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"Report on the collection & use of DNA samples under P.L. 1994, c. 136, N.J.S.A. 53:1-20.17 et. seq.", by the Attorney General Division of Criminal Justice, CODIS Compliance Unit, New Jersey State Police Office of Forensic Sciences. [Trenton, NJ: New Jersey Office of the Attorney General, 2008].

LAW

[Second Reprint]  
**SENATE, No. 737**

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Senator NICHOLAS J. SACCO**  
**District 32 (Bergen and Hudson)**  
**Senator JOHN A. GIRGENTI**  
**District 35 (Bergen and Passaic)**  
**Assemblywoman JOAN M. QUIGLEY**  
**District 32 (Bergen and Hudson)**  
**Assemblyman VINCENT PRIETO**  
**District 32 (Bergen and Hudson)**  
**Assemblyman CRAIG J. COUGHLIN**  
**District 19 (Middlesex)**  
**Assemblyman ALBERT COUTINHO**  
**District 29 (Essex and Union)**  
**Assemblyman JON M. BRAMNICK**  
**District 21 (Essex, Morris, Somerset and Union)**  
**Assemblyman NELSON T. ALBANO**  
**District 1 (Cape May, Atlantic and Cumberland)**  
**Assemblyman ROBERT SCHROEDER**  
**District 39 (Bergen)**

**Co-Sponsored by:**

**Senators Beach, Stack, Assemblyman Wilson, Assemblywomen Handlin,  
N.Munoz and Assemblyman Conaway**

**SYNOPSIS**

Expands DNA database to include samples from certain violent arrestees.

**CURRENT VERSION OF TEXT**

As amended by the Senate on May 20, 2010.

(Sponsorship Updated As Of: 6/30/2010)

1 AN ACT concerning DNA testing **‘[and] ,’** amending P.L.1994,  
2 c.136 <sup>1</sup>, and supplementing Title 2C of the New Jersey  
3 Statutes<sup>1</sup>.

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

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

10 2. The Legislature finds and declares that DNA databanks are  
11 an important tool in criminal investigations and in deterring and  
12 detecting recidivist acts. It is the policy of this State to assist  
13 federal, state and local criminal justice and law enforcement  
14 agencies in the identification and detection of individuals who are  
15 the subjects of criminal investigations. It is therefore in the best  
16 interest of the State of New Jersey to establish a DNA database and  
17 a DNA databank containing blood or other biological samples  
18 submitted by every person convicted or found not guilty by reason  
19 of insanity of a crime and arrested for certain violent crimes. It is  
20 also in the best interest of the State of New Jersey to include in this  
21 DNA database and DNA databank blood or other biological  
22 samples submitted by juveniles adjudicated delinquent or  
23 adjudicated not delinquent by reason of insanity for acts, which if  
24 committed by an adult, would constitute a crime and by every  
25 juvenile arrested for certain violent crimes.

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

36 The Legislative finds, as did the Supreme Court of New Jersey,  
37 that there is a compelling parallel between the taking of DNA and  
38 fingerprinting, and that the purposes of DNA testing demonstrate  
39 “special needs” beyond ordinary law enforcement.<sup>1</sup>

40 (cf: P.L.2003, c.183, s.1)

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SLP committee amendments adopted March 18, 2010.

<sup>2</sup>Senate floor amendments adopted May 20, 2010.

1        '[1.] 2.' Section 4 of P.L.1994, c.136 (C.53:1-20.20) is  
2 amended to read as follows:

3        4. a. On or after January 1, 1995 every person convicted of  
4 aggravated sexual assault and sexual assault under N.J.S.2C:14-2 or  
5 aggravated criminal sexual contact and criminal sexual contact  
6 under N.J.S.2C:14-3 or any attempt to commit any of these crimes  
7 and who is sentenced to a term of imprisonment shall have a blood  
8 sample drawn or other biological sample collected for purposes of  
9 DNA testing upon commencement of the period of confinement.

10        In addition, every person convicted on or after January 1, 1995  
11 of these offenses, but who is not sentenced to a term of  
12 confinement, shall provide a DNA sample 'for purposes of DNA  
13 testing' as a condition of the sentence imposed. A person who has  
14 been convicted and incarcerated as a result of a conviction of one or  
15 more of these offenses prior to January 1, 1995 shall provide a  
16 DNA sample before parole or release from incarceration.

17        Every person arrested for an offense enumerated in this  
18 subsection shall provide a DNA sample 'for purposes of DNA  
19 testing' prior to the person's release from custody. '[If the charge  
20 for which the sample was taken is dismissed or the person is  
21 acquitted at trial, the sample and all related records shall be  
22 destroyed.]'

23        b. On or after January 1, 1998 every juvenile adjudicated  
24 delinquent for an act which, if committed by an adult, would  
25 constitute aggravated sexual assault or sexual assault under  
26 N.J.S.2C:14-2 or aggravated criminal sexual contact or criminal  
27 sexual contact under N.J.S.2C:14-3, or any attempt to commit any  
28 of these crimes, shall have a blood sample drawn or other biological  
29 sample collected for purposes of DNA testing.

30        Every juvenile arrested for an act which, if committed by an  
31 adult, would constitute an offense enumerated in this subsection  
32 shall provide a DNA sample 'for purposes of DNA testing' prior to  
33 the juvenile's release from custody. '[If the charge for which the  
34 sample was taken is dismissed or the juvenile is acquitted at trial,  
35 the sample and all related records shall be destroyed.]'

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

44        d. On or after January 1, 2000 every person convicted of  
45 murder pursuant to N.J.S.2C:11-3, manslaughter pursuant to  
46 N.J.S.2C:11-4, aggravated assault of the second degree pursuant to  
47 paragraph (1) or (6) of subsection b. of N.J.S.2C:12-1, kidnapping

1 pursuant to N.J.S.2C:13-1, luring or enticing a child in violation of  
2 P.L.1993, c.291 (C.2C:13-6), engaging in sexual conduct which  
3 would impair or debauch the morals of a child pursuant to  
4 N.J.S.2C:24-4, or any attempt to commit any of these crimes and  
5 who is sentenced to a term of imprisonment shall have a blood  
6 sample drawn or other biological sample collected for purposes of  
7 DNA testing upon commencement of the period of confinement.

8 In addition, every person convicted on or after January 1, 2000  
9 of these offenses, but who is not sentenced to a term of  
10 confinement, shall provide a DNA sample as a condition of the  
11 sentence imposed. A person who has been convicted and  
12 incarcerated as a result of a conviction of one or more of these  
13 offenses prior to January 1, 2000 shall provide a DNA sample  
14 before parole or release from incarceration.

15 Every person arrested for an offense enumerated in this  
16 subsection shall provide a DNA sample 'for purposes of DNA  
17 testing' prior to the person's release from custody. '【If the charge  
18 for which the sample was taken is dismissed or the person is  
19 acquitted at trial, the sample and all related records shall be  
20 destroyed.】'

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

32 Every juvenile arrested for an act which, if committed by an  
33 adult, would constitute an offense enumerated in this subsection  
34 shall provide a DNA sample 'for purposes of DNA testing' prior to  
35 the juvenile's release from custody. '【If the charge for which the  
36 sample was taken is dismissed or the juvenile is acquitted at trial,  
37 the sample and all related records shall be destroyed.】'

38 f. On or after January 1, 2000 every person found not guilty by  
39 reason of insanity of murder pursuant to N.J.S.2C:11-3,  
40 manslaughter pursuant to N.J.S.2C:11-4, aggravated assault of the  
41 second degree pursuant to paragraph (1) or (6) of subsection b. of  
42 N.J.S.2C:12-1, kidnapping pursuant to N.J.S.2C:13-1, luring or  
43 enticing a child in violation of P.L.1993, c.291 (C.2C:13-6),  
44 engaging in sexual conduct which would impair or debauch the  
45 morals of a child pursuant to N.J.S.2C:24-4, or any attempt to  
46 commit any of these crimes, or adjudicated not delinquent by reason  
47 of insanity for an act which, if committed by an adult, would

1 constitute one of these crimes, shall have a blood sample drawn or  
2 other biological sample collected for purposes of DNA testing.

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

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

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

43 (cf: P.L.2003, c.183, s.3)

44

45 **'[2] 3.'** Section 6 of P.L.1994, c.136 (C.53:1-20.22) is amended  
46 to read as follows:

1       6. a. Each blood sample required to be drawn or biological  
2 sample collected pursuant to section 4 of P.L.1994, c.136 (C.53:1-  
3 20.20) from persons who are incarcerated shall be drawn or  
4 collected at the place of incarceration. 'The law enforcement  
5 agency that affects an arrest for which DNA testing is required  
6 pursuant to P.L. , c. (pending before the Legislature as this bill)  
7 shall collect a DNA sample from the arrestee prior to the arrestee's  
8 release or incarceration.'<sup>1</sup> DNA samples from persons who are not  
9 sentenced to a term of confinement shall be drawn or collected at a  
10 prison or jail unit to be specified by the sentencing court. DNA  
11 samples from persons who are adjudicated delinquent shall be  
12 drawn or collected at a prison or jail identification and classification  
13 bureau specified by the family court.

14       b. Only a correctional health nurse technician, physician,  
15 registered professional nurse, licensed practical nurse, laboratory or  
16 medical technician, phlebotomist or other health care worker with  
17 phlebotomy training shall draw any blood sample to be submitted  
18 for analysis, and only a correctional health nurse technician,  
19 physician, registered professional nurse, licensed practical nurse,  
20 laboratory or medical technician or person who has received  
21 biological sample collection training in accordance with protocols  
22 adopted by the Attorney General, in consultation with the  
23 Department of Corrections, shall collect or supervise the collection  
24 of any other biological sample to be submitted for analysis. No  
25 civil liability shall attach to any person authorized to draw blood or  
26 collect a biological sample by this section as a result of drawing  
27 blood or collecting the sample from any person if the blood was  
28 drawn or sample collected according to recognized medical  
29 procedures. No person shall be relieved from liability for  
30 negligence in the drawing or collecting of any DNA sample. No  
31 sample shall be drawn or collected pursuant to section 4 of  
32 P.L.1994, c.136 (C.53:1-20.20) if the division has previously  
33 received a blood or biological sample from the convicted person or  
34 the juvenile adjudicated delinquent which was adequate for  
35 successful analysis and identification.

36       '[c. A person or juvenile who refuses to allow a blood sample to  
37 be drawn or a biological sample to be collected is guilty of crime of  
38 the fourth degree.]'<sup>1</sup>

39 (cf: P.L.2003, c.183, s.5)

40

41       <sup>1</sup>4. Section 9 of P.L.1994, c.136 (C.53:1-20.25) is amended to  
42 read as follows:

43       9. a. (1) (i) Any person whose DNA record or profile has been  
44 included in the State DNA database and whose DNA sample is  
45 stored in the State DNA databank may apply for expungement on  
46 the grounds that the conviction that resulted in the inclusion of the  
47 person's DNA record or profile in the State database or the



1 inclusion of the person's DNA sample in the State databank has  
2 been reversed and the case dismissed. The person, either  
3 individually or through an attorney, may apply to the court for  
4 expungement of the record. A copy of the application for  
5 expungement shall be served on the prosecutor for the county in  
6 which the conviction was obtained not less than 20 days prior to the  
7 date of the hearing on the application. A certified copy of the order  
8 reversing and dismissing the conviction shall be attached to an  
9 order expunging the DNA record or profile insofar as its inclusion  
10 rests upon that conviction.

11 (ii) Any person whose DNA record or profile has been included  
12 in the State DNA database and whose DNA sample is stored in the  
13 State DNA databank may apply for expungement on the grounds  
14 that all charges resulting from the arrest that provided the basis for  
15 inclusion of the person's DNA record or profile in the State  
16 database or the inclusion of the person's DNA sample in the State  
17 databank have been dismissed or have been resolved through an  
18 acquittal at trial. The person, either individually or through an  
19 attorney, may apply to the court for expungement of the record. A  
20 copy of the application for expungement shall be served on the  
21 prosecutor for the county in which the <sup>2</sup>[conviction] charge<sup>2</sup> was  
22 <sup>2</sup>[obtained] brought<sup>2</sup> not less than 20 days prior to the date of the  
23 hearing on the application. A certified copy of the order of  
24 dismissal shall be attached to an order expunging the DNA record  
25 or profile insofar as its inclusion rests upon the arrest which  
26 resulted in those charges.

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

42 (ii) Any juvenile whose DNA record or profile has been included  
43 in the State DNA database and whose DNA sample is stored in the  
44 State DNA databank may apply for expungement on the grounds  
45 that all charges resulting from the arrest that provided the basis for  
46 inclusion of the juvenile's DNA record or profile in the State  
47 database or the inclusion of the juvenile's DNA sample in the State

1 databank have been dismissed or have resulted in an acquittal at  
2 trial. The juvenile, either individually or through an attorney, may  
3 apply to the court for expungement of the record. A copy of the  
4 application for expungement shall be served on the prosecutor for  
5 the county in which the <sup>2</sup>[conviction] charge<sup>2</sup> was <sup>2</sup>[obtained]  
6 brought<sup>2</sup> not less than 20 days prior to the date of the hearing on the  
7 application. A certified copy of the order of dismissal shall be  
8 attached to an order expunging the DNA record or profile insofar as  
9 its inclusion rests upon the arrest which resulted in those charges.

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

26 (ii) Any person found not guilty by reason of insanity, or  
27 adjudicated not delinquent by reason of insanity, whose DNA  
28 record or profile has been included in the State DNA database and  
29 whose DNA sample is stored in the State DNA databank may apply  
30 for expungement on the grounds that all charges resulting from the  
31 arrest that provided the basis for inclusion of the person's DNA  
32 record or profile in the State database or the inclusion of the  
33 person's DNA sample in the State databank have been dismissed or  
34 have been resolved through an acquittal at trial. The person, either  
35 individually or through an attorney, may apply to the court for  
36 expungement of the record. A copy of the application for  
37 expungement shall be served on the prosecutor for the county in  
38 which the <sup>2</sup>[conviction] charge<sup>2</sup> was <sup>2</sup>[obtained] brought<sup>2</sup> not less  
39 than 20 days prior to the date of the hearing on the application. A  
40 certified copy of the order of dismissal shall be attached to an order  
41 expunging the DNA record or profile insofar as its inclusions rests  
42 upon the arrest which resulted in those charges.

43 b. Upon receipt of an order of expungement and unless  
44 otherwise provided, the division shall purge the DNA record and all  
45 other identifiable information from the State database and the DNA  
46 sample stored in the State databank covered by the order. If the  
47 entry in the database reflects more than one conviction or

1 adjudication, that entry shall not be expunged unless and until the  
2 person or the juvenile adjudicated delinquent has obtained an order  
3 of expungement for each conviction or adjudication on the grounds  
4 contained in subsection a. of this section. If one of the bases for  
5 inclusion in the DNA database was other than conviction or  
6 adjudication, that entry shall not be subject to expungement.<sup>1</sup>

7 (cf: P.L.1997, c.341, s.5)

8

9 <sup>1</sup>5. (New section) A person or juvenile who knowingly refuses

10 to allow a blood sample to be drawn or a biological sample to be

11 collected pursuant to the provisions of the "DNA Database and

12 Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.) is

13 guilty of a crime of the fourth degree.<sup>1</sup>

14

15 <sup>1</sup>[3.] 6.<sup>1</sup> This act shall take effect on the first day of the 18th

16 month following enactment, but the Attorney General and the

17 Superintendent of State Police may take such anticipatory

18 administrative action in advance as shall be necessary for the

19 implementation of this act.

[First Reprint]

**SENATE, No. 737**

**STATE OF NEW JERSEY**  
**214th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Senator NICHOLAS J. SACCO**

**District 32 (Bergen and Hudson)**

**Senator JOHN A. GIRGENTI**

**District 35 (Bergen and Passaic)**

**Co-Sponsored by:**

**Senator Beach**

**SYNOPSIS**

Expands DNA database to include samples from certain violent arrestees.

**CURRENT VERSION OF TEXT**

As reported by the Senate Law and Public Safety Committee on March 18, 2010, with amendments.



**(Sponsorship Updated As Of: 5/21/2010)**

1 AN ACT concerning DNA testing '[and] <sup>1</sup>' amending P.L.1994,  
2 c.136 <sup>1</sup>, and supplementing Title 2C of the New Jersey  
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4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
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8 <sup>1</sup>1. Section 2 of P.L.1994, c.136 (C.53:1-20.18) is amended to  
9 read as follows:

10 2. The Legislature finds and declares that DNA databanks are an  
11 important tool in criminal investigations and in deterring and  
12 detecting recidivist acts. It is the policy of this State to assist  
13 federal, state and local criminal justice and law enforcement  
14 agencies in the identification and detection of individuals who are  
15 the subjects of criminal investigations. It is therefore in the best  
16 interest of the State of New Jersey to establish a DNA database and  
17 a DNA databank containing blood or other biological samples  
18 submitted by every person convicted or found not guilty by reason  
19 of insanity of a crime and arrested for certain violent crimes. It is  
20 also in the best interest of the State of New Jersey to include in this  
21 DNA database and DNA databank blood or other biological  
22 samples submitted by juveniles adjudicated delinquent or  
23 adjudicated not delinquent by reason of insanity for acts, which if  
24 committed by an adult, would constitute a crime and by every  
25 juvenile arrested for certain violent crimes.

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

36 The Legislative finds, as did the Supreme Court of New Jersey,  
37 that there is a compelling parallel between the taking of DNA and  
38 fingerprinting, and that the purposes of DNA testing demonstrate  
39 "special needs" beyond ordinary law enforcement.<sup>1</sup>

40 (cf: P.L.2003, c.183, s.1)

41  
42 <sup>1</sup>[1.] 2.<sup>1</sup> Section 4 of P.L.1994, c.136 (C.53:1-20.20) is  
43 amended to read as follows:

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

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Senate SLP committee amendments adopted March 18, 2010.

1       4. a. On or after January 1, 1995 every person convicted of  
2 aggravated sexual assault and sexual assault under N.J.S.2C:14-2 or  
3 aggravated criminal sexual contact and criminal sexual contact  
4 under N.J.S.2C:14-3 or any attempt to commit any of these crimes  
5 and who is sentenced to a term of imprisonment shall have a blood  
6 sample drawn or other biological sample collected for purposes of  
7 DNA testing upon commencement of the period of confinement.

8       In addition, every person convicted on or after January 1, 1995  
9 of these offenses, but who is not sentenced to a term of  
10 confinement, shall provide a DNA sample 'for purposes of DNA  
11 testing' as a condition of the sentence imposed. A person who has  
12 been convicted and incarcerated as a result of a conviction of one or  
13 more of these offenses prior to January 1, 1995 shall provide a  
14 DNA sample before parole or release from incarceration.

15       Every person arrested for an offense enumerated in this  
16 subsection shall provide a DNA sample 'for purposes of DNA  
17 testing' prior to the person's release from custody. 'If the charge  
18 for which the sample was taken is dismissed or the person is  
19 acquitted at trial, the sample and all related records shall be  
20 destroyed.'

21       b. On or after January 1, 1998 every juvenile adjudicated  
22 delinquent for an act which, if committed by an adult, would  
23 constitute aggravated sexual assault or sexual assault under  
24 N.J.S.2C:14-2 or aggravated criminal sexual contact or criminal  
25 sexual contact under N.J.S.2C:14-3, or any attempt to commit any  
26 of these crimes, shall have a blood sample drawn or other biological  
27 sample collected for purposes of DNA testing.

28       Every juvenile arrested for an act which, if committed by an  
29 adult, would constitute an offense enumerated in this subsection  
30 shall provide a DNA sample 'for purposes of DNA testing' prior to  
31 the juvenile's release from custody. 'If the charge for which the  
32 sample was taken is dismissed or the juvenile is acquitted at trial,  
33 the sample and all related records shall be destroyed.'

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

42       d. On or after January 1, 2000 every person convicted of  
43 murder pursuant to N.J.S.2C:11-3, manslaughter pursuant to  
44 N.J.S.2C:11-4, aggravated assault of the second degree pursuant to  
45 paragraph (1) or (6) of subsection b. of N.J.S.2C:12-1, kidnapping  
46 pursuant to N.J.S.2C:13-1, luring or enticing a child in violation of  
47 P.L.1993, c.291 (C.2C:13-6), engaging in sexual conduct which

1 would impair or debauch the morals of a child pursuant to  
2 N.J.S.2C:24-4, or any attempt to commit any of these crimes and  
3 who is sentenced to a term of imprisonment shall have a blood  
4 sample drawn or other biological sample collected for purposes of  
5 DNA testing upon commencement of the period of confinement.

6 In addition, every person convicted on or after January 1, 2000  
7 of these offenses, but who is not sentenced to a term of  
8 confinement, shall provide a DNA sample as a condition of the  
9 sentence imposed. A person who has been convicted and  
10 incarcerated as a result of a conviction of one or more of these  
11 offenses prior to January 1, 2000 shall provide a DNA sample  
12 before parole or release from incarceration.

13 Every person arrested for an offense enumerated in this  
14 subsection shall provide a DNA sample 'for purposes of DNA  
15 testing' prior to the person's release from custody. '【If the charge  
16 for which the sample was taken is dismissed or the person is  
17 acquitted at trial, the sample and all related records shall be  
18 destroyed.】'

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

30 Every juvenile arrested for an act which, if committed by an  
31 adult, would constitute an offense enumerated in this subsection  
32 shall provide a DNA sample 'for purposes of DNA testing' prior to  
33 the juvenile's release from custody. '【If the charge for which the  
34 sample was taken is dismissed or the juvenile is acquitted at trial,  
35 the sample and all related records shall be destroyed.】'

36 f. On or after January 1, 2000 every person found not guilty by  
37 reason of insanity of murder pursuant to N.J.S.2C:11-3,  
38 manslaughter pursuant to N.J.S.2C:11-4, aggravated assault of the  
39 second degree pursuant to paragraph (1) or (6) of subsection b. of  
40 N.J.S.2C:12-1, kidnapping pursuant to N.J.S.2C:13-1, luring or  
41 enticing a child in violation of P.L.1993, c.291 (C.2C:13-6),  
42 engaging in sexual conduct which would impair or debauch the  
43 morals of a child pursuant to N.J.S.2C:24-4, or any attempt to  
44 commit any of these crimes, or adjudicated not delinquent by reason  
45 of insanity for an act which, if committed by an adult, would  
46 constitute one of these crimes, shall have a blood sample drawn or  
47 other biological sample collected for purposes of DNA testing.

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

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

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

41 (cf: P.L.2003, c.183, s.3)

42

43 **'[2] 3.'** Section 6 of P.L.1994, c.136 (C.53:1-20.22) is amended  
44 to read as follows:

45 6. a. Each blood sample required to be drawn or biological  
46 sample collected pursuant to section 4 of P.L.1994, c.136 (C.53:1-  
47 20.20) from persons who are incarcerated shall be drawn or



1 collected at the place of incarceration. <sup>1</sup>The law enforcement  
2 agency that affects an arrest for which DNA testing is required  
3 pursuant to P.L. , c. (pending before the Legislature as this bill)  
4 shall collect a DNA sample from the arrestee prior to the arrestee's  
5 release or incarceration.<sup>1</sup> DNA samples from persons who are not  
6 sentenced to a term of confinement shall be drawn or collected at a  
7 prison or jail unit to be specified by the sentencing court. DNA  
8 samples from persons who are adjudicated delinquent shall be  
9 drawn or collected at a prison or jail identification and classification  
10 bureau specified by the family court.

11 b. Only a correctional health nurse technician, physician,  
12 registered professional nurse, licensed practical nurse, laboratory or  
13 medical technician, phlebotomist or other health care worker with  
14 phlebotomy training shall draw any blood sample to be submitted  
15 for analysis, and only a correctional health nurse technician,  
16 physician, registered professional nurse, licensed practical nurse,  
17 laboratory or medical technician or person who has received  
18 biological sample collection training in accordance with protocols  
19 adopted by the Attorney General, in consultation with the  
20 Department of Corrections, shall collect or supervise the collection  
21 of any other biological sample to be submitted for analysis. No  
22 civil liability shall attach to any person authorized to draw blood or  
23 collect a biological sample by this section as a result of drawing  
24 blood or collecting the sample from any person if the blood was  
25 drawn or sample collected according to recognized medical  
26 procedures. No person shall be relieved from liability for  
27 negligence in the drawing or collecting of any DNA sample. No  
28 sample shall be drawn or collected pursuant to section 4 of  
29 P.L.1994, c.136 (C.53:1-20.20) if the division has previously  
30 received a blood or biological sample from the convicted person or  
31 the juvenile adjudicated delinquent which was adequate for  
32 successful analysis and identification.

33 <sup>1</sup>[c. A person or juvenile who refuses to allow a blood sample to  
34 be drawn or a biological sample to be collected is guilty of crime of  
35 the fourth degree.]<sup>1</sup>

36 (cf: P.L.2003, c.183, s.5)

37

38 <sup>1</sup>4. Section 9 of P.L.1994, c.136 (C.53:1-20.25) is amended to  
39 read as follows:

40 9. a. (1) (i) Any person whose DNA record or profile has been  
41 included in the State DNA database and whose DNA sample is  
42 stored in the State DNA databank may apply for expungement on  
43 the grounds that the conviction that resulted in the inclusion of the  
44 person's DNA record or profile in the State database or the  
45 inclusion of the person's DNA sample in the State databank has  
46 been reversed and the case dismissed. The person, either  
47 individually or through an attorney, may apply to the court for

1 expungement of the record. A copy of the application for  
2 expungement shall be served on the prosecutor for the county in  
3 which the conviction was obtained not less than 20 days prior to the  
4 date of the hearing on the application. A certified copy of the order  
5 reversing and dismissing the conviction shall be attached to an  
6 order expunging the DNA record or profile insofar as its inclusion  
7 rests upon that conviction.

8 (ii) Any person whose DNA record or profile has been included  
9 in the State DNA database and whose DNA sample is stored in the  
10 State DNA databank may apply for expungement on the grounds  
11 that all charges resulting from the arrest that provided the basis for  
12 inclusion of the person's DNA record or profile in the State  
13 database or the inclusion of the person's DNA sample in the State  
14 databank have been dismissed or have been resolved through an  
15 acquittal at trial. The person, either individually or through an  
16 attorney, may apply to the court for expungement of the record. A  
17 copy of the application for expungement shall be served on the  
18 prosecutor for the county in which the conviction was obtained not  
19 less than 20 days prior to the date of the hearing on the application.  
20 A certified copy of the order of dismissal shall be attached to an  
21 order expunging the DNA record or profile insofar as its inclusion  
22 rests upon the arrest which resulted in those charges.

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

38 (ii) Any juvenile whose DNA record or profile has been included  
39 in the State DNA database and whose DNA sample is stored in the  
40 State DNA databank may apply for expungement on the grounds  
41 that all charges resulting from the arrest that provided the basis for  
42 inclusion of the juvenile's DNA record or profile in the State  
43 database or the inclusion of the juvenile's DNA sample in the State  
44 databank have been dismissed or have resulted in an acquittal at  
45 trial. The juvenile, either individually or through an attorney, may  
46 apply to the court for expungement of the record. A copy of the  
47 application for expungement shall be served on the prosecutor for

1 the county in which the conviction was obtained not less than 20  
2 days prior to the date of the hearing on the application. A certified  
3 copy of the order of dismissal shall be attached to an order  
4 expunging the DNA record or profile insofar as its inclusion rests  
5 upon the arrest which resulted in those charges.

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

22 (ii) Any person found not guilty by reason of insanity, or  
23 adjudicated not delinquent by reason of insanity, whose DNA  
24 record or profile has been included in the State DNA database and  
25 whose DNA sample is stored in the State DNA databank may apply  
26 for expungement on the grounds that all charges resulting from the  
27 arrest that provided the basis for inclusion of the person's DNA  
28 record or profile in the State database or the inclusion of the  
29 person's DNA sample in the State databank have been dismissed or  
30 have been resolved through an acquittal at trial. The person, either  
31 individually or through an attorney, may apply to the court for  
32 expungement of the record. A copy of the application for  
33 expungement shall be served on the prosecutor for the county in  
34 which the conviction was obtained not less than 20 days prior to the  
35 date of the hearing on the application. A certified copy of the order  
36 of dismissal shall be attached to an order expunging the DNA  
37 record or profile insofar as its inclusions rests upon the arrest which  
38 resulted in those charges.

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

1 inclusion in the DNA database was other than conviction or  
2 adjudication, that entry shall not be subject to expungement.<sup>1</sup>  
3 (cf: P.L.1997, c.341, s.5)

4  
5 <sup>1</sup>5. (New section) A person or juvenile who knowingly refuses  
6 to allow a blood sample to be drawn or a biological sample to be  
7 collected pursuant to the provisions of the "DNA Database and  
8 Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.) is  
9 guilty of a crime of the fourth degree.<sup>1</sup>

10  
11 <sup>1</sup>[3.] 6.<sup>1</sup> This act shall take effect on the first day of the 18th  
12 month following enactment, but the Attorney General and the  
13 Superintendent of State Police may take such anticipatory  
14 administrative action in advance as shall be necessary for the  
15 implementation of this act.

STATEMENT TO  
[First Reprint]  
**SENATE, No. 737**

with Senate Floor Amendments  
(Proposed by Senator SACCO)

ADOPTED: MAY 20, 2010

Senate Bill No. 737 (1R) expands the State's DNA database to also include DNA samples from persons arrested for certain violent crimes, including murder, manslaughter, kidnapping, and sex offenses.

As reported by the Senate Law and Public Safety Committee, the bill also permits an adult or juvenile to make an application to the court to expunge the DNA record in cases where the charges were dismissed or the person or juvenile was acquitted or found not guilty by reason of insanity. These Senate amendments are technical in nature and clarify that a copy of the application for expungement is to be served on the prosecutor for the county in which the charge was brought.

# SENATE, No. 737

## STATE OF NEW JERSEY 214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

**Sponsored by:**

**Senator NICHOLAS J. SACCO**

**District 32 (Bergen and Hudson)**

**Senator JOHN A. GIRGENTI**

**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Expands DNA database to include samples from certain violent arrestees.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



S737 SACCO, GIRGENTI

2

1 AN ACT concerning DNA testing and amending P.L.1994, c.136.

2

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

5

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

8 4. a. On or after January 1, 1995 every person convicted of  
9 aggravated sexual assault and sexual assault under N.J.S.2C:14-2 or  
10 aggravated criminal sexual contact and criminal sexual contact  
11 under N.J.S.2C:14-3 or any attempt to commit any of these crimes  
12 and who is sentenced to a term of imprisonment shall have a blood  
13 sample drawn or other biological sample collected for purposes of  
14 DNA testing upon commencement of the period of confinement.

15 In addition, every person convicted on or after January 1, 1995  
16 of these offenses, but who is not sentenced to a term of  
17 confinement, shall provide a DNA sample as a condition of the  
18 sentence imposed. A person who has been convicted and  
19 incarcerated as a result of a conviction of one or more of these  
20 offenses prior to January 1, 1995 shall provide a DNA sample  
21 before parole or release from incarceration.

22 Every person arrested for an offense enumerated in this  
23 subsection shall provide a DNA sample prior to the person's release  
24 from custody. If the charge for which the sample was taken is  
25 dismissed or the person is acquitted at trial, the sample and all  
26 related records shall be destroyed.

27 b. On or after January 1, 1998 every juvenile adjudicated  
28 delinquent for an act which, if committed by an adult, would  
29 constitute aggravated sexual assault or sexual assault under  
30 N.J.S.2C:14-2 or aggravated criminal sexual contact or criminal  
31 sexual contact under N.J.S.2C:14-3, or any attempt to commit any  
32 of these crimes, shall have a blood sample drawn or other biological  
33 sample collected for purposes of DNA testing.

34 Every juvenile arrested for an act which, if committed by an  
35 adult, would constitute an offense enumerated in this subsection  
36 shall provide a DNA sample prior to the juvenile's release from  
37 custody. If the charge for which the sample was taken is dismissed  
38 or the juvenile is acquitted at trial, the sample and all related  
39 records shall be destroyed.

40 c. On or after January 1, 1998 every person found not guilty by  
41 reason of insanity of aggravated sexual assault or sexual assault  
42 under N.J.S.2C:14-2 or aggravated criminal sexual contact or  
43 criminal sexual contact under N.J.S.2C:14-3, or any attempt to  
44 commit any of these crimes, or adjudicated not delinquent by reason  
45 of insanity for an act which, if committed by an adult, would

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

Matter underlined thus is new matter.

1 constitute one of these crimes, shall have a blood sample drawn or  
2 other biological sample collected for purposes of DNA testing.

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

14 In addition, every person convicted on or after January 1, 2000  
15 of these offenses, but who is not sentenced to a term of  
16 confinement, shall provide a DNA sample as a condition of the  
17 sentence imposed. A person who has been convicted and  
18 incarcerated as a result of a conviction of one or more of these  
19 offenses prior to January 1, 2000 shall provide a DNA sample  
20 before parole or release from incarceration.

21 Every person arrested for an offense enumerated in this  
22 subsection shall provide a DNA sample prior to the person's release  
23 from custody. If the charge for which the sample was taken is  
24 dismissed or the person is acquitted at trial, the sample and all  
25 related records shall be destroyed.

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

37 Every juvenile arrested for an act which, if committed by an  
38 adult, would constitute an offense enumerated in this subsection  
39 shall provide a DNA sample prior to the juvenile's release from  
40 custody. If the charge for which the sample was taken is dismissed  
41 or the juvenile is acquitted at trial, the sample and all related  
42 records shall be destroyed.

43 f. On or after January 1, 2000 every person found not guilty by  
44 reason of insanity of murder pursuant to N.J.S.2C:11-3,  
45 manslaughter pursuant to N.J.S.2C:11-4, aggravated assault of the  
46 second degree pursuant to paragraph (1) or (6) of subsection b. of  
47 N.J.S.2C:12-1, kidnapping pursuant to N.J.S.2C:13-1, luring or  
48 enticing a child in violation of P.L.1993, c.291 (C.2C:13-6),



1 engaging in sexual conduct which would impair or debauch the  
2 morals of a child pursuant to N.J.S.2C:24-4, or any attempt to  
3 commit any of these crimes, or adjudicated not delinquent by reason  
4 of insanity for an act which, if committed by an adult, would  
5 constitute one of these crimes, shall have a blood sample drawn or  
6 other biological sample collected for purposes of DNA testing.

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

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

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

47 (cf: P.L.2003, c.183, s.3)

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

3       6. a. Each blood sample required to be drawn or biological  
4 sample collected pursuant to section 4 of P.L.1994, c.136 (C.53:1-  
5 20.20) from persons who are incarcerated shall be drawn or  
6 collected at the place of incarceration. DNA samples from persons  
7 who are not sentenced to a term of confinement shall be drawn or  
8 collected at a prison or jail unit to be specified by the sentencing  
9 court. DNA samples from persons who are adjudicated delinquent  
10 shall be drawn or collected at a prison or jail identification and  
11 classification bureau specified by the family court.

12       b. Only a correctional health nurse technician, physician,  
13 registered professional nurse, licensed practical nurse, laboratory or  
14 medical technician, phlebotomist or other health care worker with  
15 phlebotomy training shall draw any blood sample to be submitted  
16 for analysis, and only a correctional health nurse technician,  
17 physician, registered professional nurse, licensed practical nurse,  
18 laboratory or medical technician or person who has received  
19 biological sample collection training in accordance with protocols  
20 adopted by the Attorney General, in consultation with the  
21 Department of Corrections, shall collect or supervise the collection  
22 of any other biological sample to be submitted for analysis. No  
23 civil liability shall attach to any person authorized to draw blood or  
24 collect a biological sample by this section as a result of drawing  
25 blood or collecting the sample from any person if the blood was  
26 drawn or sample collected according to recognized medical  
27 procedures. No person shall be relieved from liability for  
28 negligence in the drawing or collecting of any DNA sample. No  
29 sample shall be drawn or collected pursuant to section 4 of  
30 P.L.1994, c.136 (C.53:1-20.20) if the division has previously  
31 received a blood or biological sample from the convicted person or  
32 the juvenile adjudicated delinquent which was adequate for  
33 successful analysis and identification.

34       c. A person or juvenile who refuses to allow a blood sample to  
35 be drawn or a biological sample to be collected is guilty of crime of  
36 the fourth degree.

37 (cf: P.L.2003, c.183, s.5)

38

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

1 STATEMENT

2

3 This bill would expand the State's DNA database to also include  
4 DNA samples from persons arrested for certain violent crimes,  
5 including murder, manslaughter, kidnapping, and sex offenses.

6 The "DNA Database and Databank Act of 1994," P.L.1994,  
7 c.136 (C.53:1-20.17 et seq.), was amended by P.L.2003, c.183 to  
8 expand the DNA database to include blood or biological samples  
9 from adults and juveniles found guilty of, adjudicated delinquent  
10 for, or found not guilty by reason of insanity of a crime of the first,  
11 second, third or fourth degree. Prior to this law, the database  
12 contained DNA samples from these persons if they were convicted  
13 of, adjudicated delinquent for, or found not guilty by reason of  
14 insanity of certain violent crimes, such as murder, manslaughter and  
15 kidnapping, and sex offenses.

16 The bill specifically requires adults and juveniles arrested for the  
17 following crimes to submit DNA samples: murder; manslaughter;  
18 second degree aggravated assault when the person attempts to cause  
19 or causes serious bodily injury to another or causes bodily injury  
20 while fleeing or attempting to flee a law enforcement officer;  
21 kidnapping; luring or enticing a child; engaging in sexual conduct  
22 which would impair or debauch the morals of a child; aggravated  
23 sexual assault, sexual assault, aggravated criminal sexual contact,  
24 criminal sexual contact or an attempt to commit any of these  
25 offenses. In the case of these arrestees, if the charge for which the  
26 sample was taken is dismissed or the person is acquitted at trial, the  
27 sample and all related records must be destroyed.

28 The bill also establishes that a person who refuses to submit a  
29 blood or biological sample is guilty of a crime of the fourth degree.  
30 Fourth degree crimes are punishable by a term of imprisonment of  
31 up to 18 months, a fine of up to \$10,000, or both.

# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

[Second Reprint]

**SENATE, No. 737**

# **STATE OF NEW JERSEY**

DATED: MAY 19, 2011

The Assembly Law and Public Safety Committee reports favorably Senate Bill No. 737 (2R).

Senate Bill No. 737 (2R) expands the State's DNA database to also include DNA samples from persons arrested for certain violent crimes, including murder, manslaughter, kidnapping, and sex offenses. Current law authorizes samples to be taken from persons convicted of crimes.

The "DNA Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.), was amended by P.L.2003, c.183 to expand the DNA database to include blood or biological samples from adults and juveniles found guilty of, adjudicated delinquent for, or found not guilty by reason of insanity of a crime of the first, second, third or fourth degree. Prior to this 2003 change in the law, the database contained DNA samples from these persons if they were convicted of, adjudicated delinquent for, or found not guilty by reason of insanity of certain violent crimes, such as murder, manslaughter and kidnapping, and sex offenses.

The bill specifically requires adults and juveniles arrested for the following crimes to submit DNA samples for purposes of DNA testing: murder; manslaughter; second degree aggravated assault when the person attempts to cause or causes serious bodily injury to another or causes bodily injury while fleeing or attempting to flee a law enforcement officer; kidnapping; luring or enticing a child; engaging in sexual conduct which would impair or debauch the morals of a child; aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact or an attempt to commit any of these offenses.

The bill also permits an adult or juvenile to make an application to the court to expunge the DNA record in cases where the charges were dismissed or the person or juvenile was acquitted. Under the bill, a copy of the application must be served on the county prosecutor where the charge was brought.

Further, the bill also establishes that a person who refuses to submit a blood or biological sample is guilty of a crime of the fourth

degree. Fourth degree crimes are punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

Finally, the bill expands the legislative findings and declarations of the "DNA Database and Databank Act of 1994" to reflect the changes that would be made to current law by the bill, as well to emphasize that the constitutional grounds for upholding the current law allowing DNA samples to be taken from persons convicted of crimes similarly apply to the taking of DNA samples from arrestees as provided under the bill.

As reported by the committee, this bill is identical to Assembly Bill No. 2594, as amended and reported by the committee on this same date.

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### **SENATE, No. 737**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: MARCH 18, 2010

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 737.

This bill would expand the State's DNA database to also include DNA samples from persons arrested for certain violent crimes, including murder, manslaughter, kidnapping, and sex offenses.

The "DNA Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.), was amended by P.L.2003, c.183 to expand the DNA database to include blood or biological samples from adults and juveniles found guilty of, adjudicated delinquent for, or found not guilty by reason of insanity of a crime of the first, second, third or fourth degree. Prior to this law, the database contained DNA samples from these persons if they were convicted of, adjudicated delinquent for, or found not guilty by reason of insanity of certain violent crimes, such as murder, manslaughter and kidnapping, and sex offenses.

As amended by the committee, the bill specifically requires adults and juveniles arrested for the following crimes to submit DNA samples for purposes of DNA testing: murder; manslaughter; second degree aggravated assault when the person attempts to cause or causes serious bodily injury to another or causes bodily injury while fleeing or attempting to flee a law enforcement officer; kidnapping; luring or enticing a child; engaging in sexual conduct which would impair or debauch the morals of a child; aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact or an attempt to commit any of these offenses. The amended bill also permits an adult or juvenile to make an application to the court to expunge the DNA record in cases where the charges were dismissed or the person or juvenile was acquitted.

The amended bill also establishes that a person who refuses to submit a blood or biological sample is guilty of a crime of the fourth degree. Fourth degree crimes are punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

The committee amendments expand the legislative findings and declarations of the "DNA Database and Databank Act of 1994" to reflect the changes made to current law by the bill and amendments.

The amendments also clarify that DNA samples are to be drawn for purposes of DNA testing. In addition, the amendments create an expungement procedure so that a person or juvenile may apply to have a DNA record expunged if in the case of an acquittal or if the charges are dismissed. As introduced, the bill provided in such cases that the sample and all related records must be destroyed. Finally, the amendments create a new offense in Title 2C for refusal to allow a DNA sample to be collected, provide that this offense is crime of the fourth degree, and clarify that the penalty applies to the provisions of the "DNA Database and Databank Act of 1994."

This bill was pre-filed for introduction in the 2010-2011 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

**ASSEMBLY, No. 2594**

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**STATE OF NEW JERSEY**

**214th LEGISLATURE**

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INTRODUCED MARCH 22, 2010

**Sponsored by:**

**Assemblywoman JOAN M. QUIGLEY**

**District 32 (Bergen and Hudson)**

**Assemblyman VINCENT PRIETO**

**District 32 (Bergen and Hudson)**

**Assemblyman CRAIG J. COUGHLIN**

**District 19 (Middlesex)**

**Assemblyman ALBERT COUTINHO**

**District 29 (Essex and Union)**

**Assemblyman JON M. BRAMNICK**

**District 21 (Essex, Morris, Somerset and Union)**

**Co-Sponsored by:**

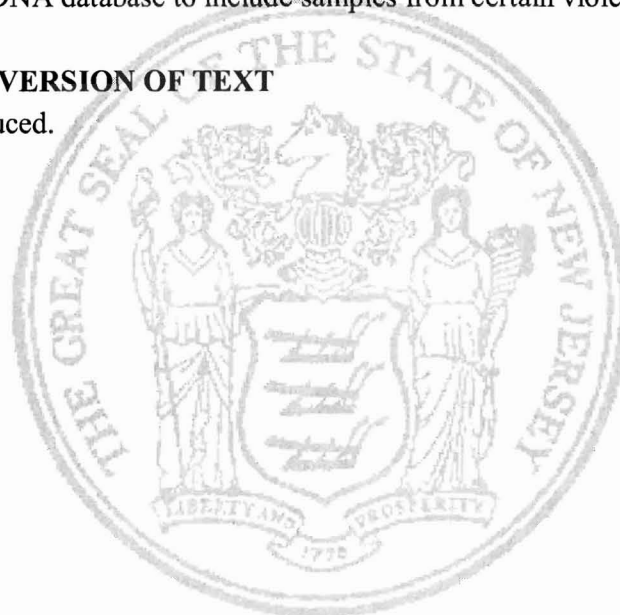
**Assemblymen Albano, Wilson and Assemblywoman Handlin**

**SYNOPSIS**

Expands DNA database to include samples from certain violent arrestees.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 5/20/2011)**



A2594 QUIGLEY, PRIETO

2

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

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  
8 read as follows:

9 2. The Legislature finds and declares that DNA databanks are  
10 an important tool in criminal investigations and in deterring and  
11 detecting recidivist acts. It is the policy of this State to assist  
12 federal, state and local criminal justice and law enforcement  
13 agencies in the identification and detection of individuals who are  
14 the subjects of criminal investigations. It is therefore in the best  
15 interest of the State of New Jersey to establish a DNA database and  
16 a DNA databank containing blood or other biological samples  
17 submitted by every person convicted or found not guilty by reason  
18 of insanity of a crime and arrested for certain violent crimes. It is  
19 also in the best interest of the State of New Jersey to include in this  
20 DNA database and DNA databank blood or other biological  
21 samples submitted by juveniles adjudicated delinquent or  
22 adjudicated not delinquent by reason of insanity for acts, which if  
23 committed by an adult, would constitute a crime and by every  
24 juvenile arrested for certain violent crimes.

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

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

39 (cf: P.L.2003, c.183, s.1)

40

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

43 4. a. On or after January 1, 1995 every person convicted of  
44 aggravated sexual assault and sexual assault under N.J.S.2C:14-2 or

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

Matter underlined thus is new matter.

1 aggravated criminal sexual contact and criminal sexual contact  
2 under N.J.S.2C:14-3 or any attempt to commit any of these crimes  
3 and who is sentenced to a term of imprisonment shall have a blood  
4 sample drawn or other biological sample collected for purposes of  
5 DNA testing upon commencement of the period of confinement.

6 In addition, every person convicted on or after January 1, 1995  
7 of these offenses, but who is not sentenced to a term of  
8 confinement, shall provide a DNA sample for purposes of DNA  
9 testing as a condition of the sentence imposed. A person who has  
10 been convicted and incarcerated as a result of a conviction of one or  
11 more of these offenses prior to January 1, 1995 shall provide a  
12 DNA sample before parole or release from incarceration.

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

16 b. On or after January 1, 1998 every juvenile adjudicated  
17 delinquent for an act which, if committed by an adult, would  
18 constitute aggravated sexual assault or sexual assault under  
19 N.J.S.2C:14-2 or aggravated criminal sexual contact or criminal  
20 sexual contact under N.J.S.2C:14-3, or any attempt to commit any  
21 of these crimes, shall have a blood sample drawn or other biological  
22 sample collected for purposes of DNA testing.

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

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

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

46 In addition, every person convicted on or after January 1, 2000  
47 of these offenses, but who is not sentenced to a term of  
48 confinement, shall provide a DNA sample as a condition of the

1 sentence imposed. A person who has been convicted and  
2 incarcerated as a result of a conviction of one or more of these  
3 offenses prior to January 1, 2000 shall provide a DNA sample  
4 before parole or release from incarceration.

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

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

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

23 f. On or after January 1, 2000 every person found not guilty by  
24 reason of insanity of murder pursuant to N.J.S.2C:11-3,  
25 manslaughter pursuant to N.J.S.2C:11-4, aggravated assault of the  
26 second degree pursuant to paragraph (1) or (6) of subsection b. of  
27 N.J.S.2C:12-1, kidnapping pursuant to N.J.S.2C:13-1, luring or  
28 enticing a child in violation of P.L.1993, c.291 (C.2C:13-6),  
29 engaging in sexual conduct which would impair or debauch the  
30 morals of a child pursuant to N.J.S.2C:24-4, or any attempt to  
31 commit any of these crimes, or adjudicated not delinquent by reason  
32 of insanity for an act which, if committed by an adult, would  
33 constitute one of these crimes, shall have a blood sample drawn or  
34 other biological sample collected for purposes of DNA testing.

35 g. Every person convicted or found not guilty by reason of  
36 insanity of a crime shall have a blood sample drawn or other  
37 biological sample collected for purposes of DNA testing. If the  
38 person is sentenced to a term of imprisonment or confinement, the  
39 person shall have a blood sample drawn or other biological sample  
40 collected for purposes of DNA testing upon commencement of the  
41 period of imprisonment or confinement. If the person is not  
42 sentenced to a term of imprisonment or confinement, the person  
43 shall provide a DNA sample as a condition of the sentence imposed.  
44 A person who has been convicted or found not guilty by reason of  
45 insanity of a crime prior to the effective date of P.L.2003, c.183 and  
46 who, on the effective date, is serving a sentence of imprisonment,  
47 probation, parole or other form of supervision as a result of the  
48 crime or is confined following acquittal by reason of insanity shall

1 provide a DNA sample before termination of imprisonment,  
2 probation, parole, supervision or confinement, as the case may be.

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

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

27 (cf: P.L.2003, c.183, s.3)

28

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

31 6. a. Each blood sample required to be drawn or biological  
32 sample collected pursuant to section 4 of P.L.1994, c.136 (C.53:1-  
33 20.20) from persons who are incarcerated shall be drawn or  
34 collected at the place of incarceration. The law enforcement agency  
35 that affects an arrest for which DNA testing is required pursuant to  
36 P.L. , c. (pending before the Legislature as this bill) shall collect  
37 a DNA sample from the arrestee prior to the arrestee's release or  
38 incarceration. DNA samples from persons who are not sentenced to  
39 a term of confinement shall be drawn or collected at a prison or jail  
40 unit to be specified by the sentencing court. DNA samples from  
41 persons who are adjudicated delinquent shall be drawn or collected  
42 at a prison or jail identification and classification bureau specified  
43 by the family court.

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

1 physician, registered professional nurse, licensed practical nurse,  
2 laboratory or medical technician or person who has received  
3 biological sample collection training in accordance with protocols  
4 adopted by the Attorney General, in consultation with the  
5 Department of Corrections, shall collect or supervise the collection  
6 of any other biological sample to be submitted for analysis. No  
7 civil liability shall attach to any person authorized to draw blood or  
8 collect a biological sample by this section as a result of drawing  
9 blood or collecting the sample from any person if the blood was  
10 drawn or sample collected according to recognized medical  
11 procedures. No person shall be relieved from liability for  
12 negligence in the drawing or collecting of any DNA sample. No  
13 sample shall be drawn or collected pursuant to section 4 of  
14 P.L.1994, c.136 (C.53:1-20.20) if the division has previously  
15 received a blood or biological sample from the convicted person or  
16 the juvenile adjudicated delinquent which was adequate for  
17 successful analysis and identification.  
18 (cf: P.L.2003, c.183, s.5)

19

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

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

37 (ii) Any person whose DNA record or profile has been included  
38 in the State DNA database and whose DNA sample is stored in the  
39 State DNA databank may apply for expungement on the grounds  
40 that all charges resulting from the arrest that provided the basis for  
41 inclusion of the person's DNA record or profile in the State  
42 database or the inclusion of the person's DNA sample in the State  
43 databank have been dismissed or have been resolved through an  
44 acquittal at trial. The person, either individually or through an  
45 attorney, may apply to the court for expungement of the record. A  
46 copy of the application for expungement shall be served on the  
47 prosecutor for the county in which the conviction was obtained not  
48 less than 20 days prior to the date of the hearing on the application.

1 A certified copy of the order of dismissal shall be attached to an  
2 order expunging the DNA record or profile insofar as its inclusion  
3 rests upon the arrest which resulted in those charges.

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

19 (ii) Any juvenile whose DNA record or profile has been included  
20 in the State DNA database and whose DNA sample is stored in the  
21 State DNA databank may apply for expungement on the grounds  
22 that all charges resulting from the arrest that provided the basis for  
23 inclusion of the juvenile's DNA record or profile in the State  
24 database or the inclusion of the juvenile's DNA sample in the State  
25 databank have been dismissed or have been resolved through an  
26 acquittal at trial. The juvenile, either individually or through an  
27 attorney, may apply to the court for expungement of the record. A  
28 copy of the application for expungement shall be served on the  
29 prosecutor for the county in which the conviction 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 of dismissal shall be attached to an  
32 order expunging the DNA record or profile insofar as its inclusion  
33 rests upon the arrest which resulted in those charges.

34 (3) (i) Any person found not guilty by reason of insanity, or  
35 adjudicated not delinquent by reason of insanity, whose DNA  
36 record or profile has been included in the State DNA database and  
37 whose DNA sample is stored in the State DNA databank may apply  
38 for expungement on the grounds that the judgment that resulted in  
39 the inclusion of the person's DNA record or profile in the State  
40 database or the inclusion of the person's DNA sample in the State  
41 databank has been reversed and the case dismissed. The person,  
42 either individually or through an attorney, may apply to the court  
43 for expungement of the record. A copy of the application of  
44 expungement shall be served on the prosecutor for the county in  
45 which the judgment was obtained not less than 20 days prior to the  
46 date of the hearing on the application. A certified copy of the order  
47 reversing and dismissing the judgment shall be attached to an order

1 expunging the DNA record or profile insofar as its inclusion rests  
2 upon that conviction.

3 (ii) Any person found not guilty by reason of insanity, or  
4 adjudicated not delinquent by reason of insanity, whose DNA  
5 record or profile has been included in the State DNA database and  
6 whose DNA sample is stored in the State DNA databank may apply  
7 for expungement on the grounds that all charges resulting from the  
8 arrest that provided the basis for inclusion of the person's DNA  
9 record or profile in the State database or the inclusion of the  
10 person's DNA sample in the State databank have been dismissed or  
11 have been resolved through an acquittal at trial. The person, either  
12 individually or through an attorney, may apply to the court for  
13 expungement of the record. A copy of the application for  
14 expungement shall be served on the prosecutor for the county in  
15 which the conviction was obtained not less than 20 days prior to the  
16 date of the hearing on the application. A certified copy of the order  
17 of dismissal shall be attached to an order expunging the DNA  
18 record or profile insofar as its inclusions rests upon the arrest which  
19 resulted in those charges.

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

31 (cf: P.L.1997, c.341, s.5)

32

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

38

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

44

45

46

#### STATEMENT

47

48

This bill would expand the State's DNA database to also include

1 DNA samples from persons arrested for certain violent crimes,  
2 including murder, manslaughter, kidnapping, and sex offenses.

3 The "DNA Database and Databank Act of 1994," P.L.1994,  
4 c.136 (C.53:1-20.17 et seq.), was amended by P.L.2003, c.183 to  
5 expand the DNA database to include blood or biological samples  
6 from adults and juveniles found guilty of, adjudicated delinquent  
7 for, or found not guilty by reason of insanity of a crime of the first,  
8 second, third or fourth degree. Prior to this law, the database  
9 contained DNA samples from these persons if they were convicted  
10 of, adjudicated delinquent for, or found not guilty by reason of  
11 insanity of certain violent crimes, such as murder, manslaughter and  
12 kidnapping, and sex offenses.

13 The bill specifically requires adults and juveniles arrested for the  
14 following crimes to submit DNA samples for purposes of DNA  
15 testing: murder; manslaughter; second degree aggravated assault  
16 when the person attempts to cause or causes serious bodily injury to  
17 another or causes bodily injury while fleeing or attempting to flee a  
18 law enforcement officer; kidnapping; luring or enticing a child;  
19 engaging in sexual conduct which would impair or debauch the  
20 morals of a child; aggravated sexual assault, sexual assault,  
21 aggravated criminal sexual contact, criminal sexual contact or an  
22 attempt to commit any of these offenses. The bill also permits an  
23 adult or juvenile to make an application to the court to expunge the  
24 DNA record in cases where the charges were dismissed or the  
25 person or juvenile was acquitted.

26 The bill also establishes that a person who refuses to submit a  
27 blood or biological sample is guilty of a crime of the fourth degree.  
28 Fourth degree crimes are punishable by a term of imprisonment of  
29 up to 18 months, a fine of up to \$10,000, or both.

30 The bill expands the legislative findings and declarations of the  
31 "DNA Database and Databank Act of 1994" to reflect the changes  
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# ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 2594**

with committee amendments

## **STATE OF NEW JERSEY**

DATED: MAY 19, 2011

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2594.

Assembly Bill No. 2594 expands the State's DNA database to also include DNA samples from persons arrested for certain violent crimes, including murder, manslaughter, kidnapping, and sex offenses. Current law authorizes samples to be taken from persons convicted of crimes.

The "DNA Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.), was amended by P.L.2003, c.183 to expand the DNA database to include blood or biological samples from adults and juveniles found guilty of, adjudicated delinquent for, or found not guilty by reason of insanity of a crime of the first, second, third or fourth degree. Prior to this 2003 change in the law, the database contained DNA samples from these persons if they were convicted of, adjudicated delinquent for, or found not guilty by reason of insanity of certain violent crimes, such as murder, manslaughter and kidnapping, and sex offenses.

The bill specifically requires adults and juveniles arrested for the following crimes to submit DNA samples for purposes of DNA testing: murder; manslaughter; second degree aggravated assault when the person attempts to cause or causes serious bodily injury to another or causes bodily injury while fleeing or attempting to flee a law enforcement officer; kidnapping; luring or enticing a child; engaging in sexual conduct which would impair or debauch the morals of a child; aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact or an attempt to commit any of these offenses.

The bill also permits an adult or juvenile to make an application to the court to expunge the DNA record in cases where the charges were dismissed or the person or juvenile was acquitted. Under the amended bill, a copy of the application must be served on the county prosecutor where the charge was brought.

Further, the bill establishes that a person who refuses to submit a blood or biological sample is guilty of a crime of the fourth degree.

Fourth degree crimes are punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.

Finally, the bill expands the legislative findings and declarations of the "DNA Database and Databank Act of 1994" to reflect the changes that would be made to current law by the bill, as well to emphasize that the constitutional grounds for upholding the current law allowing DNA samples to be taken from persons convicted of crimes similarly apply to the taking of DNA samples from arrestees as provided under the bill.

As amended and reported by the committee, this bill is identical to Senate Bill No. 737 (2R).

COMMITTEE AMENDMENTS:

The committee made technical amendments to the bill to clarify that a copy of the application for expungement is to be served on the prosecutor for the county in which the charge was brought. As introduced, the bill provided that the application was to be served on the prosecutor of the county where the conviction was obtained.