

SENATE No. 1595**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, Hampden, Hampshire and Middlesex</i>	
<i>Todd M. Smola</i>	<i>1st Hampden</i>	
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>2/18/2021</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>2/18/2021</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>2/19/2021</i>
<i>Timothy R. Whelan</i>	<i>1st Barnstable</i>	<i>2/19/2021</i>
<i>Joan B. Lovely</i>	<i>Second Essex</i>	<i>2/22/2021</i>
<i>Donald R. Berthiaume, Jr.</i>	<i>5th Worcester</i>	<i>2/24/2021</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>2/25/2021</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>2/26/2021</i>
<i>Natalie M. Blais</i>	<i>1st Franklin</i>	<i>3/1/2021</i>
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	<i>3/5/2021</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>3/8/2021</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>3/18/2021</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>	<i>3/19/2021</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>3/19/2021</i>

<i>Steven G. Xiarhos</i>	<i>5th Barnstable</i>	<i>3/19/2021</i>
<i>Alyson M. Sullivan</i>	<i>7th Plymouth</i>	<i>4/8/2021</i>
<i>John C. Velis</i>	<i>Second Hampden and Hampshire</i>	<i>4/14/2021</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>5/17/2021</i>
<i>David T. Vieira</i>	<i>3rd Barnstable</i>	<i>5/19/2021</i>

SENATE No. 1595

By Ms. Gobi, a petition (accompanied by bill, Senate, No. 1595) of Anne M. Gobi, Todd M. Smola, Bradley H. Jones, Jr., Angelo J. Puppolo, Jr. and other members of the General Court for legislation to permit familial searching and partial DNA matches in investigating certain unsolved crimes. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

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 Massachusetts General Laws is hereby amended by
2 inserting after 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 “Casework DNA record”, a DNA profile that is generated by testing of biological
7 evidence originating from and associated with the commission of a crime.

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

“Familial search”, A familial search is a deliberate search of the Massachusetts DNA (CODIS) databank for biologically related relatives (siblings, parents, and children) of a contributor of an evidentiary DNA record. This search is performed with specialized software designed and validated for such purpose. The information that may develop from a familial search and ultimately be provided to law enforcement will be the name or names of an individual or individuals in Massachusetts’ DNA databank who may be related to the person whose DNA was identified on crime scene evidence or other source for DNA Record.

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

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

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

“LDIS”, local DNA index system.

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

“Mitochondrial DNA analysis” or “mtDNA analysis”, the analysis of genetic polymorphisms or alternative forms of information, that occur in the DNA of mitochondria.

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

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

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

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

(c) The Director shall establish a familial search oversight committee to oversee the familial search process in the commonwealth. The committee shall consist of the state CODIS administrator; scientists from the state police or municipal crime laboratories; attorneys for the

crime lab, department of public safety, and/or prosecutors designated by the Massachusetts District Attorneys Association; and other members designated by the department.

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

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

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

(d) Familial searching shall be permitted within the commonwealth for cases where the committee determines: i) that there is reasonable cause to believe that a familial search using the crime scene DNA record may result in a partial DNA match; ii) that the casework DNA record proposed for entry may be entered as a single source record and meets the appropriate quality threshold determined by the laboratory; iii) that the crime is unsolved, and all practicable investigative leads have been exhausted; iv) that the state crime laboratory has already searched

the casework DNA record against the CODIS database with negative results; v) that a prosecuting officer within the commonwealth makes a written request that the forensic DNA laboratory conduct a familial search on the casework DNA record; and, vi) that the requesting agency or prosecuting officer within the commonwealth commits to conduct a further investigation of the case if the name of the “potentially related offender” is released and agrees to treat the name of the “potential relative of database candidate” as a confidential, non-public investigative lead;

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

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

(h) The Director will promulgate regulations to address the following matters: i) eligibility requirements for DNA records to be used for partial matches; ii) confirmatory steps that the lab must take in order to narrow the list of potential relatives of the suspect before providing DNA records to the requesting law enforcement entity. These steps may include, but

95 not be limited to, the calculation of kinship analysis likelihood ratios, additional sample testing
96 using Y-STR, mtDNA or expanded core loci kits to further narrow the list of potential relatives
97 of the suspect; iii) measures needed to restrict law enforcement use of any DNA records
98 disclosed by the lab as a result of the above search steps and to ensure the privacy of any
99 individuals who are identified by the lab as potential familial leads; and, iv) the circumstances in
100 which out-of-state requests for DNA searches may be approved.

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

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