

By Mr. Berry, a petition (accompanied by bill, Senate, No. 725) of Frederick E. Berry, Kevin M. Burke, Paul D. Harold, Walter J. Boverini and members of the House of Representatives for legislation to establish the admissibility of DNA identification tests and to require that such tests be conducted on certain sex offenders and the results be filed in a central registry. The Judiciary.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Ninety.

AN ACT ESTABLISHING THE ADMISSIBILITY OF DNA (DEOXYRIBONUCLEIC ACID) IDENTIFICATION TESTS AND REQUIRING THAT SUCH TESTS BE CONDUCTED ON CERTAIN SEX OFFENDERS AND THE RESULTS BE FILED IN A CENTRAL REGISTRY.

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

1 Chapter 263 of the General Laws is hereby amended by  
2 inserting after section 1A the following section: —

3 Section 1B. (1) A report of the results of a DNA (deoxyribo-  
4 nucleic acid) Identification Test performed on a sample of a  
5 person's blood, hair, body fluid, or any other body tissue or body  
6 part, shall be admissible in any court proceeding. The statistical  
7 probability that two or more samples come from the same person  
8 shall also be admissible in any such proceeding. A "DNA  
9 Identification Test" shall include any test that determines the  
10 DNA composition of a sample, including, but not limited to, those  
11 tests referred to as "DNA fingerprinting," "DNA Print  
12 Identification," "Genetic Fingerprinting," or "Restriction  
13 Fragment Length Polymorphism."

14 (2) In any prosecution under section thirteen B, thirteen F,  
15 thirteen H, twenty-two, twenty-two A, twenty-three, twenty-four,  
16 or twenty-four B of chapter two hundred and sixty-five, or under  
17 section two, three, four, five, sixteen, seventeen, thirty-four,

18 thirty-five, or thirty-five A of chapter two hundred and seventy-  
19 two, or under section six or seven of chapter two hundred and  
20 seventy-four for an attempt or a conspiracy to commit any of the  
21 above-listed offenses, a person who is convicted, has their case  
22 continued without a finding, pleads guilty or nolo contendere,  
23 admits to sufficient facts to warrant a finding of guilt, or any  
24 person who was originally charged with such an offense, but who  
25 pleads guilty to a lesser offense or admits to sufficient facts to  
26 warrant a finding of guilt as to a lesser offense, shall, as a  
27 mandatory part of sentencing, submit, within ninety days, a  
28 sample of blood for a DNA Identification Test. This blood shall  
29 be drawn by a physician, registered nurse, licensed vocational  
30 nurse, duly licensed clinical laboratory technologist, or clinical  
31 laboratory bioanalyst. The performance of this test shall not be  
32 stayed pending a sentence appeal, motion for new trial, appeal  
33 to an appellate court, or other post-conviction motion or petition.

34 (3) The Commonwealth of Massachusetts Department of  
35 Public Safety shall provide all blood sample vials, mailing tubes,  
36 labels, and instructions for the collection of blood samples. The  
37 samples shall be tested by the Department of Public Safety or an  
38 independent laboratory qualified to conduct such tests. The  
39 results of the DNA Identification Tests shall be filed with and  
40 maintained by the Department of Public Safety. These results  
41 shall be released only to law enforcement agencies upon their  
42 request.

43 (4) Any person who was convicted of, or pleaded guilty or nolo  
44 contendere to, any offense enumerated in paragraph (2), or a  
45 person who was originally charged with such an offense, but  
46 pleaded guilty or nolo contendere to a lesser offense or admitted  
47 to sufficient facts to warrant a finding of guilt as to a lesser offense,  
48 and who is incarcerated in any correctional institution operated  
49 by the county, Commonwealth, or Department of Youth Services  
50 shall be required to submit a blood sample for a DNA  
51 Identification Test under paragraphs (2) and (3).

52 (5) Any person who was convicted of, had their case continued  
53 without a finding, or pleaded guilty or nolo contendere to, any  
54 offense enumerated in paragraph (2), or a person who was  
55 originally charged with such an offense, but pleaded guilty or nolo

56 contendere to a lesser offense or admitted to sufficient facts to  
57 warrant a finding of guilt as to a lesser offense, and who is on  
58 probation or has been released from full-time confinement in a  
59 secure correctional facility through a furlough, parole, pre-release,  
60 work-release, or any other program run by any correctional  
61 institution of the county, Commonwealth, or the Department of  
62 Youth Services, shall be required to submit a blood sample for  
63 a DNA Identification Test under paragraphs (2) and (3).

64 (6) The costs of any test performed under paragraphs (2)-(5)  
65 shall be assessed against the person tested, unless the person is  
66 indigent as provided in section twenty-seven A of chapter two  
67 hundred and sixty-one. If the person is marginally indigent, the  
68 court may require the person to pay a reasonable portion of the  
69 costs.

70 (7) If any provision or clause of this section or application  
71 thereof to any person or circumstances is held invalid, such  
72 invalidity shall not affect other provisions or applications of this  
73 section which can be given effect without the invalid provision  
74 or application, and to this end the provisions of this section are  
75 declared to be severable.

