

CHAPTER 104

AN ACT concerning DNA testing, amending P.L.1994, c.136, and supplementing Title 2C of the New Jersey Statutes.

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 databases.

2. The Legislature finds and declares that DNA databanks are an important tool in criminal investigations and in deterring and detecting recidivist acts. 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 or other biological samples submitted by every person convicted or found not guilty by reason of insanity of a crime and arrested for certain violent crimes. It is also in the best interest of the State of New Jersey to include in this DNA database and DNA databank blood or other biological samples submitted by juveniles adjudicated delinquent or adjudicated not delinquent by reason of insanity for acts, which if committed by an adult, would constitute a crime and by every juvenile arrested for certain violent crimes.

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

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

2. 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 or other biological sample collected 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 for purposes of DNA testing 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 provide a DNA sample before parole or release from incarceration.

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

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 or other biological sample collected for purposes of DNA testing.

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

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 or other biological sample collected for purposes of DNA testing.

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

In addition, every person convicted on or after January 1, 2000 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, 2000 shall provide a DNA sample before parole or release from incarceration.

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

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

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

f. On or after January 1, 2000 every person found not guilty by reason of insanity of murder pursuant to N.J.S.2C:11-3, manslaughter pursuant to N.J.S.2C:11-4, aggravated assault of the second degree pursuant to paragraph (1) or (6) of subsection b. of N.J.S.2C:12-1, kidnapping pursuant to N.J.S.2C:13-1, luring or enticing a child in violation of P.L.1993, c.291 (C.2C:13-6), engaging in sexual conduct which would impair or debauch the morals of a child pursuant to N.J.S.2C:24-4, 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 or other biological sample collected for purposes of DNA testing.

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

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

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

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

b. Only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory or medical technician, phlebotomist or other health care worker with phlebotomy training shall draw any blood sample to be submitted for analysis,

and only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory or medical technician or person who has received biological sample collection training in accordance with protocols adopted by the Attorney General, in consultation with the Department of Corrections, shall collect or supervise the collection of any other biological sample to be submitted for analysis. No civil liability shall attach to any person authorized to draw blood or collect a biological sample by this section as a result of drawing blood or collecting the sample from any person if the blood was drawn or sample collected according to recognized medical procedures. No person shall be relieved from liability for negligence in the drawing or collecting of any DNA sample. No sample shall be drawn or collected pursuant to section 4 of P.L.1994, c.136 (C.53:1-20.20) if the division has previously received a blood or biological sample from the convicted person or the juvenile adjudicated delinquent which was adequate for successful analysis and identification.

4. 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) (i) 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.

(ii) 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 all charges resulting from the arrest that provided the basis for 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 have been dismissed or have been resolved through an acquittal at trial. 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 charge was brought not less than 20 days prior to the date of the hearing on the application. A certified copy of the order of dismissal shall be attached to an order expunging the DNA record or profile insofar as its inclusion rests upon the arrest which resulted in those charges.

(2) (i) 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.

(ii) Any juvenile 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 all charges resulting from the arrest that provided the basis for 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 have been dismissed or have resulted in an acquittal at trial. The juvenile, 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 charge was brought not less than 20 days prior to the date of the hearing on the application. A certified copy of the order of dismissal shall be attached to an order expunging the DNA record or profile insofar as its inclusion rests upon the arrest which resulted in those charges.

(3) (i) 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.

(ii) 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 all charges resulting from the arrest that provided the basis for 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 have been dismissed or have been resolved through an acquittal at trial. 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 charge was brought not less than 20 days prior to the date of the hearing on the application. A certified copy of the order of dismissal shall be attached to an order expunging the DNA record or profile insofar as its inclusion rests upon the arrest which resulted in those charges.

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.

C.2C:29-11 Refusal to allow blood, biological sample to be drawn; fourth degree crime.

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

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

Approved August 18, 2011.