

ASSEMBLY, No. 1678

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

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SYNOPSIS

Authorizes court to order law enforcement to submit DNA evidence to national database to determine whether the evidence matches a known individual or a DNA profile from an unsolved crime.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 9/19/2014)

1 AN ACT concerning DNA evidence, amending P.L.2001, c.377 and
2 P.L.1994, c.136 and supplementing Title 2A of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.2001, c.377 (C.2A:84A-32a) is amended to
9 read as follows:

10 1. a. Any person who was convicted of a crime **[and is**
11 **currently serving a term of imprisonment]** may make a motion
12 before the trial court that entered the judgment of conviction for the
13 performance of forensic DNA testing.

14 (1) The motion shall be verified by the convicted person under
15 penalty of perjury and shall do all of the following:

16 (a) explain why the identity of the defendant was a significant
17 issue in the case;

18 (b) explain in light of all the evidence, how if the results of the
19 requested DNA testing are favorable to the defendant, a motion for
20 a new trial based upon newly discovered evidence would be
21 granted;

22 (c) explain whether DNA testing was done at any prior time,
23 whether the defendant objected to providing a biological sample for
24 DNA testing, and whether the defendant objected to the
25 admissibility of DNA testing evidence at trial. If evidence was
26 subjected to DNA or other forensic testing previously by either the
27 prosecution or the defense, the court shall order the prosecution or
28 defense to provide all parties and the court with access to the
29 laboratory reports, underlying data and laboratory notes prepared in
30 connection with the DNA testing;

31 (d) make every reasonable attempt to identify both the evidence
32 that should be tested and the specific type of DNA testing sought;
33 and

34 (e) include consent to provide a biological sample for DNA
35 testing.

36 (2) Notice of the motion shall be served on the Attorney
37 General, the prosecutor in the county of conviction, and if known,
38 the governmental agency or laboratory holding the evidence sought
39 to be tested. Responses, if any, shall be filed within 60 days of the
40 date on which the Attorney General and the prosecutor are served
41 with the motion, unless a continuance is granted. The Attorney
42 General or prosecutor may support the motion for DNA testing or
43 oppose it with a statement of reasons and may recommend to the
44 court that if any DNA testing is ordered, a particular type of testing
45 be conducted.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus] in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 b. The court, in its discretion, may order a hearing on the
2 motion. The motion shall be heard by the judge who conducted the
3 trial unless the presiding judge determines that judge is unavailable.
4 Upon request of either party, the court may order, in the interest of
5 justice, that the convicted person be present at the hearing of the
6 motion.

7 c. The court shall appoint counsel for the convicted person who
8 brings a motion pursuant to this section if that person is indigent.

9 d. The court shall not grant the motion for DNA testing unless,
10 after conducting a hearing, it determines that all of the following
11 have been established:

12 (1) the evidence to be tested is available and in a condition that
13 would permit the DNA testing that is requested in the motion;

14 (2) the evidence to be tested has been subject to a chain of
15 custody sufficient to establish it has not been substituted, tampered
16 with, replaced or altered in any material aspect;

17 (3) the identity of the defendant was a significant issue in the
18 case;

19 (4) the convicted person has made a prima facie showing that
20 the evidence sought to be tested is material to the issue of the
21 convicted person's identity as the offender;

22 (5) the requested DNA testing result would raise a reasonable
23 probability that if the results were favorable to the defendant, a
24 motion for a new trial based upon newly discovered evidence would
25 be granted. The court in its discretion may consider any evidence
26 whether or not it was introduced at trial;

27 (6) the evidence sought to be tested meets either of the
28 following conditions:

29 (a) it was not tested previously;

30 (b) it was tested previously, but the requested DNA test would
31 provide results that are reasonably more discriminating and
32 probative of the identity of the offender or have a reasonable
33 probability of contradicting prior test results;

34 (7) the testing requested employs a method generally accepted
35 within the relevant scientific community; and

36 (8) the motion is not made solely for the purpose of delay.

37 e. If the court grants the motion for DNA testing, the court
38 order shall identify the specific evidence to be tested and the DNA
39 technology to be used.

40 (1) If the parties agree upon a mutually acceptable laboratory
41 that is accredited by the American Society of Crime Laboratory
42 Directors Laboratory Accreditation Board or a laboratory that has a
43 certificate of compliance with national standards issued pursuant to
44 42 U.S.C.A. s.14131 from the National Forensic Science
45 Technology Center, the testing shall be conducted by that
46 laboratory.

1 (2) If the parties fail to agree, the testing shall be conducted by
2 the New Jersey State Police Forensic Science Laboratory. For good
3 cause shown, however, the court may direct the evidence to an
4 alternative laboratory that is accredited by the American Society of
5 Crime Laboratory Directors Laboratory Accreditation Board or a
6 laboratory that has a certificate of compliance with national
7 standards issued pursuant to 42 U.S.C.A. s.14131 from the National
8 Forensic Science Technology Center.

9 (3) If a party seeks to conduct DNA testing at a laboratory that
10 is not an NDIS-participating laboratory as defined in section 3 of
11 P.L. , c. (C.) (pending before the Legislature as this bill),
12 such testing shall be conducted pursuant to the provisions of that
13 section.

14 f. The result of any testing ordered pursuant to this section
15 shall be fully disclosed to the person filing the motion, the
16 prosecutor and the Attorney General. If requested by any party, the
17 court shall order production of the underlying laboratory data and
18 notes.

19 g. The costs of the DNA testing ordered pursuant to this
20 section shall be borne by the convicted person.

21 h. An order granting or denying a motion for DNA testing
22 pursuant to this section may be appealed, pursuant to the Rules of
23 Court.

24 i. DNA testing ordered by the court pursuant to this section
25 shall be done as soon as practicable.

26 j. DNA profile information from biological samples taken
27 from a convicted person pursuant to a motion for post-conviction
28 DNA testing in accordance with the provisions of this section shall
29 be treated as confidential and shall not be deemed a public record
30 under P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law
31 concerning access to public records; except as provided in section 2
32 of P.L.2001, c.377 (C.53:1-20.37).

33 k. As used in this act and in section 3 of P.L. , c. (C.)
34 (pending before the Legislature as this bill), the terms "DNA,"
35 "DNA sample," "State DNA databank," "CODIS" and "FBI" shall
36 have the meaning set forth in section 3 of P.L.1994, c.136 (C.53:1-
37 20.19).

38 1. The court may order a law enforcement entity that has access
39 to CODIS to submit DNA profile information obtained from
40 probative biological material from crime scene evidence to
41 determine whether it matches a DNA profile of a known individual
42 or a DNA profile from an unsolved crime.

43 (cf: P.L.2001, c.377, s.1)

44
45 2. Section 5 of P.L.1994, c.136 (C.53:1-20.21) is amended to
46 read as follows:

1 5. Tests shall be performed on each blood or other biological
2 sample submitted pursuant to section 4 of P.L.1994, c.136 (C.53:1-
3 20.20) in order to analyze and type the genetic markers contained in
4 or derived from the DNA. Except insofar as the use of the results
5 of these tests for such purposes would jeopardize or result in the
6 loss of federal funding, the results of these tests shall be used for
7 the following purposes:

8 a. For law enforcement identification purposes, including the
9 identification of a match between DNA profile information obtained
10 from crime scene evidence and the DNA profile of a known
11 individual or the DNA profile from an unsolved crime;

12 b. For development of a population database;

13 c. To support identification research and protocol development
14 of forensic DNA analysis methods;

15 d. To assist in the recovery or identification of human remains
16 from mass disasters or for other humanitarian purposes;

17 e. For research, administrative and quality control purposes;

18 f. For judicial proceedings, by order of the court, if otherwise
19 admissible pursuant to applicable statutes or rules;

20 g. For criminal defense purposes, on behalf of a defendant,
21 who shall have access to relevant samples and analyses performed
22 in connection with the case in which the defendant is charged or
23 convicted; and

24 h. For such other purposes as may be required under federal
25 law as a condition for obtaining federal funding.

26 The DNA record of identification characteristics resulting from
27 the DNA testing conducted pursuant to this section shall be stored
28 and maintained in the State DNA database and forwarded to the FBI
29 for inclusion in CODIS. The DNA sample itself will be stored and
30 maintained in the State DNA databank.

31 (cf: P.L.2003, c.183, s.4)

32
33 3. (New section) a. As used in this section, an “NDIS-
34 participating laboratory” is a laboratory that has been designated to
35 operate the State DNA Index System and participate in the National
36 DNA Index System and CODIS.

37 b. If a party seeks to conduct DNA testing at a non-NDIS-
38 participating laboratory that otherwise meets the requirements set
39 forth in paragraphs (1) and (2) of subsection e. of section 1 of
40 P.L.2001, c.377 (C.2A:84A-32a), the party may request the court to
41 order the NDIS-participating laboratory within the State or relevant
42 jurisdiction to evaluate the non-NDIS-participating laboratory for
43 compliance with the FBI Quality Assurance Standards for Forensic
44 DNA Testing Laboratories for the purpose of uploading crime scene
45 profiles to CODIS. If the court so orders, within 45 days of
46 receiving such a request the NDIS-participating laboratory shall
47 complete the pre-approval process to determine if the non-NDIS-

1 participating laboratory is in compliance with FBI Quality
2 Assurance Standards for Forensic DNA Testing Laboratories, either
3 by conducting its own site visit and assessment of the non-NDIS-
4 participating laboratory or by obtaining and reviewing an on-site
5 visit conducted by the FBI or another NDIS-participating
6 laboratory. In the event that the requirements set forth in the FBI
7 Quality Assurance Standards for Forensic DNA Testing
8 Laboratories as of the effective date of P.L. , c. (C.)
9 (pending before the Legislature as this bill) are amended or
10 otherwise superseded, the NDIS-participating laboratory shall
11 complete such other process as may be prescribed for the
12 assessment of non-NDIS-participating laboratories.

13

14 4. This act shall take effect immediately.

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16

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STATEMENT

18

19 Under current law, certain persons convicted of crimes and
20 seeking exoneration may request forensic DNA testing of evidence
21 obtained from the crime scene. This bill is intended to facilitate
22 such testing.

23 The bill: (1) authorizes the court to order law enforcement
24 officials to submit DNA evidence from a crime scene to the
25 Combined DNA Index System (“CODIS”) for testing and to order
26 the State Police laboratory to evaluate private laboratories for
27 compliance with certain FBI standards; and (2) allows convicted
28 persons not currently serving a term of imprisonment to request
29 forensic DNA testing.

30 FORENSIC DNA TESTING AND CODIS: Currently, under section 1
31 of P.L.2001, c.377 (C.2A:84A-32a), the court may order forensic
32 DNA testing upon a motion by a person convicted of a crime and
33 serving a term of imprisonment. However, the statute does not
34 specifically authorize the court to order law enforcement officials to
35 submit crime scene evidence to CODIS for a search to determine
36 whether the evidence matches *another* person: either a known
37 individual or an unknown individual whose DNA profile was
38 obtained from an unsolved crime. This bill would provide the court
39 with that specific authority.

40 PRIVATE LABORATORIES: The bill contains a provision intended
41 to facilitate the use of accredited private labs for forensic DNA
42 analysis. Under federal law, forensic DNA analysis may be
43 conducted by either an “NDIS” lab or an accredited private lab
44 (known as a “non-NDIS” lab), but the private lab must comply with
45 certain additional requirements if the samples are to be uploaded to
46 CODIS for a search for potential DNA matches. (An NDIS lab is
47 one that has been designated to operate the State DNA Index

1 System and participate in the National DNA Index System and
2 CODIS.)

3 Because private labs do not have direct access to the CODIS
4 database, any DNA profiles they produce can be uploaded to the
5 system only with the assistance of an NDIS lab. In addition, before
6 testing any samples in a particular case, the private lab must be
7 evaluated by an NDIS lab and receive pre-approval in order for
8 samples to be eligible for uploading to CODIS for a search for
9 potential matches. Currently, if DNA samples are tested by an
10 accredited lab but the lab has not been pre-approved by an NDIS
11 lab, the results of the testing may be used in court, but may not be
12 uploaded to CODIS for a search for potential matches. The bill
13 provides that if a party seeks to conduct DNA analysis at a private
14 lab that otherwise meets the accreditation requirements set forth in
15 section 1 of P.L.2001, c.377 (C.2A:84A-32a), that party may
16 request the court to order the NDIS lab to evaluate the private lab.
17 If the court so orders, within 45 days of receiving such a request the
18 NDIS lab would be required to complete the pre-approval process to
19 determine if the private lab is in compliance with FBI Quality
20 Assurance Standards for Forensic DNA Testing Laboratories, either
21 by conducting its own site visit and assessment of the private lab or
22 by obtaining and reviewing an on-site visit conducted by the FBI or
23 another NDIS lab. The bill also provides that in the event that the
24 FBI requirements are amended or otherwise superseded, the NDIS
25 lab would be required to complete such other process as may be
26 prescribed for the assessment.

27 MOTION BY PERSON CONVICTED OF A CRIME: Under the statute,
28 any person who has been convicted of a crime and is currently
29 serving a term of imprisonment may make a motion before the court
30 for forensic DNA testing. The bill provides that any person who
31 has been convicted of a crime may make such a motion, whether or
32 not the person is currently imprisoned.

33 CLARIFYING AMENDMENT: The bill also amends the "DNA
34 Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-
35 20.17 et seq.), which requires persons convicted of crimes or
36 arrested for certain crimes to submit blood or other biological
37 samples for DNA testing. Under the statute, the test results are used
38 for various purposes, including law enforcement identification;
39 research and protocol development of forensic DNA analysis
40 methods; and criminal defense on behalf of a defendant *charged*
41 with a crime. This bill would clarify that the test results could also
42 be used for defense purposes on behalf of a defendant convicted of
43 a crime, and for the purpose of identifying a match between DNA
44 profile information obtained from crime scene evidence and the
45 DNA profile of a known individual or the DNA profile from an
46 unsolved crime.