

## CHAPTER 127

**AN ACT** concerning DNA evidence, amending P.L.2001, c.377, and supplementing Title 2A of the New Jersey Statutes.

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

1. Section 1 of P.L.2001, c.377 (C.2A:84A-32a) is amended to read as follows:

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

1. a. Any eligible person 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 eligible 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 eligible person who is serving a term of imprisonment at the time of the hearing be present at the hearing of the motion.

c. The court shall appoint counsel for the eligible 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 eligible person has made a prima facie showing that the evidence sought to be tested is material to the issue of the eligible 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 a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community and approved by the Director of the Federal Bureau of Investigation in accordance with the provisions of the Federal DNA Identification Act, 42 U.S.C.A. s.14131, 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 Office of Forensic Sciences Laboratory. For good cause shown, however, the court may, subject to the provisions of section 2 of P.L.2015, c.127 (C.2A:84A-32c), direct the evidence to an alternative laboratory that is accredited by a nonprofit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community and approved by the Director of the Federal Bureau of Investigation in accordance with the provisions of the Federal DNA Identification Act, 42 U.S.C.A. s.14131.

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 eligible 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 an eligible 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 and in P.L.2015, c.127 (C.2A:84A-32c et al.):

"DNA," "DNA sample," "State 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).

"NDIS-participating laboratory" is a laboratory that has been designated to operate CODIS and participate in the National and State DNA Index System.

l. If evidence tested at a non-NDIS-participating laboratory pursuant to this section reveals a DNA profile that is not that of the eligible person or the victim, the court shall

direct the prosecuting agency appearing on the motion to request that the New Jersey State Police Office of Forensic Services DNA Laboratory or other NDIS-participating laboratory involved in the matter submit the profile to CODIS, if the requirements and prerequisites for acceptance and submission are met, to determine whether it matches a DNA profile of a known individual or a DNA profile from an unsolved crime.

m. An eligible person may file a motion for the performance of forensic DNA testing with the trial court that entered the judgment of conviction. The motion may be considered in accordance with the provisions of this section only if the court finds just cause to hear the motion.

For a person who was convicted of a crime and is serving a sentence imposed for that criminal conviction, a determination of just cause shall be based on a reasonable probability that, if the results of the requested DNA testing were favorable, a motion for a new trial based on newly discovered evidence would be granted.

For a person who has been convicted of a crime and has completed serving the sentence for that conviction, a determination of just cause shall be based on a significant likelihood that, if the results of the requested DNA testing were favorable, a motion for a new trial based on newly discovered evidence would be granted.

n. For the purposes of this section, “eligible person” means a person who was convicted of a crime:

(1) and is currently serving a sentence imposed for that criminal conviction which includes a period of imprisonment; or

(2) who has completed serving the sentence for that conviction and demonstrates just cause as established in subsection m. of this section.

C.2A:84A-32c Procedures for DNA testing at accredited non-NDIS participating laboratory.

2. a. If a party seeks to conduct DNA testing at an accredited non-NDIS participating laboratory that otherwise meets the requirements set forth in paragraphs (1) and (2) of subsection e. of section 1 of P.L.2001, c.377 (C.2A:84A-32a) and the party seeks to submit the DNA profile information to CODIS in accordance with subsection 1. of section 1 of P.L.2001, c.377 (C.2A:84A-32a) the party, upon notice to the Attorney General and to the NDIS-participating laboratory, may request the court to order the NDIS-participating laboratory within the State to evaluate whether the laboratory at which the party seeks to conduct DNA testing is in compliance with the FBI Quality Assurance Standards for Forensic DNA Testing Laboratories for the purpose of uploading crime scene profiles to CODIS. The Attorney General may appear on the motion on his own behalf or on behalf of the NDIS-participating laboratory, if that laboratory is a public entity.

b. The court may order the NDIS-participating laboratory to conduct an evaluation pursuant to subsection b. of this section only if the court finds that the moving party clearly demonstrates:

(1) the New Jersey State Police Office of Forensic Sciences DNA Laboratory is not able to, or for practical reasons has determined not to, perform the specific testing and analysis sought by the moving party, or that its performance of the testing and analysis would not be substantially equivalent to that of the other laboratory, or that the testing would not otherwise be appropriate;

(2) there is a significant likelihood that, if the results of the requested DNA testing were favorable to the moving party, a motion for a new trial based upon newly discovered evidence would be granted;

(3) requiring the NDIS-participating laboratory to conduct the evaluation will not delay investigations or unduly burden the resources of the New Jersey State Police Office of Forensic Sciences DNA Laboratory or other NDIS-participating laboratory that may be involved in the matter; and

(4) if an evaluation were undertaken, there would be a reasonable likelihood that the results of the evaluation would conclude in a finding by the NDIS-participating laboratory that the laboratory at which the party seeks to conduct DNA testing is in compliance with the FBI Quality Assurance Standards for Forensic DNA Testing Laboratories for the purpose of uploading crime scene profiles to CODIS, and that the results of that laboratory's DNA testing, if a DNA profile is generated, would comply with federal requirements for inclusion in CODIS.

c. If the court orders an evaluation pursuant to subsection b. of this section, within 120 days of receiving the court's order, the NDIS-participating laboratory shall complete the pre-approval process to determine if the non-NDIS-participating laboratory at which the party seeks to conduct DNA testing is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories, by obtaining and reviewing the records of an on-site visit and assessment conducted by the FBI or another NDIS-participating laboratory. If an on-site visit and assessment have not been conducted within the time frames required by federal law or the laboratory does not comply with other applicable standards, or the results of an on-site visit and assessment are unavailable, the NDIS-participating laboratory may, within the limits of available resources, conduct its own on-site visit and assessment of the laboratory at which the party seeks to conduct DNA testing, provided that the laboratory agrees to cooperate with the on-site visit and assessment and the moving party bears the costs associated with the on-site visit and assessment.

d. In the event that the requirements set forth in the FBI Quality Assurance Standards for Forensic DNA Testing Laboratories following the effective date of P.L.2015, c.127 (C.2A:84A-32c et al.) are amended or otherwise superseded, the NDIS-participating laboratory shall complete such other process as may be prescribed for the assessment of non-NDIS-participating laboratories.

e. A determination by the NDIS-participating laboratory as to whether the laboratory at which the party seeks to conduct DNA testing is in compliance with FBI Quality Assurance Standards for Forensic DNA Testing Laboratories shall not be subject to judicial review.

#### C.2A:84A-32d Construction of act.

3. Nothing in P.L.2015, c.127 (C.2A:84A-32c et al.) shall be construed to:

a. create a right, obligation, or requirement regarding the preservation of evidence, including evidence that may contain a biological sample;

b. provide a basis for a remedy or cause of action based on a failure to preserve or retain evidence, including evidence that may contain a biological sample; or

c. affect or modify the Guidelines for the Retention of Evidence promulgated by the Attorney General and any successor guidelines or directives promulgated or issued by the Attorney General.

4. This act shall take effect on the first day of the fourth month next following the date of enactment.

Approved November 9, 2015.