

[First Reprint]

SENATE, No. 393

STATE OF NEW JERSEY
216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

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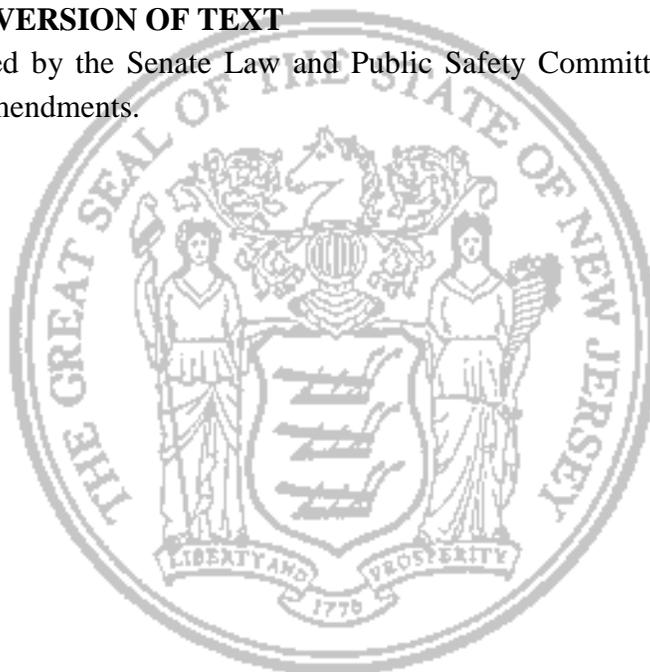
Senators Sweeney, Cardinale, Greenstein and Beach

SYNOPSIS

Expands DNA database to include samples from disorderly persons who are fingerprinted and permits law enforcement officers to collect certain biological samples.

CURRENT VERSION OF TEXT

As reported by the Senate Law and Public Safety Committee on June 19, 2014, with amendments.



1 AN ACT concerning DNA testing and amending P.L.1994, c.136.

2

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

5

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

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

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

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

40 (cf: P.L.2011, c.104, s.1)

41

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

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 June 19, 2014.

1 4. a. On or after January 1, 1995 every person convicted of
2 aggravated sexual assault and sexual assault under N.J.S.2C:14-2 or
3 aggravated criminal sexual contact and criminal sexual contact
4 under N.J.S.2C:14-3 or any attempt to commit any of these crimes
5 and 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, 1995
9 of these offenses, but who is not sentenced to a term of
10 confinement, shall provide a DNA sample for purposes of DNA
11 testing as a condition of the sentence imposed. A person who has
12 been convicted and incarcerated as a result of a conviction of one or
13 more of these offenses prior to January 1, 1995 shall provide a
14 DNA sample 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.

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

25 Every juvenile arrested for an act which, if committed by an
26 adult, would constitute an offense enumerated in this subsection
27 shall provide a DNA sample for purposes of DNA testing prior to
28 the juvenile's release from custody.

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

37 d. On or after January 1, 2000 every person convicted of
38 murder pursuant to N.J.S.2C:11-3, manslaughter pursuant to
39 N.J.S.2C:11-4, aggravated assault of the second degree pursuant to
40 paragraph (1) or (6) of subsection b. of N.J.S.2C:12-1, kidnapping
41 pursuant to N.J.S.2C:13-1, luring or enticing a child in violation of
42 P.L.1993, c.291 (C.2C:13-6), engaging in sexual conduct which
43 would impair or debauch the morals of a child pursuant to
44 N.J.S.2C:24-4, or any attempt to commit any of these crimes and
45 who is sentenced to a term of imprisonment shall have a blood
46 sample drawn or other biological sample collected for purposes of
47 DNA testing upon commencement of the period of confinement.

1 In addition, every person convicted on or after January 1, 2000
2 of these offenses, but who is not sentenced to a term of
3 confinement, shall provide a DNA sample as a condition of the
4 sentence imposed. A person who has been convicted and
5 incarcerated as a result of a conviction of one or more of these
6 offenses prior to January 1, 2000 shall provide a DNA sample
7 before parole or release from incarceration.

8 Every person arrested for an offense enumerated in this
9 subsection shall provide a DNA sample for purposes of DNA
10 testing prior to the person's release from custody.

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

22 Every juvenile arrested for an act which, if committed by an
23 adult, would constitute an offense enumerated in this subsection
24 shall provide a DNA sample for purposes of DNA testing prior to
25 the juvenile's release from custody.

26 f. On or after January 1, 2000 every person found not guilty by
27 reason of insanity of murder pursuant to N.J.S.2C:11-3,
28 manslaughter pursuant to N.J.S.2C:11-4, aggravated assault of the
29 second degree pursuant to paragraph (1) or (6) of subsection b. of
30 N.J.S.2C:12-1, kidnapping pursuant to N.J.S.2C:13-1, luring or
31 enticing a child in violation of P.L.1993, c.291 (C.2C:13-6),
32 engaging in sexual conduct which would impair or debauch the
33 morals of a child pursuant to N.J.S.2C:24-4, or any attempt to
34 commit any of these crimes, or adjudicated not delinquent by reason
35 of insanity for an act which, if committed by an adult, would
36 constitute one of these crimes, shall have a blood sample drawn or
37 other biological sample collected for purposes of DNA testing.

38 g. Every person convicted or found not guilty by reason of
39 insanity of a crime or a specified disorderly persons offense shall
40 have a blood sample drawn or other biological sample collected for
41 purposes of DNA testing. If the person is sentenced to a term of
42 imprisonment or confinement, the person shall have a blood sample
43 drawn or other biological sample collected for purposes of DNA
44 testing upon commencement of the period of imprisonment or
45 confinement. If the person is not sentenced to a term of
46 imprisonment or confinement, the person shall provide a DNA
47 sample as a condition of the sentence imposed. A person who has

1 been convicted or found not guilty by reason of insanity of a crime
2 prior to the effective date of P.L.2003, c.183 or of a specified
3 disorderly persons offense prior to the effective date of P.L. .c.
4 (pending before the Legislature as this bill) and who, on the
5 effective date, is serving a sentence of imprisonment, probation,
6 parole or other form of supervision as a result of the crime or is
7 confined following acquittal by reason of insanity shall provide a
8 DNA sample before termination of imprisonment, probation, parole,
9 supervision or confinement, as the case may be.

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

36 As used in this act, "specified disorderly persons offense" shall
37 mean ¹【shoplifting pursuant to N.J.S.2C:20-11;】¹ assault
38 constituting domestic violence as defined in section 3 of P.L.1991,
39 c.261 (C.2C:25-19); prostitution pursuant to N.J.S.2C:34-1; any
40 disorderly persons offense relating to narcotics or dangerous drugs
41 for which a person is required to be fingerprinted pursuant to
42 section 1 of P.L.1952, c.92 (C.53:1-18.1) ¹, excluding possession of
43 50 grams or less of marijuana, including any adulterants or
44 dilutants, or five grams or less of hashish under N.J.S.2C:35-10¹; or
45 any other disorderly persons offense for which a person is required
46 to be fingerprinted pursuant to R.S.53:1-15. ¹A "specified

1 disorderly persons offense” shall not include shoplifting pursuant to
2 N.J.S.2C:20-11.¹

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

6 (cf: P.L.2011, c.104, s.2)

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8 3. Section 6 of P.L.1994, c.136 (C.53:1-20.22) is amended to
9 read as follows:

10 6. a. Each blood sample required to be drawn or biological
11 sample collected pursuant to section 4 of P.L.1994, c.136 (C.53:1-
12 20.20) from persons who are incarcerated shall be drawn or
13 collected at the place of incarceration. The law enforcement agency
14 that effects an arrest for which DNA testing is required pursuant to
15 P.L.2011, c.104 shall collect a DNA sample from the arrestee prior
16 to the arrestee's release or incarceration. DNA samples from
17 persons who are not sentenced to a term of confinement shall be
18 drawn or collected at a prison or jail unit to be specified by the
19 sentencing court. DNA samples from persons who are adjudicated
20 delinquent shall be drawn or collected at a prison or jail
21 identification and classification bureau specified by the family
22 court.

23 b. Only a correctional health nurse technician, physician,
24 registered professional nurse, licensed practical nurse, laboratory or
25 medical technician, phlebotomist or other health care worker with
26 phlebotomy training shall draw any blood sample to be submitted
27 for analysis, and only a correctional health nurse technician,
28 physician, registered professional nurse, licensed practical nurse,
29 laboratory or medical technician or person, including but not
30 limited to a law enforcement officer, who has received biological
31 sample collection training in accordance with protocols adopted by
32 the Attorney General, in consultation with the Department of
33 Corrections, shall collect or supervise the collection of any other
34 biological sample to be submitted for analysis.

35 c. In addition to any other person who has received biological
36 sample collection training pursuant to subsection b. of this section,
37 a law enforcement officer who has been appropriately trained and
38 qualified pursuant to protocols adopted by the Attorney General, in
39 consultation with the Department of Corrections, may collect or
40 supervise the collection of a buccal swab sample to be submitted for
41 analysis.

42 d. No civil liability shall attach to any person authorized to
43 draw blood or collect a biological sample by this section as a result
44 of drawing blood or collecting the sample from any person if the
45 blood was drawn or sample collected according to recognized
46 medical procedures. No person shall be relieved from liability for
47 negligence in the drawing or collecting of any DNA sample. No

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1 sample shall be drawn or collected pursuant to section 4 of
2 P.L.1994, c.136 (C.53:1-20.20) if the division has previously
3 received a blood or biological sample from the convicted person or
4 the juvenile adjudicated delinquent which was adequate for
5 successful analysis and identification.

6 (cf: P.L.2011, c.104, s.3)

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8 4. This act shall take effect on the first day of the 18th month
9 following enactment, but the Attorney General and the
10 Superintendent of State Police may take such anticipatory
11 administrative action in advance as shall be necessary for the
12 implementation of this act.