim of an offense; or
    - c. On anything worn or carried by the victim or suspect at the time when the offense was committed.
  - b. *Arrested person index* which shall contain forensic DNA profiles derived from an intimate or a non-intimate sample taken from arrested persons;
  - c. *Convicted offenders index* which shall contain forensic DNA profiles derived from an intimate or a non-intimate sample taken from persons convicted of any offense under any written law;
  - d. *Detainee index* which shall contain forensic DNA profiles derived from an intimate or a non-intimate sample taken from a detainee;
  - e. *Drug dependent index* which shall contain forensic DNA profiles derived from an intimate or a non-intimate sample taken from a drug dependent;
  - f. *Law enforcement personnel index* which shall contain forensic DNA profiles of all employees of the government's law enforcement agencies, derived by means of forensic DNA analysis, from a buccal or blood swab.

- g. *Missing person index* which shall contain forensic DNA profiles and any information in relation thereto derived from an intimate or a non-intimate sample taken from—

  - i. The body or parts of the body of an unidentified deceased person;
  - ii. Anything worn or carried by a missing person; or
  - iii. The next of kin of a missing person if so required; and

h. *Voluntary person index* which shall contain forensic DNA profiles and any information in relation thereto derived from an intimate or a non-intimate sample taken from a person who volunteers to submit the same for the purpose of storage of the DNA information in the DNA Databank.

11 SEC. 5. *Objective of the DNA Database.* The objective of the DNA Database  
12 is to establish, keep and maintain a comprehensive National DNA database in order  
13 to perform comparative searches for the following purposes:

- 14        a. Serve as a tool for crime prevention and crime solution;
  - 15        b. Identify a person who might have been involved in the commission of an
  - 16              offense;
  - 17        c. Prove the innocence or guilt of a person suspected of committing an offense;
  - 18        d. Exonerate a person wrongfully convicted of an offense; or
  - 19        e. Assist in the identification of missing persons or unidentified human remains.

### ARTICLE III

21 MANAGEMENT OF DATABASE AND ACCESS TO INFORMATION

22 SEC. 6. *Management.* The PNP Forensic DNA Laboratory shall manage the  
23 DNA databases established under Article II of this Act and shall have all such powers  
24 as may be necessary for, in connection with, or incidental to the performance of its  
25 functions pursuant to this Act, including the following:

- 1        a. Be responsible for the general conduct, administration, and management of the  
2                  DNA database;
- 3        b. Establish mechanisms to facilitate the connection, storage, and dissemination  
4                  of data in connection with DNA profiles and any information in relation thereto  
5                  stored in the DNA Database;
- 6        c. Ensure that DNA profiles and any information in relation thereto are securely  
7                  stored and remain confidential;
- 8        d. Store samples taken for the purpose of forensic DNA analysis and dispose of  
9                  the same in accordance with the provisions of this Act;
- 10      e. Cooperate with both local and foreign law enforcement agencies in accordance  
11                  with the provisions of this Act; and
- 12      f. Carry out any other functions conferred by or under this Act and to perform any  
13                  other functions that are supplemental, incidental, or consequential to any of the  
14                  functions specified in this section or in furtherance of the objectives of the  
15                  Philippine National Forensic DNA Database.

16                  SEC. 7. *Access to DNA profiles and information.* The DNA database and any  
17                  information contained therein shall be accessed only by authorized personnel of the  
18                  PNP Forensic DNA Laboratory. The DNA database and any information contained  
19                  therein shall only be accessed for the purposes of:

- 20        a. Administering the database;
- 21        b. Comparing DNA profiles or information in the course of an investigation  
22                  conducted by any law-enforcement agency; or
- 23        c. Making the information available to a person to whom the information  
24                  relates.

25                  SEC. 8. *Biological Sample or Genetic Markers derived from DNA as Evidence.*  
26                  Expert testimony or evidence relating to the use of these biological samples or genetic  
27                  markers contained in or derived from DNA for identification shall be admissible and  
28                  accepted as evidence in court or any other proceedings in the country. *Provided,*

1 however, that the trial courts or other quasi-judicial bodies shall be satisfied that the  
2 expert testimony or evidence meets the criteria for admissibility under the existing  
3 Rules on DNA Evidence.

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## ARTICLE IV

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### TAKING, STORING, DISPOSING OF DNA SAMPLES, REMOVAL OF DNA 6 PROFILE, AND PRIVACY PROTECTION

7 SEC. 9. *Taking of biological sample.* Only a certified PNP DNA Collector shall  
8 collect a biological sample from any person who:

9       a. On the effective date of this Act, is currently in jail/prison or on probation, for  
10      any offense.

11       b. On or after the effective date of this Act:

12           i. Is convicted of a crime for any offense;

13           ii. Is arrested for and formally charged of the crime by a court for an  
14       offense;

15           iii. Is legally detained under the law;

16           iv. Is required to submit a DNA sample pursuant to a court order; or

17           v. Voluntarily provides a sample to be placed into the DNA database.

18 SEC. 10. *Storage and disposal of biological samples.* The PNP DNA  
19 Laboratory shall safely and securely store all biological samples that are collected for  
20 the purpose of this Act. All biological samples collected under Section 9 must be  
21 destroyed not later than six (6) months after the DNA profile has been generated.

22 SEC. 12. *Removal of DNA Profile from the DNA Database Indices.* A person  
23 whose DNA profile is contained in the volunteer or missing person's indices as defined  
24 in Article II, Section 4, Subsections (f) and (g) may request that their DNA profile, and  
25 any related information, be removed from the DNA databank at any time. The DNA  
26 Laboratory officer in charge of the database shall remove the DNA profile and any  
27 information in relation thereto within six months upon notice of said request.

1           SEC. 13. *Voluntary Support from Citizens.* To support the nationwide National  
2 DNA Database, employees from both government and private institutions and private  
3 citizens may submit DNA samples. Their forensic DNA profiles and any information in  
4 relation thereto shall be included in the voluntary person index.

5           SEC. 14. *Consent in Cases of Voluntary Support.* Any person may give his or  
6 her consent, in the prescribed manner deemed sufficient, to a certified DNA collector  
7 for purposes of collecting or taking his or her intimate or non-intimate. Prior to taking  
8 the intimate or non-intimate sample, the certified DNA collector shall inform the  
9 persons from whom the sample are to be taken that-

- 10         c. The DNA profile and any information in relation thereto may be stored in the  
11           National Forensic DNA Database and may be used for the purposes of forensic  
12           DNA analysis, police investigation, and for other purposes referred to in this  
13           Act;
- 14         d. They may make a request to access his or her information; and
- 15         e. They may at any time withdraw their consent before collection of intimate or  
16           non-intimate samples and have their DNA profile and other information  
17           removed from the database in the event that samples were already collected  
18           prior to withdrawal of consent.

19           SEC. 15. *Privacy Protection Standards.* DNA records collected and maintained  
20          for the purposes of this Act shall be disclosed only:

- 21         a. To criminal justice agencies for law enforcement investigation or identification  
22           purposes;
- 23         b. In judicial proceedings, following applicable laws and rules of procedure; and
- 24         c. To the person whom the intimate or non-intimate sample was collected from or  
25           their heir if the person is deceased.

26           SEC. 16. *Population Statistics Database.* If personally identifiable information  
27          is removed, test results may be disclosed for a population statistics database, for

identification research and protocol development purposes, or for quality control purposes.

ARTICLES

## QUALITY ASSURANCE STANDARDS

5 SEC. 17. *National DNA Database Scientific Advisory Committee.* A National  
6 DNA Database Scientific Advisory Committee shall be established for purposes of  
7 developing DNA testing database quality assurance standards for DNA testing and  
8 databasing including standards for testing the proficiency of forensic laboratories and  
9 forensic analysts conducting forensic DNA analysis

10 SEC. 18. Committee Members. The Committee shall be composed of not less  
11 than seven but not more than nine, including the Chairperson, individuals scientifically  
12 qualified to understand, develop and adopt DNA quality assurance standards.  
13 Committee representatives shall include officials from the Philippine National Police,  
14 National Bureau of Investigation, University of the Philippines, and other public entities  
15 and institutions actively engaged in forensic DNA testing. The Committee shall be  
16 chaired by an official from the PNP being the repository of the database

17 SEC. 18. *Laboratory Standards.* The Committee shall develop, adopt, and  
18 recommend standards for quality management, including standards for testing the  
19 proficiency of Assurance Standards for forensic DNA testing laboratories, including  
20 standards for testing proficiency of laboratories and forensic analysts conducting  
21 forensic DNA test. Once adopted, these standards shall be required for any forensic  
22 laboratory in the Philippines that produces samples to be included in the national DNA  
23 database

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## ARTICLE VI

## CRIMINAL ACTS AND PENALTIES

3 SEC. 10. *Refusal to give sample.* Any person who refuses to give, or allow a  
4 non-intimate sample be taken from him or her, or obstructs the taking of the same,  
5 when the collection or taking is authorized by the provisions of this Act, shall suffer a  
6 penalty of six (6) years imprisonment or a fine in the amount of Three Hundred  
7 Thousand Pesos (P300,000.00), or both, at the discretion of the court.

8           SEC. 19. *Tampering of DNA Records.* Any person who shall knowingly make  
9 any false entry or falsely alter any DNA record or profile indexed or otherwise  
10 contained in the DNA database system or; or who shall intentionally destroy, mutilate,  
11 conceal, remove or otherwise impair the verity or availability of DNA records or profile;  
12 shall suffer the penalty of six (6) to twelve (12) years imprisonment or a fine not less  
13 than Six Hundred Thousand Pesos (P600,000.00) or both, at the discretion of the  
14 court.

15 SEC. 20. *Tampering, Abetting, or Attempting to Tamper with DNA Samples.*  
16 Any person who shall knowingly tampers or causes to be tampered with any intimate  
17 sample or non-intimate sample taken for the purposes of this Act; or any person who  
18 abets the commission of or who attempts to tamper any intimate or non-intimate  
19 sample taken for the purposes of this Act, on conviction, shall suffer the penalty of six  
20 (6) to twelve (12) years imprisonment or a fine not less than Six Hundred Thousand  
21 Pesos (P600,000.00) or both, at the discretion of the court.

22           SEC. 21. *Improper Disclosure of DNA Samples and Records.* Any person who,  
23 by virtue of employment or official position, has possession of, or access to individually  
24 identifiable DNA information indexed or otherwise contained in the DNA database  
25 system as referred to in this Act, knowingly and willfully discloses such information in  
26 any manner to any person or agency not entitled to receive it to the prejudice and  
27 detriment of the public or person from whom the said DNA sample or information was  
28 taken shall suffer the penalty of six (6) months to six (6) years imprisonment or a fine  
29 not lower than Five Hundred Fifty Thousand Pesos (P500,000.00) or both, at the  
30 discretion of the court.

1           SEC. 22. *Failure to Deliver DNA Records or Samples.* Any person who shall  
2 possess a DNA record in the DNA database system or DNA samples and refuse to  
3 deliver the same upon request of a person lawfully entitled to receive the same shall  
4 suffer the penalty of six (6) months to six (6) years imprisonment or a fine not lower  
5 than Four Hundred Thousand Pesos (P400,000.00) or both, at the discretion of the  
6 court. Provided that, no action, suit, prosecution or other proceedings shall lie or be  
7 brought against the aforesaid person if he or she failed to deliver the DNA records or  
8 samples for cause/s outside his or her control.

9       SEC. 23. *Improper Access to and Use of DNA Samples and Records.* Any  
10 person who, without proper authorization, knowingly and willfully obtains DNA samples  
11 or any individually identifiable DNA information indexed or contained in the DNA  
12 database system shall suffer the penalty of six (6) months to six (6) years  
13 imprisonment or a fine not lower than Three Hundred Thousand Pesos (P300,000.00)  
14 or both, at the discretion of the court.

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## ARTICLE VII

17 GENERAL PROVISIONS

18 SEC. 24. *Sharing of Data Between the PNP and the NBI.* The Philippine  
19 National Police and the National Bureau of Investigation shall establish a system to  
20 ensure that DNA profiles from each of their respective databases are compared  
21 regularly and communicate any relevant information.

## **22 SEC. 25. Cooperation with foreign law enforcement agency**

- 23 a. The PNP may, upon request by a foreign law enforcement agency, compare a  
24 DNA profile received from the foreign law enforcement agency with the DNA  
25 profiles in the DNA Database in order to determine whether such DNA profile  
26 is already contained in the DNA Database and communicate any relevant  
27 information to the foreign law enforcement agency.

28 b. The PNP may, upon request by a foreign law enforcement agency in the course  
29 of an investigation of an offense or a prosecution of a criminal offence in that

1           foreign state, communicate a DNA profile contained in the DNA Database to  
2           that foreign law enforcement agency.

3           SEC. 26. *Regulations*. The PNP shall work with other relevant Philippine  
4           government agencies and interests to develop regulations as necessary to give full  
5           effect to, or for carrying out, the provisions of this Act.

6           SEC. 27. *Effect on Existing DNA Profiles*. Any existing DNA profiles and any  
7           information in relation thereto kept and maintained by the Philippine National Police,  
8           immediately before the coming into operation of this Act shall, on the coming into  
9           operations of this Act, form part of the Philippine Forensic DNA Database established  
10          under this Act in accordance with indices applying.

11          SEC. 28. *Implementing Rules and Regulations*. Within one hundred and twenty  
12          (120) days, the necessary rules and regulations for the implementation of this Act shall  
13          be promulgated by the Department of Interior and Local Government.

14          SEC. 29. *Appropriations*. The amount necessary for the implementation of this  
15          Act shall be included in the General Appropriations Act of the year following its  
16          enactment into law and thereafter.

17          SEC. 30. *Separability Clause*. - Any portion or provision of this Act that is  
18          declared unconstitutional shall not have the effect of nullifying other portions or  
19          provisions hereof as long as such remaining portions can still subsist and be given  
20          effect in their entirety.

21          SEC. 31. *Repealing Clause*. - All laws, ordinances, rules, regulations,  
22          other issuances or parts thereof, which are inconsistent with this Act, are hereby  
23          repealed or modified accordingly.

24          SEC. 32. *Effectivity*. - This Act shall take effect after fifteen (15) days following  
25          its publication in the official Gazette or in a newspaper of general circulation.

26          Approved,