

## CHAPTER 377

AN ACT concerning certain testing of evidence and supplementing Title 2A and Title 53 of the New Jersey Statutes.

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

C.2A:84A-32a Motion for performance of forensic DNA testing, certain circumstances.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) it was not tested previously;

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

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

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

e. If the court grants the motion for DNA testing, the court order shall identify the specific evidence to be tested and the DNA technology to be used. (1) If the parties agree upon a mutually acceptable laboratory that is accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board or a laboratory that has a certificate of compliance with national standards issued pursuant to 42 U.S.C.A. s.14131 from the National Forensic Science Technology Center, the testing shall be conducted by that laboratory.

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

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

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

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

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

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

k. As used in this act, the terms "DNA," "DNA sample," "DNA databank," "CODIS" and "FBI" shall have the meaning set forth in section 3 of P.L.1994, c.136 (C.53:1-20.19).

#### C.53:1-20.37 Retaining of all DNA profile information.

2. a. Notwithstanding any other provision of law to the contrary, the Division of State Police in the Department of Law and Public Safety shall retain all DNA profile information from biological samples taken from a convicted person pursuant to the provisions of section 1 of P.L.2001, c.377 (C.2A:84A-32a) and may use the profile information in the investigation and prosecution of other crimes. The DNA profile information shall be added to, stored and maintained in the State DNA databank established pursuant to the "DNA Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.) and shall be forwarded to the FBI for inclusion in CODIS.

b. The Attorney General shall adopt rules governing the procedures to be used in the analysis and storage of DNA profile information obtained in accordance with the provisions of P.L.2001, c.377 (C.2A:84A-32a et al.).

#### C.2A:84A-32b Rules.

3. The Supreme Court of New Jersey may adopt rules appropriate and necessary to effectuate the purpose of this act.

4. This act shall take effect on the 180th day after enactment, but the Attorney General may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act

Approved January 8, 2002.