

[Second Reprint]
SENATE, No. 737

STATE OF NEW JERSEY
214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

Sponsored by:

Senator NICHOLAS J. SACCO

District 32 (Bergen and Hudson)

Senator JOHN A. GIRGENTI

District 35 (Bergen and Passaic)

Assemblywoman JOAN M. QUIGLEY

District 32 (Bergen and Hudson)

Assemblyman VINCENT PRIETO

District 32 (Bergen and Hudson)

Assemblyman CRAIG J. COUGHLIN

District 19 (Middlesex)

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Assemblyman JON M. BRAMNICK

District 21 (Essex, Morris, Somerset and Union)

Assemblyman NELSON T. ALBANO

District 1 (Cape May, Atlantic and Cumberland)

Assemblyman ROBERT SCHROEDER

District 39 (Bergen)

Co-Sponsored by:

**Senators Beach, Stack, Assemblyman Wilson, Assemblywomen Handlin,
N.Munoz and Assemblyman Conaway**

SYNOPSIS

Expands DNA database to include samples from certain violent arrestees.

CURRENT VERSION OF TEXT

As amended by the Senate on May 20, 2010.

(Sponsorship Updated As Of: 6/30/2010)

1 AN ACT concerning DNA testing ¹**[and]** ¹ amending P.L.1994,
 2 c.136 ¹, and supplementing Title 2C of the New Jersey
 3 Statutes¹.

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

7
 8 ¹1. Section 2 of P.L.1994, c.136 (C.53:1-20.18) is amended to
 9 read as follows:

10 2. The Legislature finds and declares that DNA databanks are
 11 an important tool in criminal investigations and in deterring and
 12 detecting recidivist acts. It is the policy of this State to assist
 13 federal, state and local criminal justice and law enforcement
 14 agencies in the identification and detection of individuals who are
 15 the subjects of criminal investigations. It is therefore in the best
 16 interest of the State of New Jersey to establish a DNA database and
 17 a DNA databank containing blood or other biological samples
 18 submitted by every person convicted or found not guilty by reason
 19 of insanity of a crime and arrested for certain violent crimes. It is
 20 also in the best interest of the State of New Jersey to include in this
 21 DNA database and DNA databank blood or other biological
 22 samples submitted by juveniles adjudicated delinquent or
 23 adjudicated not delinquent by reason of insanity for acts, which if
 24 committed by an adult, would constitute a crime and by every
 25 juvenile arrested for certain violent crimes.

26 The Legislature further finds and declares that the minimal
 27 intrusion on an individual's privacy interest resulting from a DNA
 28 test is justified by the compelling governmental interests advanced
 29 by DNA analysis, for those who are convicted, adjudicated or found
 30 not guilty by reason of insanity for indictable crimes, as well as for
 31 those who are arrested for certain violent crimes. It further finds
 32 that DNA testing enhances the State's ability to positively identify
 33 an offender, to ascertain whether an individual may be implicated in
 34 another offense, and to establish positive identification in the event
 35 the offender becomes a fugitive.

36 The Legislative finds, as did the Supreme Court of New Jersey,
 37 that there is a compelling parallel between the taking of DNA and
 38 fingerprinting, and that the purposes of DNA testing demonstrate
 39 "special needs" beyond ordinary law enforcement.¹

40 (cf: P.L.2003, c.183, s.1)

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLP committee amendments adopted March 18, 2010.

²Senate floor amendments adopted May 20, 2010.

1 '[1.] 2.' Section 4 of P.L.1994, c.136 (C.53:1-20.20) is
2 amended to read as follows:

3 4. a. On or after January 1, 1995 every person convicted of
4 aggravated sexual assault and sexual assault under N.J.S.2C:14-2 or
5 aggravated criminal sexual contact and criminal sexual contact
6 under N.J.S.2C:14-3 or any attempt to commit any of these crimes
7 and who is sentenced to a term of imprisonment shall have a blood
8 sample drawn or other biological sample collected for purposes of
9 DNA testing upon commencement of the period of confinement.

10 In addition, every person convicted on or after January 1, 1995
11 of these offenses, but who is not sentenced to a term of
12 confinement, shall provide a DNA sample 'for purposes of DNA
13 testing' as a condition of the sentence imposed. A person who has
14 been convicted and incarcerated as a result of a conviction of one or
15 more of these offenses prior to January 1, 1995 shall provide a
16 DNA sample before parole or release from incarceration.

17 Every person arrested for an offense enumerated in this
18 subsection shall provide a DNA sample 'for purposes of DNA
19 testing' prior to the person's release from custody. 'If the charge
20 for which the sample was taken is dismissed or the person is
21 acquitted at trial, the sample and all related records shall be
22 destroyed.】'

23 b. On or after January 1, 1998 every juvenile adjudicated
24 delinquent for an act which, if committed by an adult, would
25 constitute aggravated sexual assault or sexual assault under
26 N.J.S.2C:14-2 or aggravated criminal sexual contact or criminal
27 sexual contact under N.J.S.2C:14-3, or any attempt to commit any
28 of these crimes, shall have a blood sample drawn or other biological
29 sample collected for purposes of DNA testing.

30 Every juvenile arrested for an act which, if committed by an
31 adult, would constitute an offense enumerated in this subsection
32 shall provide a DNA sample 'for purposes of DNA testing' prior to
33 the juvenile's release from custody. 'If the charge for which the
34 sample was taken is dismissed or the juvenile is acquitted at trial,
35 the sample and all related records shall be destroyed.】'

36 c. On or after January 1, 1998 every person found not guilty by
37 reason of insanity of aggravated sexual assault or sexual assault
38 under N.J.S.2C:14-2 or aggravated criminal sexual contact or
39 criminal sexual contact under N.J.S.2C:14-3, or any attempt to
40 commit any of these crimes, or adjudicated not delinquent by reason
41 of insanity for an act which, if committed by an adult, would
42 constitute one of these crimes, shall have a blood sample drawn or
43 other biological sample collected for purposes of DNA testing.

44 d. On or after January 1, 2000 every person convicted of
45 murder pursuant to N.J.S.2C:11-3, manslaughter pursuant to
46 N.J.S.2C:11-4, aggravated assault of the second degree pursuant to
47 paragraph (1) or (6) of subsection b. of N.J.S.2C:12-1, kidnapping

1 pursuant to N.J.S.2C:13-1, luring or enticing a child in violation of
2 P.L.1993, c.291 (C.2C:13-6), engaging in sexual conduct which
3 would impair or debauch the morals of a child pursuant to
4 N.J.S.2C:24-4, or any attempt to commit any of these crimes and
5 who is sentenced to a term of imprisonment shall have a blood
6 sample drawn or other biological sample collected for purposes of
7 DNA testing upon commencement of the period of confinement.

8 In addition, every person convicted on or after January 1, 2000
9 of these offenses, but who is not sentenced to a term of
10 confinement, shall provide a DNA sample as a condition of the
11 sentence imposed. A person who has been convicted and
12 incarcerated as a result of a conviction of one or more of these
13 offenses prior to January 1, 2000 shall provide a DNA sample
14 before parole or release from incarceration.

15 Every person arrested for an offense enumerated in this
16 subsection shall provide a DNA sample 'for purposes of DNA
17 testing' prior to the person's release from custody. 'If the charge
18 for which the sample was taken is dismissed or the person is
19 acquitted at trial, the sample and all related records shall be
20 destroyed.]'

21 e. On or after January 1, 2000 every juvenile adjudicated
22 delinquent for an act which, if committed by an adult, would
23 constitute murder pursuant to N.J.S.2C:11-3, manslaughter pursuant
24 to N.J.S.2C:11-4, aggravated assault of the second degree pursuant
25 to paragraph (1) or (6) of subsection b. of N.J.S.2C:12-1,
26 kidnapping pursuant to N.J.S.2C:13-1, luring or enticing a child in
27 violation of P.L.1993, c.291 (C.2C:13-6), engaging in sexual
28 conduct which would impair or debauch the morals of a child
29 pursuant to N.J.S.2C:24-4, or any attempt to commit any of these
30 crimes, shall have a blood sample drawn or other biological sample
31 collected for purposes of DNA testing.

32 Every juvenile arrested for an act which, if committed by an
33 adult, would constitute an offense enumerated in this subsection
34 shall provide a DNA sample 'for purposes of DNA testing' prior to
35 the juvenile's release from custody. 'If the charge for which the
36 sample was taken is dismissed or the juvenile is acquitted at trial,
37 the sample and all related records shall be destroyed.]'

38 f. On or after January 1, 2000 every person found not guilty by
39 reason of insanity of murder pursuant to N.J.S.2C:11-3,
40 manslaughter pursuant to N.J.S.2C:11-4, aggravated assault of the
41 second degree pursuant to paragraph (1) or (6) of subsection b. of
42 N.J.S.2C:12-1, kidnapping pursuant to N.J.S.2C:13-1, luring or
43 enticing a child in violation of P.L.1993, c.291 (C.2C:13-6),
44 engaging in sexual conduct which would impair or debauch the
45 morals of a child pursuant to N.J.S.2C:24-4, or any attempt to
46 commit any of these crimes, or adjudicated not delinquent by reason
47 of insanity for an act which, if committed by an adult, would

1 constitute one of these crimes, shall have a blood sample drawn or
2 other biological sample collected for purposes of DNA testing.

3 g. Every person convicted or found not guilty by reason of
4 insanity of a crime shall have a blood sample drawn or other
5 biological sample collected for purposes of DNA testing. If the
6 person is sentenced to a term of imprisonment or confinement, the
7 person shall have a blood sample drawn or other biological sample
8 collected for purposes of DNA testing upon commencement of the
9 period of imprisonment or confinement. If the person is not
10 sentenced to a term of imprisonment or confinement, the person
11 shall provide a DNA sample as a condition of the sentence imposed.
12 A person who has been convicted or found not guilty by reason of
13 insanity of a crime prior to the effective date of P.L.2003, c.183 and
14 who, on the effective date, is serving a sentence of imprisonment,
15 probation, parole or other form of supervision as a result of the
16 crime or is confined following acquittal by reason of insanity shall
17 provide a DNA sample before termination of imprisonment,
18 probation, parole, supervision or confinement, as the case may be.

19 h. Every juvenile adjudicated delinquent, or adjudicated not
20 delinquent by reason of insanity, for an act which, if committed by
21 an adult, would constitute a crime shall have a blood sample drawn
22 or other biological sample collected for purposes of DNA testing.
23 If under the order of disposition the juvenile is sentenced to some
24 form of imprisonment, detention or confinement, the juvenile shall
25 have a blood sample drawn or other biological sample collected for
26 purposes of DNA testing upon commencement of the period of
27 imprisonment, detention or confinement. If the order of disposition
28 does not include some form of imprisonment, detention or
29 confinement, the juvenile shall provide a DNA sample as a
30 condition of the disposition ordered by the court. A juvenile who,
31 prior to the effective date of P.L.2003, c.183, has been adjudicated
32 delinquent, or adjudicated not delinquent by reason of insanity for
33 an act which, if committed by an adult, would constitute a crime
34 and who on the effective date is under some form of imprisonment,
35 detention, confinement, probation, parole or any other form of
36 supervision as a result of the offense or is confined following an
37 adjudication of not delinquent by reason of insanity shall provide a
38 DNA sample before termination of imprisonment, detention,
39 supervision or confinement, as the case may be.

40 i. Nothing in this act shall be deemed to limit or preclude
41 collection of DNA samples as authorized by court order or in
42 accordance with any other law.

43 (cf: P.L.2003, c.183, s.3)

44

45 ¹[2] 3. Section 6 of P.L.1994, c.136 (C.53:1-20.22) is amended
46 to read as follows:

1 6. a. Each blood sample required to be drawn or biological
2 sample collected pursuant to section 4 of P.L.1994, c.136 (C.53:1-
3 20.20) from persons who are incarcerated shall be drawn or
4 collected at the place of incarceration. ¹The law enforcement
5 agency that affects an arrest for which DNA testing is required
6 pursuant to P.L. , c. (pending before the Legislature as this bill)
7 shall collect a DNA sample from the arrestee prior to the arrestee's
8 release or incarceration.¹ DNA samples from persons who are not
9 sentenced to a term of confinement shall be drawn or collected at a
10 prison or jail unit to be specified by the sentencing court. DNA
11 samples from persons who are adjudicated delinquent shall be
12 drawn or collected at a prison or jail identification and classification
13 bureau specified by the family court.

14 b. Only a correctional health nurse technician, physician,
15 registered professional nurse, licensed practical nurse, laboratory or
16 medical technician, phlebotomist or other health care worker with
17 phlebotomy training shall draw any blood sample to be submitted
18 for analysis, and only a correctional health nurse technician,
19 physician, registered professional nurse, licensed practical nurse,
20 laboratory or medical technician or person who has received
21 biological sample collection training in accordance with protocols
22 adopted by the Attorney General, in consultation with the
23 Department of Corrections, shall collect or supervise the collection
24 of any other biological sample to be submitted for analysis. No
25 civil liability shall attach to any person authorized to draw blood or
26 collect a biological sample by this section as a result of drawing
27 blood or collecting the sample from any person if the blood was
28 drawn or sample collected according to recognized medical
29 procedures. No person shall be relieved from liability for
30 negligence in the drawing or collecting of any DNA sample. No
31 sample shall be drawn or collected pursuant to section 4 of
32 P.L.1994, c.136 (C.53:1-20.20) if the division has previously
33 received a blood or biological sample from the convicted person or
34 the juvenile adjudicated delinquent which was adequate for
35 successful analysis and identification.

36 ¹[c. A person or juvenile who refuses to allow a blood sample to
37 be drawn or a biological sample to be collected is guilty of crime of
38 the fourth degree.]¹

39 (cf: P.L.2003, c.183, s.5)

40

41 ¹4. Section 9 of P.L.1994, c.136 (C.53:1-20.25) is amended to
42 read as follows:

43 9. a. (1) (i) Any person whose DNA record or profile has been
44 included in the State DNA database and whose DNA sample is
45 stored in the State DNA databank may apply for expungement on
46 the grounds that the conviction that resulted in the inclusion of the
47 person's DNA record or profile in the State database or the

1 inclusion of the person's DNA sample in the State databank has
2 been reversed and the case dismissed. The person, either
3 individually or through an attorney, may apply to the court for
4 expungement of the record. A copy of the application for
5 expungement shall be served on the prosecutor for the county in
6 which the conviction was obtained not less than 20 days prior to the
7 date of the hearing on the application. A certified copy of the order
8 reversing and dismissing the conviction shall be attached to an
9 order expunging the DNA record or profile insofar as its inclusion
10 rests upon that conviction.

11 (ii) Any person whose DNA record or profile has been included
12 in the State DNA database and whose DNA sample is stored in the
13 State DNA databank may apply for expungement on the grounds
14 that all charges resulting from the arrest that provided the basis for
15 inclusion of the person's DNA record or profile in the State
16 database or the inclusion of the person's DNA sample in the State
17 databank have been dismissed or have been resolved through an
18 acquittal at trial. The person, either individually or through an
19 attorney, may apply to the court for expungement of the record. A
20 copy of the application for expungement shall be served on the
21 prosecutor for the county in which the ²[conviction] charge² was
22 ²[obtained] brought² not less than 20 days prior to the date of the
23 hearing on the application. A certified copy of the order of
24 dismissal shall be attached to an order expunging the DNA record
25 or profile insofar as its inclusion rests upon the arrest which
26 resulted in those charges.

27 (2) (i) Any juvenile adjudicated delinquent whose DNA record or
28 profile has been included in the State DNA database and whose
29 DNA sample is stored in the State DNA databank may apply for
30 expungement on the grounds that the adjudication that resulted in
31 the inclusion of the juvenile's DNA record or profile in the State
32 database or the inclusion of the juvenile's DNA sample in the State
33 databank has been reversed and the case dismissed. The juvenile
34 adjudicated delinquent, either individually or through an attorney,
35 may apply to the court for expungement of the record. A copy of
36 the application for expungement shall be served on the prosecutor
37 for the county in which the conviction was obtained not less than 20
38 days prior to the date of the hearing on the application. A certified
39 copy of the order reversing and dismissing the adjudication shall be
40 attached to an order expunging the DNA record or profile insofar as
41 its inclusion rests upon that conviction.

42 (ii) Any juvenile whose DNA record or profile has been included
43 in the State DNA database and whose DNA sample is stored in the
44 State DNA databank may apply for expungement on the grounds
45 that all charges resulting from the arrest that provided the basis for
46 inclusion of the juvenile's DNA record or profile in the State
47 database or the inclusion of the juvenile's DNA sample in the State

1 databank have been dismissed or have resulted in an acquittal at
2 trial. The juvenile, either individually or through an attorney, may
3 apply to the court for expungement of the record. A copy of the
4 application for expungement shall be served on the prosecutor for
5 the county in which the ²[conviction] charge² was ²[obtained]
6 brought² not less than 20 days prior to the date of the hearing on the
7 application. A certified copy of the order of dismissal shall be
8 attached to an order expunging the DNA record or profile insofar as
9 its inclusion rests upon the arrest which resulted in those charges.

10 (3) (i) Any person found not guilty by reason of insanity, or
11 adjudicated not delinquent by reason of insanity, whose DNA
12 record or profile has been included in the State DNA database and
13 whose DNA sample is stored in the State DNA databank may apply
14 for expungement on the grounds that the judgment that resulted in
15 the inclusion of the person's DNA record or profile in the State
16 database or the inclusion of the person's DNA sample in the State
17 databank has been reversed and the case dismissed. The person,
18 either individually or through an attorney, may apply to the court
19 for expungement of the record. A copy of the application of
20 expungement shall be served on the prosecutor for the county in
21 which the judgment was obtained not less than 20 days prior to the
22 date of the hearing on the application. A certified copy of the order
23 reversing and dismissing the judgment shall be attached to an order
24 expunging the DNA record or profile insofar as its inclusion rests
25 upon that conviction.

26 (ii) Any person found not guilty by reason of insanity, or
27 adjudicated not delinquent by reason of insanity, whose DNA
28 record or profile has been included in the State DNA database and
29 whose DNA sample is stored in the State DNA databank may apply
30 for expungement on the grounds that all charges resulting from the
31 arrest that provided the basis for inclusion of the person's DNA
32 record or profile in the State database or the inclusion of the
33 person's DNA sample in the State databank have been dismissed or
34 have been resolved through an acquittal at trial. The person, either
35 individually or through an attorney, may apply to the court for
36 expungement of the record. A copy of the application for
37 expungement shall be served on the prosecutor for the county in
38 which the ²[conviction] charge² was ²[obtained] brought² not less
39 than 20 days prior to the date of the hearing on the application. A
40 certified copy of the order of dismissal shall be attached to an order
41 expunging the DNA record or profile insofar as its inclusions rests
42 upon the arrest which resulted in those charges.

43 b. Upon receipt of an order of expungement and unless
44 otherwise provided, the division shall purge the DNA record and all
45 other identifiable information from the State database and the DNA
46 sample stored in the State databank covered by the order. If the
47 entry in the database reflects more than one conviction or

1 adjudication, that entry shall not be expunged unless and until the
2 person or the juvenile adjudicated delinquent has obtained an order
3 of expungement for each conviction or adjudication on the grounds
4 contained in subsection a. of this section. If one of the bases for
5 inclusion in the DNA database was other than conviction or
6 adjudication, that entry shall not be subject to expungement.¹
7 (cf: P.L.1997, c.341, s.5)

8
9 ¹5. (New section) A person or juvenile who knowingly refuses
10 to allow a blood sample to be drawn or a biological sample to be
11 collected pursuant to the provisions of the "DNA Database and
12 Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.) is
13 guilty of a crime of the fourth degree.¹

14
15 ¹[3.] 6.¹ This act shall take effect on the first day of the 18th
16 month following enactment, but the Attorney General and the
17 Superintendent of State Police may take such anticipatory
18 administrative action in advance as shall be necessary for the
19 implementation of this act.