

SENATE No. 1363

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr

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 relative to the expansion of the state DNA database.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>2/3/2017</i>

SENATE No. 1363

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 1363) of Bruce E. Tarr and Ryan C. Fattman for legislation to expand the state DNA database. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to the expansion of the state DNA database.

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 3 of chapter 22E of the General Laws is hereby amended by
2 striking the section in its entirety and inserting in place thereof the following:-

3 Section 3. (a) Any person who is convicted of an offense that is punishable by
4 imprisonment in the state prison and any person adjudicated a youthful offender by reason of an
5 offense that would be punishable by imprisonment in the state prison if committed by an adult
6 shall submit a DNA sample to the department within 6 months of such conviction or adjudication
7 or, if incarcerated, within the first 6 months of such incarceration or before release from custody,
8 whichever occurs first.

9 (b) Any person who is arrested by virtue of process, or is taken into custody by an officer
10 and charged with the commission of: (i) an offense listed in clause (i) of subsection (b) of section
11 25 of chapter 279; or (ii) section 17 or section 18 of chapter 266, and who upon arrest has been

12 arraigned pursuant to the applicable court rules under the Massachusetts Rules of Criminal
13 Procedure, shall submit a DNA sample to the department.

14 (c) The trial court and probation department shall work in conjunction with the director to
15 establish and implement a system for the electronic notification to the department whenever a
16 person is required to submit a DNA sample under this section. The sample shall be collected by a
17 person authorized under section 4 of this chapter subsequent to arraignment, in accordance with
18 regulations or procedures established by the director. The results of such sample shall be made
19 part of the state DNA database. In the event the department is unable to complete DNA analysis
20 on a sample provided pursuant to this section or any sample so provided fails to yield a DNA
21 record, the person required to submit a DNA sample pursuant to this section shall, within 6
22 months of notice from the director, submit additional DNA samples until DNA analysis is
23 completed and results in the production of a DNA record. The submission of such DNA sample
24 shall not be stayed pending a sentence appeal, motion for new trial, appeal to an appellate court
25 or other post conviction motion or petition.

26 SECTION 2. Section 5 of chapter 22E of the General Laws is hereby amended by striking
27 the section in its entirety and inserting in place thereof the following:-

28 Section 5. The department shall provide all collection materials, labels and instructions
29 for the collection of DNA samples pursuant to this chapter.

30 SECTION 3. Section 11 of chapter 22E of the General Laws is hereby amended by
31 striking the section in its entirety and inserting in place thereof the following:-

32 Section 11. Any person required to provide a DNA sample pursuant to this chapter and
33 who, after notice, fails to provide such DNA sample or such additional DNA samples as required

34 by section 3 shall be subject to punishment by a fine of not more than \$2,000 or imprisonment in
35 a jail or house of correction for not more than six months or both for each such offense. Each day
36 a person fails, as required by section 3, to submit a DNA sample shall, until such DNA sample is
37 so provided, constitute a separate offense.

38 SECTION 4. Section 12 of chapter 22E of the General Laws is hereby amended, in line
39 6, by striking out the figure “\$1,000” and inserting in its place thereof the following figure:-
40 “\$2,000”; and is hereby further amended, in line 7, by striking out the words “six months” and
41 inserting in place thereof the following:- 1 year.

42 SECTION 5. Section 13 of chapter 22E of the General Laws, as appearing in the 2014
43 official edition, is hereby amended by striking, in line 4, the figure “\$1,000” and inserting in its
44 place thereof the following:- “\$2,000”; and is hereby further amended, in line 5, by striking the
45 words “six months” and inserting in place thereof the following:- 1 year.

46 SECTION 6. Section 15 of chapter 22E of the General Laws is hereby amended by
47 adding the following subsections:-

48 (b) The department shall destroy the DNA sample and any records of a person related to
49 the sample that were taken in connection with a particular alleged designated crime if the sample
50 was collected post-arraignment under subsection (b) of section 3, and any of the following
51 occurs: the felony charge which required the DNA sample is downgraded to a misdemeanor by
52 the prosecuting attorney upon a plea agreement or the person is convicted of a lesser offense that
53 is a misdemeanor other than one constituting abuse as defined in section 1 of chapter 209A or a
54 sex offense for which registration is required pursuant to sections 178C to 178P of chapter 6; (ii)
55 the person is acquitted after a trial of the charges which required the taking of the DNA sample;

56 or (iii) the charges which required the taking of the DNA sample are dismissed by either the
57 court or the state after arraignment unless good cause is shown why the sample should not be
58 destroyed.

59 (c) If the person has more than one entry in the state DNA database, CODIS, or the state
60 DNA data bank, only the entry related to the dismissed case shall be deleted.

61 (d) The trial court and probation department shall work in conjunction with the director to
62 establish and implement a system for the electronic notification to the department whenever a
63 DNA sample is required to be destroyed pursuant to this section. The department shall notify the
64 person upon destroying the DNA sample and completing its responsibilities under this
65 subsection.

66 (e) If a DNA sample is matched to another DNA sample during the course of a criminal
67 investigation, the record of the match shall not be expunged even if the sample itself is expunged
68 in accordance with the provisions of this section.