

SENATE No. 1528

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act permitting familial searching and partial DNA matches in investigating certain unsolved crimes.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Anne M. Gobi</i>	<i>Worcester and Hampshire</i>	
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>1/25/2023</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>2/1/2023</i>
<i>John C. Velis</i>	<i>Hampden and Hampshire</i>	<i>2/7/2023</i>
<i>Alyson M. Sullivan-Almeida</i>	<i>7th Plymouth</i>	<i>2/14/2023</i>

SENATE No. 1528

By Ms. Gobi, a petition (accompanied by bill, Senate, No. 1528) of Anne M. Gobi, Todd M. Smola, Brian M. Ashe, John C. Velis and others for legislation to permit familial searching and partial DNA matches in investigating certain unsolved crimes. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1595 OF 2021-2022.]

The Commonwealth of Massachusetts

—————
**In the One Hundred and Ninety-Third General Court
(2023-2024)**
—————

An Act permitting familial searching and partial DNA matches in investigating certain unsolved crimes.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 10 of Chapter 22E of the General Laws, as so appearing in the 2022
2 Official edition, is hereby amended, in section (a), by inserting after the word “his” the following
3 words: - “/her”.

4 SECTION 2. Said Chapter 22E is hereby further amended in section (a) by inserting after
5 the word “electronically” the following words:- ;provided, however, that (1) the request must not
6 be made for the purpose of aggregating DNA records for inclusion in an external, unregulated
7 DNA record database, and (2) the requesting agency must execute a Use and Dissemination
8 Agreement that is tailored to the scope and purpose of the request and that expressly prohibits the
9 establishment of an unregulated database of aggregated DNA records.

10 SECTION 3. Chapter 22E of the General Laws is hereby amended by inserting after
11 section (d) the following section:-

12 (e) The director may not make aggregated DNA records available to external agencies.
13 Aggregation of DNA records outside of CODIS, including by law enforcement entities outside of
14 the state police crime laboratory, shall be prohibited, and the development of unregulated
15 secondary DNA databases shall likewise be prohibited.

16 SECTION 4. Said chapter 22E of is hereby amended by inserting after section 10 the
17 following section:-

18 Section 10A. (a) As used in this section, the following words shall have the following
19 meanings unless the context clearly requires otherwise:

20 “Allele”, one of the alternate forms of the DNA at a particular genetic locus.

21 “Casework DNA record”, a DNA profile that is generated by testing of biological
22 evidence originating from and associated with the commission of a crime.

23 “Convicted offender DNA record”, the DNA record generated by the testing of a
24 casework sample collected from a convicted offender.

25 “Familial search”, A familial search is a deliberate search of the Massachusetts DNA
26 (CODIS) databank for biologically related relatives (siblings, parents, and children) of a
27 contributor of an evidentiary DNA record. This search is performed with specialized software
28 designed and validated for such purpose. The information that may develop from a familial
29 search and ultimately be provided to law enforcement will be the name or names of an individual

30 or individuals in Massachusetts' DNA databank who may be related to the person whose DNA
31 was identified on crime scene evidence or other source for DNA Record.

32 "Forensic DNA laboratory", a forensic laboratory that conforms to federal standards,
33 operated by the commonwealth or local government, that performs forensic DNA testing from
34 casework evidence.

35 "Forensic DNA testing", a test that employs techniques to examine DNA derived from
36 the human body for the purpose of providing information to resolve issues of identification;
37 provided, however, that regulation adopted pursuant to this chapter shall not include DNA
38 testing on materials derived from the human body for the purpose of determining a person's
39 genetic disease or medical condition and shall not include a laboratory operated by the federal
40 government.

41 "Partial match", the determination made during the CODIS candidate match confirmation
42 process that a DNA record from a forensic index sample is consistent with a DNA record in the
43 convicted offender index and a comparison reveals that the offender is not the source of the DNA
44 record but may be a relative of the source of the forensic index DNA record.

45 "LDIS", local DNA index system.

46 "Loci", shall mean the specific chromosomal locations of genes or other DNA elements,
47 such as a short tandem repeat (STR) sequence.

48 "Mitochondrial DNA analysis" or "mtDNA analysis", the analysis of genetic
49 polymorphisms or alternative forms of information, that occur in the DNA of mitochondria.

50 “STR DNA record”, the list of alleles carried by a particular individual at a specific set of
51 genetic loci

52 “STR analysis”, a form of testing that provides DNA profiles for loci that contain short
53 tandem repeat sequences in the DNA.

54 “Y-STR”, STR loci on the Y-chromosome.

55 (b) The Director shall be the exclusive entity that may promulgate regulations that permit
56 familial searching and the release of partial matches to prosecuting officers and limit access to
57 the resultant records to the state or local police investigators tasked with handling any follow-up
58 investigation within the commonwealth for cases involving violent felony offenses including, but
59 not limited to, rape, unsolved homicides, and unidentified persons. No DNA records derived
60 from DNA samples shall be aggregated or stored in any database, other than CODIS and the
61 state DNA database, that is accessible by any person other than by the department for the
62 purpose for which the samples were collected.

63 (c) The Director shall establish a familial search oversight committee to oversee the
64 familial search process in the commonwealth. The committee shall consist of the state CODIS
65 administrator; scientists from the state police or municipal crime laboratories; attorneys for the
66 crime lab, department of public safety, and/or prosecutors designated by the Massachusetts
67 District Attorneys Association; and other members designated by the department.

68 The committee shall be responsible for all decisions regarding the use of familial
69 searching in cases, including, but not limited to, evaluating whether there has been a prior
70 unsuccessful CODIS search, the seriousness of the crime under investigation, and assessments of
71 claims that all practicable investigative leads have been exhausted.

72 The committee must collect and maintain data pertaining to the implementation of
73 familial searching, including, but not limited to: i) the frequency and nature of applications for
74 familial searches; ii) the approval and denial rates for such applications, along with reason for
75 denial where applicable; iii) whether an approved search yielded potential candidates; iv)
76 whether confirmatory testing was conducted; v) whether any names were released to
77 investigators as a result of familial search; vi) whether the results of such release led to an
78 identification and/or arrest; and vii) demographic data, including, but not limited to race, relating
79 to both requests for familial searching and search results.

80 Committee members, once so designated, must receive substantial training on the
81 forensic, policy, and legal considerations surrounding the use of familial searches.

82 (d) Familial searching shall be permitted within the commonwealth for cases where the
83 committee determines: i) that there is reasonable cause to believe that a familial search using the
84 crime scene DNA record may result in a partial DNA match; ii) that the casework DNA record
85 proposed for entry may be entered as a single source record and meets the appropriate quality
86 threshold determined by the laboratory; iii) that the crime is unsolved, and all practicable
87 investigative leads have been exhausted; iv) that the state crime laboratory has already searched
88 the casework DNA record against the CODIS database with negative results; v) that a
89 prosecuting officer within the commonwealth makes a written request that the forensic DNA
90 laboratory conduct a familial search on the casework DNA record; and, vi) that the requesting
91 agency or prosecuting officer within the commonwealth commits to conduct a further
92 investigation of the case if the name of the “potentially related offender” is released and agrees to
93 treat the name of the “potential relative of database candidate” as a confidential, non-public
94 investigative lead;

95 (e) If a laboratory finds a partial match as a result of a standard search of a DNA index
96 but does not receive an exact match, the laboratory shall first contact the submitting agency and
97 the appropriate prosecutor to confirm that they are committed to pursue further investigation of
98 the case if the name is released. After receiving written confirmation from the submitting agency
99 and the appropriate prosecutor, the laboratory shall follow the steps outlined in subsection (c).

100 (f) The report generated from the submitting laboratory to the investigating law
101 enforcement agency shall indicate that: i) the match is a result of familial searching or is a partial
102 match resulting from a standard search of a DNA index; ii) the information provided is a
103 confidential, non-public investigative lead; and iii) the available data suggests that the sources of
104 the evidentiary DNA pattern is potentially a relative of the convicted offender but is not
105 conclusive evidence of the same.

106 (h) The Director will promulgate regulations to address the following matters: i)
107 eligibility requirements for DNA records to be used for partial matches; ii) confirmatory steps
108 that the lab must take in order to narrow the list of potential relatives of the suspect before
109 providing DNA records to the requesting law enforcement entity. These steps may include, but
110 not be limited to, the calculation of kinship analysis likelihood ratios, additional sample testing
111 using Y-STR, mtDNA or expanded core loci kits to further narrow the list of potential relatives
112 of the suspect; iii) measures needed to restrict law enforcement use of any DNA records
113 disclosed by the lab as a result of the above search steps and to ensure the privacy of any
114 individuals who are identified by the lab as potential familial leads; and, iv) the circumstances in
115 which out-of-state requests for DNA searches may be approved.

116 (j) This policy will be subject to review every 2 years.

SECTION 5. This act shall take effect upon its passage.