

SENATE No. 2480

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:

Anne M. Gobi

Todd M. Smola

DISTRICT/ADDRESS:

Worcester, Hampden, Hampshire and Middlesex

1st Hampden

SENATE No. 2480

By Ms. Gobi, a petition (accompanied by bill, Senate, No. 2480) (subject to Joint Rule 12) of Anne M. Gobi and Todd M. Smola for legislation to permit familial searching and partial DNA matches in investigating certain unsolved crimes. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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. Chapter 22E of the General Laws is hereby amended by inserting after
2 section 10 the following section:-

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

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

6 “Blind external proficiency testing”, a test sample that is presented to a forensic
7 laboratory for forensic DNA testing through a second agency and which appears to the analyst to
8 involve routine evidence submitted for forensic DNA testing.

9 “Casework evidence DNA profile”, a DNA profile that is derived from biological
10 evidence originating from and associated with the commission of a crime. “Convicted offender

11 DNA profile”, the DNA profile generated by the testing of a biological sample collected from a
12 designated offender.

13 “Designated offender”, a person convicted of a felony.

14 “DNA profile”, a set of DNA identification characteristics that may permit the DNA of a
15 person to be distinguishable from that of another person; provided, however, that for STR DNA
16 profiles, “DNA profile” shall mean the list of alleles carried by a particular individual at a
17 specific set of genetic loci.

18 “Familial searching”, the process of purposefully searching a DNA databank for partial
19 matches or indirect associations between a convicted offender’s DNA profile and a DNA profile
20 developed from crime scene evidence.

21 “Forensic DNA index”, the electronic database in CODIS that contains DNA profiles
22 generated from casework evidence by forensic DNA laboratories.

23 “Forensic DNA laboratory”, a forensic laboratory operated pursuant to section 7 that
24 performs forensic DNA testing on a crime scene or material derived from the human body for
25 use as evidence in a criminal proceeding or for the purpose of identification.

26 “Forensic DNA profile”, a DNA profile that is derived from biological evidence
27 originating from and associated with the commission of a crime.

28 “Forensic DNA testing”, a test that employs techniques to examine DNA derived from
29 the human body for the purpose of providing information to resolve issues of identification;
30 provided, however, that regulation adopted pursuant to this chapter shall not include DNA
31 testing on materials derived from the human body for the purpose of determining a person’s

32 genetic disease or medical condition and shall not include a laboratory operated by the federal
33 government..

34 “Forensic laboratory”, a laboratory operated by the commonwealth or a local government
35 that performs forensic testing on evidence in a criminal investigation or proceeding or for the
36 purpose of identification.

37 “Indirect association” or “partial match”, the determination during the CODIS candidate
38 match confirmation process that a forensic index DNA profile is similar to a DNA profile in the
39 convicted offender index or subject index and a comparison reveals that the offender or subject is
40 not the source of the DNA profile but may be a relative of the source of the forensic index
41 profile.

42 “LDIS”, local DNA index system.

43 “Loci”, shall mean the specific chromosomal locations of genes or other DNA elements,
44 such as an STR.

45 “Mitochondrial DNA analysis” or “mtDNA analysis”, the analysis of genetic
46 polymorphisms that occur in the DNA of mitochondria.

47 “STR”, short tandem repeat.

48 “STR analysis”, a form of testing that provides DNA profiles for loci that contain simple
49 DNA unit repeats.

50 “Subject DNA profile”, the DNA profile generated by analysis of a biological sample
51 collected from a person convicted of a crime whose specimen was collected pursuant to sections
52 3 and 4, inclusive.

53 “Subject index”, the electronic database containing DNA profiles generated from a
54 person convicted of a crime whose DNA specimen was collected: (i) after a criminal trial; (ii)
55 pursuant to a plea agreement; (iii) as a condition of participation in a temporary release,
56 comprehensive alcohol and substance abuse treatment or shock incarceration program; (iv) as a
57 condition of release on parole, post-release supervision, presumptive release or conditional
58 release on a definite or indefinite sentence; or (v) as a condition of probation or interim probation
59 supervision.

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

61 (b) The director shall promulgate regulations that permit familial searching and the
62 release of partial matches to police departments in cities and towns, to the department, to the
63 department of correction, to a sheriff’s department, to the parole board or to prosecuting officers
64 within the commonwealth for cases involving violent felony offenses, homicides and burglary.

65 (c) The regulations shall permit the use of familial searching and require the release of
66 the results of such a search to police departments in cities and towns, to the department, to the
67 department of correction, to a sheriff’s department, to the parole board or to prosecuting officers
68 within the commonwealth if, upon application by a public servant acting in the course of the
69 public servant’s official duties, a court determines that:

70 (i) there is reasonable cause to believe that a familial search using the crime scene DNA
71 profile may result in a partial DNA match;

72 (ii) the crime scene DNA profile derives from a single source and contains not less than
73 10 of the CODIS core loci;

74 (iii) the crime is unsolved and all practicable investigative leads have been exhausted;

75 (iv) the DNA laboratory has run an exact match on the crime scene DNA profile with
76 negative results;

77 (v) a police department in a city and town, the department, the department of correction, a
78 sheriff's department, the parole board or a prosecuting officer within the commonwealth makes a
79 written request that the DNA laboratory conduct a familial search on the crime scene DNA
80 profile;

81 (vi) a police department in a city and town, the department, the department of correction,
82 a sheriff's department, the parole board or a prosecuting officer within the commonwealth
83 commit to further investigation of the case if the name of the potentially related offender is
84 released and the name of the potentially related offender will be treated as a confidential, non-
85 public investigative lead;

86 (vii) an LDIS search has been performed using the crime scene profile in the forensic
87 unknown index;

88 (viii) the agency or person submitting the request has committed to pursue further
89 investigation of the case if the name is released; and

90 (ix) the submitting laboratory has confirmed that the release of the name will be followed
91 by a report to the investigating law enforcement agency; provided, however, that the report will
92 indicate that the match is indirect and will also indicate that the available data suggests that the
93 source of the evidentiary DNA pattern is potentially a relative of the convicted offender.

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

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

105 (f) The division will provide the match information to the state DNA database to
106 calculate and report whether the appropriate statistical threshold has been met.

107 (g) Upon receiving a completed application from a forensic DNA laboratory and
108 confirmation from the database that the appropriate statistical threshold has been met, the
109 division shall release the name of the offender to the laboratory who shall release the information
110 to the investigating law enforcement agency after a court has determined that all of the
111 requirements in subsection (c) have been satisfied. If the appropriate statistical threshold is not
112 supported by the available data, then testing of additional loci of the offender sample may be
113 required and may include Y-STR or mtDNA analysis. If the subsequent testing does not meet the
114 appropriate threshold, the database will notify the division and the offender's name will not be
115 released.

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

117 (i) The same standards and procedures defined in this section apply to requests for partial
118 match and familial searching information from criminal justice agencies located outside of the
119 commonwealth.

120 Any person who intentionally discloses a DNA record, or the results of a forensic DNA
121 test or analysis, found as a result of familial searching or a partial match, to an individual or
122 agency other than one authorized to have access to such records pursuant to this chapter, or
123 intentionally uses or receives DNA records, or the results of a forensic DNA test or analysis,
124 found as a result of familial searching or a partial match, for purposes other than those authorized
125 pursuant to this article shall be guilty of a class E felony, and upon conviction thereof, shall be
126 subject to a fine of not more than ten thousand dollars and any such other penalties as provided.

127 SECTION 2. This act shall take effect upon its passage.