

CHAPTER 341

AN ACT concerning DNA testing of certain persons and amending P.L.1994, c.136.

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

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

C.53:1-20.18 Findings, declarations regarding DNA databanks.

2. The Legislature finds and declares that DNA databanks are an important tool in criminal investigations and in deterring and detecting recidivist acts. Several states have enacted laws requiring persons convicted of certain crimes, especially serious sexual offenses, to provide genetic samples for DNA profiling. Moreover, it is the policy of this State to assist federal, state and local criminal justice and law enforcement agencies in the identification and detection of individuals who are the subjects of criminal investigations. It is therefore in the best interest of the State of New Jersey to establish a DNA database and a DNA databank containing blood samples submitted by certain serious sexual offenders. It is also in the best interest of the State of New Jersey to include in this DNA database and DNA databank blood samples submitted by certain juveniles adjudicated delinquent for certain acts, which if committed by an adult, would constitute serious sexual offenses and blood samples submitted by certain persons found not guilty by reason of insanity, or adjudicated not delinquent by reason of insanity, of certain serious sexual offenses.

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

C.53:1-20.19 Definitions regarding DNA databanks.

3. As used in this act:

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

"DNA" means deoxyribonucleic acid.

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

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

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

"FBI" means the Federal Bureau of Investigation.

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

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

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

C.53:1-20.20 DNA samples required; conditions.

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

b. On or after January 1, 1998 every juvenile adjudicated delinquent for an act which, if committed by an adult, would constitute aggravated sexual assault or sexual assault under N.J.S.2C:14-2 or aggravated criminal sexual contact or criminal sexual contact under

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

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

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

C.53:1-20.22 Drawing of DNA samples; conditions.

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

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

C.53:1-20.25 Expungement of records from State records; conditions.

9. a. (1) Any person whose DNA record or profile has been included in the State DNA database and whose DNA sample is stored in the State DNA databank may apply for expungement on the grounds that the conviction that resulted in the inclusion of the person's DNA record or profile in the State database or the inclusion of the person's DNA sample in the State databank has been reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record. A copy of the application for expungement shall be served on the prosecutor for the county in which the conviction was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the conviction shall be attached to an order expunging the DNA record or profile insofar as its inclusion rests upon that conviction.

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

(3) Any person found not guilty by reason of insanity, or adjudicated not delinquent by reason of insanity, whose DNA record or profile has been included in the State DNA database and whose DNA sample is stored in the State DNA databank may apply for expungement on the grounds that the judgment that resulted in the inclusion of the person's DNA record or profile in the State database or the inclusion of the person's DNA sample in the State databank has been

reversed and the case dismissed. The person, either individually or through an attorney, may apply to the court for expungement of the record. A copy of the application of expungement shall be served on the prosecutor for the county in which the judgment was obtained not less than 20 days prior to the date of the hearing on the application. A certified copy of the order reversing and dismissing the judgment shall be attached to an order expunging the DNA record or profile insofar as its inclusion rests upon that conviction.

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

6. This act shall take effect immediately.

Approved January 12, 1998.