

[Passed Both Houses]

[Second Reprint]

ASSEMBLY, No. 353

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywoman QUIGLEY, Assemblyman FELICE,
Assemblywoman Pou, Assemblyman Bucco, Senators Sacco and Scott

1 AN ACT concerning DNA testing of certain ²[juveniles] persons² and
2 amending P.L.1994, c.136.

3

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

6

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

9 2. The Legislature finds and declares that DNA databanks are an
10 important tool in criminal investigations and in deterring and detecting
11 recidivist acts. Several states have enacted laws requiring persons
12 convicted of certain crimes, especially serious sexual offenses, to
13 provide genetic samples for DNA profiling. Moreover, it is the policy
14 of this State to assist federal, state and local criminal justice and law
15 enforcement agencies in the identification and detection of individuals
16 who are the subjects of criminal investigations. It is therefore in the
17 best interest of the State of New Jersey to establish a DNA database
18 and a DNA databank containing blood samples submitted by certain
19 serious sexual offenders. It is also in the best interest of the State of
20 New Jersey to include in this DNA database and DNA databank blood
21 samples submitted by certain juveniles adjudicated delinquent for
22 certain acts, which if committed by an adult, would constitute serious
23 sexual offenses²and blood samples submitted by certain persons found
24 not guilty by reason of insanity, or adjudicated not delinquent by
25 reason of insanity, of certain serious sexual offenses².
26 (cf: P.L.1994, c.136, s.2)

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted May 1, 1997.

² Senate SJU committee amendments adopted November 17, 1997.

1 2. Section 3 of P.L.1994, c.136 (C.53:1-20.19) is amended to read
2 as follows:

3 3. As used in this act:

4 "CODIS" means the FBI's national DNA identification index system
5 that allows the storage and exchange of DNA records submitted by
6 State and local forensic laboratories.

7 "DNA" means deoxyribonucleic acid.

8 "DNA Record" means DNA identification information stored in the
9 State DNA database or CODIS for the purpose of generating
10 investigative leads or supporting statistical interpretation of DNA test
11 results.

12 "DNA Sample" means a blood sample provided by any person
13 convicted of any offense enumerated in section 4 of this act or
14 provided by any juvenile adjudicated delinquent for an act which, if
15 committed by an adult, would constitute any offense enumerated in
16 section 4 of this act or submitted to the division for analysis pursuant
17 to a criminal investigation.

18 "Division" means the Division of State Police in the Department of
19 Law and Public Safety.

20 "FBI" means the Federal Bureau of Investigation.

21 "State DNA Database" means the DNA identification record system
22 to be administered by the division which provides DNA records to the
23 FBI for storage and maintenance in CODIS.

24 "State DNA Databank" means the repository of DNA samples
25 collected under the provisions of this act.

26 (cf: P.L.1994, c.136, s.3)

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

30 4. a. On or after January 1, 1995 every person convicted of
31 aggravated sexual assault and sexual assault under N.J.S.2C:14-2 or
32 aggravated criminal sexual contact and criminal sexual contact under
33 N.J.S.2C:14-3 or any attempt to commit any of these crimes and who
34 is sentenced to a term of imprisonment shall have a blood sample
35 drawn for purposes of DNA testing upon commencement of the period
36 of confinement. In addition, every person convicted on or after
37 January 1, 1995 of these offenses, but who is not sentenced to a term
38 of confinement, shall provide a DNA sample as a condition of the
39 sentence imposed. A person who has been convicted and incarcerated
40 as a result of a conviction of one or more of these offenses prior to
41 January 1, 1995 shall have a DNA sample drawn before parole or
42 release from incarceration.

43 b. On or after January 1, ¹[1996] 1998¹ every juvenile adjudicated
44 delinquent for an act which, if committed by an adult, would constitute
45 aggravated sexual assault or sexual assault under N.J.S.2C:14-2 or
46 aggravated criminal sexual contact or criminal sexual contact under

1 N.J.S.2C:14-3, or any attempt to commit any of these crimes, shall
2 have a blood sample drawn for purposes of DNA testing.

3 ²c. On or after January 1, 1998 every person found not guilty by
4 reason of insanity of aggravated sexual assault or sexual assault under
5 N.J.S.2C:14-2 or aggravated criminal sexual contact or criminal sexual
6 contact under N.J.S.2C:14-3, or any attempt to commit any of these
7 crimes, or adjudicated not delinquent by reason of insanity for an act
8 which, if committed by an adult, would constitute one of these crimes,
9 shall have a blood sample drawn for purposes of DNA testing.²

10 (cf: P.L.1994, c.136, s.4)

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

14 6. Each DNA sample required to be drawn pursuant section 4 of
15 this act from persons who are incarcerated shall be drawn at the place
16 of incarceration. DNA samples from persons who are not sentenced
17 to a term of confinement shall be drawn at a prison or jail unit to be
18 specified by the sentencing court. DNA samples from persons who are
19 adjudicated delinquent shall be drawn at a ²[juvenile facility to be]
20 prison or jail identification and classification bureau² specified by the
21 family court. Only a correctional health nurse technician, physician,
22 registered professional nurse, licensed practical nurse, laboratory
23 technician, phlebotomist or other health care worker with phlebotomy
24 training shall draw any DNA sample to be submitted for analysis. No
25 civil liability shall attach to any person authorized to draw blood by
26 this section as a result of drawing blood from any person if the blood
27 was drawn according to recognized medical procedures. No person
28 shall be relieved from liability for negligence in the drawing of any
29 DNA sample. No sample shall be drawn if the division has previously
30 received an adequate blood sample from the convicted person or the
31 juvenile adjudicated delinquent.

32 (cf: P.L.1994, c.136, s.6)

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

36 9. a. (1) Any person whose DNA record or profile has been
37 included in the State DNA database and whose DNA sample is stored
38 in the State DNA databank may apply for expungement on the grounds
39 that the conviction that resulted in the inclusion of the person's DNA
40 record or profile in the State database or the inclusion of the person's
41 DNA sample in the State databank has been reversed and the case
42 dismissed. The person, either individually or through an attorney, may
43 apply to the court for expungement of the record. A copy of the
44 application for expungement shall be served on the prosecutor for the
45 county ²in² which the conviction was obtained not less than 20 days
46 prior to the date of the hearing on the application. A certified copy of

1 the order reversing and dismissing the conviction shall be attached to
2 an order expunging the DNA record or profile insofar as its inclusion
3 rests upon that conviction.

4 (2) Any juvenile adjudicated delinquent whose DNA record or
5 profile has been included in the State DNA database and whose DNA
6 sample is stored in the State DNA databank may apply for
7 expungement on the grounds that the adjudication that resulted in the
8 inclusion of the juvenile's DNA record or profile in the State database
9 or the inclusion of the juvenile's DNA sample in the State databank has
10 been reversed and the case dismissed. The juvenile adjudicated
11 delinquent, either individually or through an attorney, may apply to the
12 court for expungement of the record. A copy of the application for
13 expungement shall be served on the prosecutor for the county ²in²
14 which the conviction was obtained not less than 20 days prior to the
15 date of the hearing on the application. A certified copy of the order
16 reversing and dismissing the adjudication shall be attached to an order
17 expunging the DNA record or profile insofar as its inclusion rests upon
18 that conviction.

19 ²(3) Any person found not guilty by reason of insanity, or
20 adjudicated not delinquent by reason of insanity, whose DNA record
21 or profile has been included in the State DNA database and whose
22 DNA sample is stored in the State DNA databank may apply for
23 expungement on the grounds that the judgment that resulted in the
24 inclusion of the person's DNA record or profile in the State database
25 or the inclusion of the person's DNA sample in the State databank has
26 been reversed and the case dismissed. The person, either individually
27 or through an attorney, may apply to the court for expungement of the
28 record. A copy of the application of expungement shall be served on
29 the prosecutor for the county in which the judgment was obtained not
30 less than 20 days prior to the date of the hearing on the application.
31 A certified copy of the order reversing and dismissing the judgment
32 shall be attached to an order expunging the DNA record or profile
33 insofar as its inclusion rests upon that conviction.²

34 b. Upon receipt of an order of expungement and unless otherwise
35 provided , the division shall purge the DNA record and all other
36 identifiable information from the State database and the DNA sample
37 stored in the State databank covered by the order. If the entry in the
38 database reflects more than one conviction or adjudication, that entry
39 shall not be expunged unless and until the person or the juvenile
40 adjudicated delinquent has obtained an order of expungement for each
41 conviction or ²[adjudication] adjudication² on the grounds contained in
42 subsection a. of this section. If one of the bases for inclusion in the
43 DNA database was other than conviction or adjudication, that entry
44 shall not be subject to expungement.¹

45 (cf: P.L.1994,c.136,s.9)

1 ¹[5.] 6.¹ This act shall take effect immediately.

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6 Expands provisions of P.L.1994, c.136 providing for taking of DNA
7 samples in certain cases.