



**SENATE, No. 1920**

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

INTRODUCED DECEMBER 4, 2000

**Sponsored by:**

**Senator ROBERT J. MARTIN**

**District 26 (Essex, Morris and Passaic)**

**Senator EDWARD T. O'CONNOR, JR.**

**District 31 (Hudson)**

**SYNOPSIS**

Provides for postconviction DNA testing under certain circumstances.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/29/2001)**

1 AN ACT concerning certain testing of evidence and supplementing  
2 Title 2A and Title 53 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. a. Any person who was convicted of a crime and is currently  
8 serving a term of imprisonment may make a motion before the trial  
9 court that entered the judgment of conviction for the performance of  
10 forensic DNA testing.

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

13 (a) explain why the identity of the defendant was or should have  
14 been a significant issue in the case;

15 (b) explain in light of all the evidence, how the requested DNA  
16 testing would raise a reasonable probability that the convicted person's  
17 verdict or sentence would be more favorable if the results of the DNA  
18 testing had been available at the time of conviction; and

19 (c) make every reasonable attempt to identify both the evidence  
20 that should be tested and the specific type of DNA testing sought.

21 (2) Notice of the motion shall be served on the Attorney General,  
22 the prosecutor in the county of conviction, and if known, the  
23 governmental agency or laboratory holding the evidence sought to be  
24 tested. Responses, if any, shall be filed within 60 days of the date on  
25 which the Attorney General or the prosecutor are served with the  
26 motion, unless a continuance is granted.

27 (3) If any DNA or other biological evidence testing was conducted  
28 previously by either the prosecution or defense, the results of that  
29 testing shall be revealed in the motion for testing, if known. If  
30 evidence was subjected to DNA or other forensic testing previously by  
31 either the prosecution or the defense, the court shall order the  
32 prosecution or defense to provide all parties and the court with access  
33 to the laboratory reports, underlying data, and laboratory notes  
34 prepared in connection with the DNA testing.

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

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

42 d. The court shall grant the motion for DNA testing if it determines  
43 all of the following have been established:

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

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

4 (3) the identity of the defendant was or should have been a  
5 significant issue in the case.

6 (4) the convicted person has made a prima facie showing that the  
7 evidence sought to be tested is material to the issue of the convicted  
8 person's identity as the offender or accomplice to the crime, special  
9 circumstance, or enhancement allegation that resulted in the conviction  
10 or sentence.

11 (5) the requested DNA testing result would raise a reasonable  
12 probability that, in light of all the evidence, the convicted person's  
13 verdict or sentence would have been more favorable if the results of  
14 the DNA testing had been available at the time of conviction. The  
15 court in its discretion may consider any evidence whether or not it was  
16 introduced at trial.

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

19 (a) it was not tested previously;

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

24 (7) The testing requested employs a method generally accepted  
25 within the relevant scientific community.

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

27 e. If the court grants the motion for DNA testing, the court order  
28 shall identify the specific evidence to be tested and the DNA  
29 technology to be used. The testing shall be conducted by a laboratory  
30 mutually agreed upon by the prosecutor, the Attorney General and the  
31 person filing the motion. If the parties cannot agree, the court's order  
32 shall designate the laboratory to conduct the testing and shall consider  
33 designating a laboratory accredited by the American Society of Crime  
34 Laboratory Directors Laboratory Accreditation Board.

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

39 g. The costs of the DNA testing ordered pursuant to this section  
40 shall be borne by the State.

41 h. An order granting or denying a motion for DNA testing pursuant  
42 to this section may be appealed, pursuant to Rules of Court. Any such  
43 appeal shall be filed within 20 days after the court's order granting or  
44 denying the motion for DNA testing.

45 i. DNA testing ordered by the court pursuant to this section shall  
46 be done as soon as practicable. However, if the court finds that a

1 miscarriage of justice will otherwise occur and that it is necessary in  
2 the interests of justice to give priority to the DNA testing, a DNA  
3 laboratory shall be required to give priority to the DNA testing  
4 ordered pursuant to this section over the laboratory's other pending  
5 casework.

6 j. DNA profile information from biological samples taken from a  
7 convicted person pursuant to a motion for postconviction DNA testing  
8 pursuant to this section is exempt from any law requiring disclosure of  
9 information to the public.

10

11 2. a. Notwithstanding any other provision of law to the contrary  
12 and subject to subsection b. of this section, the Division of State  
13 Police in the Department of Law and Public Safety shall retain any  
14 biological material secured in connection with a criminal case for the  
15 period of time that the convicted person remains incarcerated in  
16 connection with the case. The material shall be stored and maintained  
17 in the State DNA databank established pursuant to the "DNA  
18 Database and Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17  
19 et seq.). The division shall have the discretion to determine how the  
20 evidence is retained pursuant to this section, provided that the  
21 evidence is retained in a condition suitable for DNA testing.

22 b. The division may dispose of biological material before the  
23 expiration of the period of time described in subsection a. if all the  
24 conditions set forth below are met:

25 (1) The division notifies all of the following persons of the  
26 provisions of this section and of the intention of the division to dispose  
27 of the material: any person who as a result of a conviction in the case  
28 is currently serving a term of imprisonment and who remains  
29 incarcerated in connection with the case; any counsel of record; the  
30 public defender in the county of the conviction; the prosecutor in the  
31 county of the conviction and the Attorney General.

32 (2) The division does not receive, within 90 days of sending the  
33 notification, any of the following:

34 (a) A copy of the motion filed pursuant to section 1 of P.L.  
35 c. , (C. )(now pending before the Legislature as section 1 of this  
36 bill), however, upon filing of that motion, the division shall retain the  
37 material only until the time that the court's denial of the motion is  
38 final.

39 (b) A sworn request that the material not be destroyed or disposed  
40 of because the declarant will file within 180 days a motion for DNA  
41 testing pursuant to section 1 of P.L. c. , (C. )(now pending  
42 before the Legislature as section 1 of this bill) that is followed within  
43 180 days by a copy of the motion for DNA testing pursuant to section  
44 1 of P.L. c. , (C. )(now pending before the Legislature as  
45 section 1 of this bill), unless a request for an extension is requested by  
46 the convicted person and agreed to by the governmental entity in

1 possession of the evidence.

2 (c) A copy of a sworn declaration of innocence that has been filed  
3 with the court within 180 days of the judgment of conviction.  
4 However, the court shall permit the destruction of the evidence upon  
5 a showing that the declaration is false or there is no issue of identity  
6 that would be affected by additional testing. The convicted person  
7 may be cross-examined on the declaration at any hearing conducted  
8 pursuant to this section or on an application by or on behalf of the  
9 convicted person pursuant to section 1 of P.L. c. , (C. )(now  
10 pending before the Legislature as section 1 of this bill).

11 (3) No other provision of law requires that biological evidence be  
12 preserved or retained.

13 c. The division shall adopt rules governing the procedures to be  
14 used in the analysis and storage of DNA samples and DNA testing  
15 results submitted pursuant to P.L. c. , (C. )(now pending  
16 before the Legislature as this bill).

17

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

20

21 4. This act shall take effect on the 120th day after enactment.

22

23

24

STATEMENT

25

26 This bill provides that any person who has been convicted of a  
27 crime and is currently serving a term of imprisonment may make an  
28 application to the court for the performance of forensic DNA testing  
29 under specified conditions. The bill requires the motion to include:  
30 an explanation as to why the convicted person's identity was or should  
31 have been a significant issue in the case; an explanation as to how the  
32 DNA testing would raise a reasonable probability that the sentence  
33 would have been more favorable if the DNA testing had been available  
34 at the trial which resulted in the conviction; and to make a reasonable  
35 attempt to identify the evidence to be tested and the type of DNA  
36 testing sought. The motion would also have to include the results of  
37 any previous conducted DNA testing. If any previous tests were  
38 conducted the court can order that access to the reports, data and  
39 notes in connection with the previous DNA tests be provided to all  
40 the parties involved.

41 The bill provides that the court shall grant the motion for DNA  
42 testing if it determines that: (1) the evidence to be tested is available  
43 and in a condition to be tested; (2) the evidence to be tested has been  
44 subject to a chain of custody sufficient to establish that it has not be  
45 tampered with, replaced or altered in any material aspect; (3) the  
46 identity of the defendant was or should have been a significant issue

1 in the case; (4) there is a prima facie showing that the evidence sought  
2 is material to the issue of the convicted person's identity as the  
3 offender of or accomplice to the crime, special circumstances or  
4 enhancement allegation that resulted in the conviction; (5) the DNA  
5 testing results would raise a reasonable probability that the convicted  
6 person's sentence would have been more favorable if the results had  
7 been available; (6) the evidence sought either has not been tested  
8 previously or it has been tested but the test would provide results that  
9 are reasonably more discriminating and probative of the identity of the  
10 offender or have a reasonable probability of contradicting prior tests  
11 results; (7) the testing employs a method which is generally accepted  
12 and (8) the motion is not made solely for the purpose of delay.

13 The bill provides that the costs of the test would be borne by the  
14 State.

15 The bill would also require the Division of State Police in the  
16 Department of Law and Public Safety to store the DNA testing results  
17 for the period of time that the applicant remains incarcerated in  
18 connection with the case.

19 This bill is modeled after a recently enacted law in California.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 1920**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 28, 2001

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1920.

This bill establishes procedures for post-conviction DNA testing. Section 1 of the bill provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make an application to the court for the performance of forensic DNA testing. The committee amended this section of the bill to clarify that the motion should do all of the following: (1) explain why the identity of the convicted person's was a significant issue in the case; (2) explain, in light of all the evidence, how if the results of the requested DNA testing are favorable to the defendant, a motion for a new trial based would be granted; (3) explain whether DNA testing was done at any prior time, whether the defendant objected to providing a biological sample for DNA testing, and whether the defendant objected to the admissibility of DNA testing evidence at trial; (4) make a reasonable attempt to identify the evidence to be tested and the type of DNA testing sought; and (5) include a consent to provide a biological sample for DNA testing. In addition, if there were any previous DNA testing conducted, the motion would also have to include the results of those tests.

In addition, the amendments provide that, if any DNA testing is ordered, the Attorney General or prosecutor may recommend a particular type of testing be conducted.

The committee also amended the bill to clarify that the court could not grant the motion for DNA testing unless, after conducting a hearing, it determines that all of the following conditions have been established: (1) the evidence to be tested is available and in a condition to be tested; (2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not be tampered with, replaced or altered in any material aspect; (3) the identity of the defendant was a significant issue in the case; (4) the convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of identity ; (5) the requested DNA testing results would raise a reasonable probability, if the results were



favorable to the defendant, that a motion for a new trial based upon the newly discovered evidence would be granted; (6) the evidence sought either has not been previously tested or it has been previously tested but the requested test would provide results that are reasonably more discriminating and probative of the identity of the offender or have a reasonable probability of contradicting prior tests results; (7) the testing employs a method which is generally accepted and (8) the motion is not made solely for the purpose of delay.

The bill was also amended by the committee to clarify that the DNA tests would be conducted by the New Jersey State Police Forensic Science Laboratory or, if the laboratory was unable to perform the testing at a lab that was accredited by the American Society of Crime Laboratory Directors Accreditation Board or a laboratory that has a certificate of compliance. In addition, the amendments provide that the costs of the test would be borne by the convicted person.

More importantly, the committee amended the bill to provide that all post-conviction DNA profile information obtained from a convicted person could be used in the investigation and prosecution of other crimes. The amendments also delete subsection b. of the bill which would have authorized the Division of State Police to dispose of the DNA profile information.

The remaining committee amendments were technical in nature including giving the rule-making authority to the Attorney General instead of the Division of State Police and amending the effective date.

[First Reprint]

**SENATE, No. 1920**

---

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

---

INTRODUCED DECEMBER 4, 2000

**Sponsored by:**

**Senator ROBERT J. MARTIN**

**District 26 (Essex, Morris and Passaic)**

**Senator EDWARD T. O'CONNOR, JR.**

**District 31 (Hudson)**

**Co-Sponsored by:**

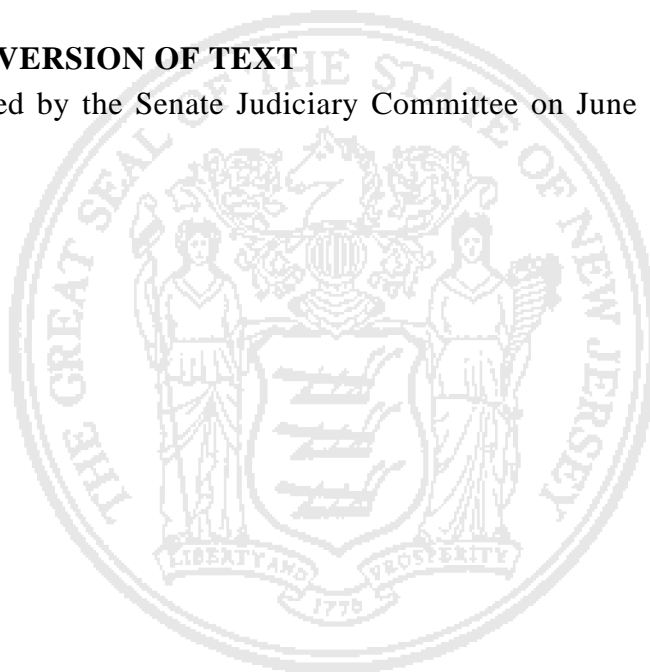
**Senators Himelman, Allen and Sacco**

**SYNOPSIS**

Provides for post-conviction DNA testing; allows post-conviction DNA profile information to be used in the investigation and prosecution of other crimes

**CURRENT VERSION OF TEXT**

As reported by the Senate Judiciary Committee on June 28, 2001, with amendments.



**(Sponsorship Updated As Of: 11/27/2001)**

1 AN ACT concerning certain testing of evidence and supplementing  
2 Title 2A and Title 53 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. a. Any person who was convicted of a crime and is currently  
8 serving a term of imprisonment may make a motion before the trial  
9 court that entered the judgment of conviction for the performance of  
10 forensic DNA testing.

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

13 (a) explain why the identity of the defendant was <sup>1</sup>[or should have  
14 been]<sup>1</sup> a significant issue in the case;

15 (b) explain in light of all the evidence, how <sup>1</sup>if the results of <sup>1</sup> the  
16 requested DNA testing <sup>1</sup>[would raise a reasonable probability that the  
17 convicted person's verdict or sentence would be more] are<sup>1</sup> favorable  
18 <sup>1</sup>[if the results of the DNA testing had been available at the time of  
19 conviction; and] to the defendant, a motion for a new trial based upon  
20 newly discovered evidence would be granted;<sup>1</sup>

21 (c) <sup>1</sup>explain whether DNA testing was done at any prior time,  
22 whether the defendant objected to providing a biological sample for  
23 DNA testing, and whether the defendant objected to the admissibility  
24 of DNA testing evidence at trial. If evidence was subjected to DNA  
25 or other forensic testing previously by either the prosecution or the  
26 defense, the court shall order the prosecution or defense to provide  
27 all parties and the court with access to the laboratory reports,  
28 underlying data and laboratory notes prepared in connection with the  
29 DNA testing;<sup>1</sup>

30 (d) make every reasonable attempt to identify both the evidence  
31 that should be tested and the specific type of DNA testing sought <sup>1</sup>;and

32 (e) include consent to provide a biological sample for DNA  
33 testing<sup>1</sup>.

34 (2) Notice of the motion shall be served on the Attorney General,  
35 the prosecutor in the county of conviction, and if known, the  
36 governmental agency or laboratory holding the evidence sought to be  
37 tested. Responses, if any, shall be filed within 60 days of the date on  
38 which the Attorney General <sup>1</sup>[or] and<sup>1</sup> the prosecutor are served with  
39 the motion, unless a continuance is granted. <sup>1</sup>The Attorney General or  
40 prosecutor may support the motion for DNA testing or oppose it with  
41 a statement of reasons and may recommend to the court that if any

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and 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 SJU committee amendments adopted June 28, 2001.

- 1 DNA testing is ordered, a particular type of testing be conducted.<sup>1</sup>
- 2 <sup>1</sup>[(3) If any DNA or other biological evidence testing was  
3 conducted previously by either the prosecution or defense, the results  
4 of that testing shall be revealed in the motion for testing, if known. If  
5 evidence was subjected to DNA or other forensic testing previously by  
6 either the prosecution or the defense, the court shall order the  
7 prosecution or defense to provide all parties and the court with access  
8 to the laboratory reports, underlying data, and laboratory notes  
9 prepared in connection with the DNA testing.]<sup>1</sup>
- 10 b. The court, in its discretion, may order a hearing on the motion.  
11 The motion shall be heard by the judge who conducted the trial unless  
12 the presiding judge determines that judge is unavailable. Upon request  
13 of either party, the court may order, in the interest of justice, that the  
14 convicted person be present at the hearing of the motion.
- 15 c. The court shall appoint counsel for the convicted person who  
16 brings a motion pursuant this section if that person is indigent.
- 17 d. The court shall <sup>1</sup>not<sup>1</sup> grant the motion for DNA testing  
18 <sup>1</sup>[if]unless, after conducting a hearing,<sup>1</sup> it determines <sup>1</sup>that<sup>1</sup> all of the  
19 following have been established:
- 20 (1) the evidence to be tested is available and in a condition that  
21 would permit the DNA testing that is requested in the motion <sup>1</sup>[.]<sup>1</sup>
- 22 (2) the evidence to be tested has been subject to a chain of custody  
23 sufficient to establish it has not been substituted, tampered with,  
24 replaced or altered in any material aspect <sup>1</sup>[.]<sup>1</sup>
- 25 (3) the identity of the defendant was <sup>1</sup>[or should have been]<sup>1</sup> a  
26 significant issue <sup>1</sup>[int he] in the<sup>1</sup> case <sup>1</sup>[.]<sup>1</sup>
- 27 (4) the convicted person has made a prima facie showing that the  
28 evidence sought to be tested is material to the issue of the convicted  
29 person's identity as the offender <sup>1</sup>[of or accomplice to the crime,  
30 special circumstance, or enhancement allegation that resulted in the  
31 conviction or sentence.]<sup>1</sup>
- 32 (5) the requested DNA testing result would raise a reasonable  
33 probability that <sup>1</sup>[, in light of all the evidence, the convicted person's  
34 verdict or sentence would have been more] if the results were<sup>1</sup>  
35 favorable <sup>1</sup>[ if the results of the DNA testing had been available at the  
36 time of conviction] to the defendant, a motion for a new trial based  
37 upon newly discovered evidence would be granted<sup>1</sup>. The court in its  
38 discretion may consider any evidence whether or not it was introduced  
39 at trial <sup>1</sup>[.]<sup>1</sup>
- 40 (6) <sup>1</sup>[The] the<sup>1</sup> evidence sought to be tested meets either of the  
41 following conditions:
- 42 (a) it was not tested previously;
- 43 (b) it was tested previously, but the requested DNA test would  
44 provide results that are reasonably more discriminating and probative  
45 of the identity of the offender <sup>1</sup>[or accomplice]<sup>1</sup> or have a reasonable

1 probability of contradicting prior test results <sup>1</sup>[.]; <sup>1</sup>

2 (7) <sup>1</sup>[The] the<sup>1</sup> testing requested employs a method generally  
3 accepted within the relevant scientific community <sup>1</sup>[.]; and<sup>1</sup>

4 (8) <sup>1</sup>[The] the<sup>1</sup> motion is not made solely for the purpose of delay.

5 e. If the court grants the motion for DNA testing, the court order  
6 shall identify the specific evidence to be tested and the DNA  
7 technology to be used. The testing shall be conducted <sup>1</sup>by the New  
8 Jersey State Police Forensic Science Laboratory or, if that laboratory  
9 is unable to perform the testing, at<sup>1</sup> a laboratory <sup>1</sup>[mutually agreed  
10 upon by the prosecutor, the Attorney General and the person filing the  
11 motion. If the parties cannot agree, the court's order shall designate  
12 the laboratory to conduct the testing and shall consider designating a  
13 laboratory] that is<sup>1</sup> accredited by the American Society of Crime  
14 Laboratory Directors Laboratory Accreditation Board <sup>1</sup>or a laboratory  
15 that has a certificate of compliance with national standards issued  
16 pursuant to 42 U.S.C.A. section 14131 from the National Forensic  
17 Science Technology Center<sup>1</sup>.

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

22 g. The costs of the DNA testing ordered pursuant to this section  
23 shall be borne by the <sup>1</sup>[State] convicted person<sup>1</sup>.

24 h. An order granting or denying a motion for DNA testing pursuant  
25 to this section may be appealed, pursuant to Rules of Court. <sup>1</sup>[Any  
26 such appeal shall be filed within 20 days after the court's order  
27 granting or denying the motion for DNA testing.]<sup>1</sup>

28 i. DNA testing ordered by the court pursuant to this section shall  
29 be done as soon as practicable. <sup>1</sup>[However, if the court finds that a  
30 miscarriage of justice will otherwise occur and that it is necessary in  
31 the interests of justice to give priority to the DNA testing, a DNA  
32 laboratory shall be required to give priority to the DNA testing  
33 ordered pursuant to this section over the laboratory's other pending  
34 casework.]<sup>1</sup>

35 j. DNA profile information from biological samples taken from a  
36 convicted person pursuant to a motion for <sup>1</sup>[postconviction] post-  
37 conviction<sup>1</sup> DNA testing <sup>1</sup>[pursuant to] in accordance with the  
38 provisions of<sup>1</sup> this section <sup>1</sup>[is exempt from any law requiring  
39 disclosure of information to the public] shall be treated as confidential  
40 and shall not be deemed a public record under P.L.1963, c.73  
41 (C.47:1A-1 et seq.) or the common law concerning access to public  
42 records; except as provided in section 2 of P.L. c. (C. ) (now  
43 pending before the Legislature as section 2 of this bill)<sup>1</sup>.

44 <sup>1</sup>k. As used in this act, the terms "DNA," "DNA sample," DNA  
45 databank," "CODIS" and "FBI" shall have the meaning set forth in

1 section 3 of P.L.1994, c.136 (C.53:1-20.19).<sup>1</sup>

2

3 2. a. Notwithstanding any other provision of law to the contrary  
4 <sup>1</sup>[and subject to subsection b. of this section]<sup>1</sup>, the Division of State  
5 Police in the Department of Law and Public Safety shall retain <sup>1</sup>[any  
6 biological material secured in connection with a criminal case for the  
7 period of time that the convicted person remains incarcerated in  
8 connection with the case] all DNA profile information from biological  
9 samples taken from a convicted person pursuant to the provisions of  
10 section 1 of P.L. c. (C. )(now pending before the  
11 Legislature as this bill) and may use the profile information in the  
12 investigation and prosecution of other crimes.<sup>1</sup> The <sup>1</sup>[material] DNA  
13 profile information<sup>1</sup> shall be added to.<sup>1</sup> stored and maintained in the  
14 State DNA databank established pursuant to the "DNA Database and  
15 Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.) <sup>1</sup>and  
16 shall be forwarded to the FBI for inclusion in CODIS<sup>1</sup>. <sup>1</sup>[The division  
17 shall have the discretion to determine how the evidence is retained  
18 pursuant to this section, provided that the evidence is retained in a  
19 condition suitable for DNA testing.]<sup>1</sup>

20 <sup>1</sup>[b. The division may dispose of biological material before the  
21 expiration of the period of time described in subsection a. if all the  
22 conditions set forth below are met:

23 (1) The division notifies all of the following persons of the  
24 provisions of this section and of the intention of the division to dispose  
25 of the material: any person who as a result of a conviction in the case  
26 is currently serving a term of imprisonment and who remains  
27 incarcerated in connection with the case; any counsel of record; the  
28 public defender in the county of the conviction; the prosecutor in the  
29 county of the conviction and the Attorney General.

30 (2) The division does not receive, within 90 days of sending the  
31 notification, any of the following:

32 (a) A copy of the motion filed pursuant to section 1 of  
33 P.L. c. , (C. )(now pending before the Legislature as section 1  
34 of this bill), however, upon filing of that motion, the division shall  
35 retain the material only until the time that the court's denial of the  
36 motion is final.

37 (b) A sworn request that the material not be destroyed or disposed  
38 of because the declarant will file within 180 days a motion for DNA  
39 testing pursuant to section 1 of P.L. c. , (C. )(now pending  
40 before the Legislature as section 1 of this bill) that is followed within  
41 180 days by a copy of the motion for DNA testing pursuant to section  
42 1 of P.L. c. , (C. )(now pending before the Legislature as  
43 section 1 of this bill), unless a request for an extension is requested by  
44 the convicted person and agreed to by the governmental entity in  
45 possession of the evidence.

46 (c) A copy of a sworn declaration of innocence that has been filed

1 with the court within 180 days of the judgment of conviction.  
2 However, the court shall permit the destruction of the evidence upon  
3 a showing that the declaration is false or there is no issue of identity  
4 that would be affected by additional testing. The convicted person  
5 may be cross-examined on the declaration at any hearing conducted  
6 pursuant to this section or on an application by or on behalf of the  
7 convicted person pursuant to section 1 of P.L. c. , (C. )(now  
8 pending before the Legislature as section 1 of this bill).

9 (3) No other provision of law requires that biological evidence be  
10 preserved or retained.]<sup>1</sup>

11 <sup>1</sup>[c]b<sup>1</sup>. The <sup>1</sup>[division] Attorney General <sup>1</sup>shall adopt rules  
12 governing the procedures to be used in the analysis and storage of  
13 DNA <sup>1</sup>[samples and DNA testing results submitted pursuant]<sup>1</sup> profile  
14 information obtained in accordance with the provisions of <sup>1</sup>  
15 P.L. c. , (C. )(now pending before the Legislature as this bill).

16  
17 3. The Supreme Court of New Jersey may adopt rules appropriate  
18 and necessary to effectuate the purpose of this act.

19  
20 4. This act shall take effect on the <sup>1</sup>[120th] 180th<sup>1</sup> day after  
21 enactment <sup>1</sup>, but the Attorney General may take such anticipatory  
22 administrative action in advance as shall be necessary for the  
23 implementation of the act<sup>1</sup>.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

[First Reprint]

## **SENATE, No. 1920**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 13, 2001

The Assembly Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1920 (1R).

This bill establishes procedures for post-conviction DNA testing. Section 1 of the bill provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make an application to the court for the performance of forensic DNA testing. The motion before the trial court which entered the judgment of conviction should do all of the following: (1) explain why the identity of the convicted person's was a significant issue in the case; (2) explain, in light of all the evidence, how if the results of the requested DNA testing are favorable to the defendant, a motion for a new trial based would be granted; (3) explain whether DNA testing was done at any prior time, whether the defendant objected to providing a biological sample for DNA testing, and whether the defendant objected to the admissibility of DNA testing evidence at trial; (4) make a reasonable attempt to identify the evidence to be tested and the type of DNA testing sought; and (5) include consent to provide a biological sample for DNA testing. In addition, if any previous DNA testing was conducted, the motion would also have to include the results of those tests.

If any DNA testing is ordered, the Attorney General or prosecutor may recommend a particular type of testing be conducted.

The bill provides that the court could not grant the motion for DNA testing unless, after conducting a hearing, it determines that all of the following conditions have been established: (1) the evidence to be tested is available and in a condition to be tested; (2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not be tampered with, replaced or altered in any material aspect; (3) the identity of the defendant was a significant issue in the case; (4) the convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of identity; (5) the requested DNA testing results would raise a reasonable probability, if the results were favorable to the defendant,



that a motion for a new trial based upon the newly discovered evidence would be granted; (6) the evidence sought either has not been previously tested or it has been previously tested but the requested test would provide results that are reasonably more discriminating and probative of the identity of the offender or have a reasonable probability of contradicting prior tests results; (7) the testing employs a method which is generally accepted and (8) the motion is not made solely for the purpose of delay.

In its original form, the bill provided that the DNA tests would be conducted by the New Jersey State Police Forensic Science Laboratory or, if the laboratory was unable to perform the testing, at a lab accredited by the American Society of Crime Laboratory Directors Accreditation Board or a laboratory that has a certificate of compliance with certain national standards.

The committee amended the bill to provide that if the parties agree upon a mutually acceptable laboratory which is accredited by the appropriate board, then the testing would be done by that laboratory. If the parties fail to agree on a laboratory, then the testing would be conducted by the New Jersey State Police Forensic Science Laboratory. However, the court may direct that the evidence be given to an alternative accredited laboratory if good cause is shown.

The bill provides that the costs of the test would be borne by the convicted person.

Section 2 of the bill provides that all post-conviction DNA profile information obtained from a convicted person could be used in the investigation and prosecution of other crimes.

The bill gives rule-making authority to the Attorney General and the Supreme Court.

As amended this bill is identical to Assembly, No. 3996 (1R).

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## SENATE, No. 1920

### STATE OF NEW JERSEY

### 209th LEGISLATURE

DATED: JANUARY 16, 2002

#### SUMMARY

**Synopsis:** Provides for post-conviction DNA testing; allows post-conviction DNA profile information to be used in the investigation and prosecution of other crimes.

**Type of Impact:** General Fund expenditure

**Agencies Affected:** Department of Law and Public Safety, Judiciary

#### Office of Legislative Services Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	Minimal	Minimal	Minimal

- ! The bill provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make an application to the court for the performance of forensic DNA testing.
- ! The bill also notes that the court could not grant the motion for DNA testing unless, after conducting a hearing, it determines a number of conditions have been met.
- ! Information obtained from the Division of State Police in the Department of Law and Public Safety, which is responsible for the identification, analysis and storage of the blood samples in a State databank notes that the cost of conducting a DNA analysis through a private vendor is currently \$40 per sample.
- ! The Administrative Office of the Courts (AOC) notes that the impact on the Judiciary would be the number of motions entered by defendants, and the need to examine these defendants for indigence status. The AOC also notes that since there are a number of requirements that must be met before DNA testing can be undertaken, the number of defendants who would need to be tested is likely to be small.

#### BILL DESCRIPTION

Senate Bill No. 1920 (1R) of 2000 establishes procedures for post-conviction DNA testing. The bill provides that any person who has been convicted of a crime and is currently

-serving a term of imprisonment may make an application to the court for the performance of forensic DNA testing. This motion should: (1) explain why the identity of the convicted person's was a significant issue in the case; (2) explain, in light of all the evidence, how if the results of the requested DNA testing are favorable to the defendant, a motion for a new trial based would be granted; (3) explain whether DNA testing was done at any prior time, whether the defendant objected to providing a biological sample for DNA testing, and whether the defendant objected to the admissibility of DNA testing evidence at trial; (4) make a reasonable attempt to identify the evidence to be tested and the type of DNA testing sought; and (5) include a consent to provide a biological sample for DNA testing. In addition, if there were any previous DNA testing conducted, the motion would also have to include the results of those tests.

The bill also notes that the court could not grant the motion for DNA testing unless, after conducting a hearing, it determines that all of the following conditions have been established: (1) the evidence to be tested is available and in a condition to be tested; (2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not be tampered with, replaced or altered in any material aspect; (3) the identity of the defendant was a significant issue in the case; (4) the convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of identity; (5) the requested DNA testing results would raise a reasonable probability, if the results were favorable to the defendant, that a motion for a new trial based upon the newly discovered evidence would be granted; (6) the evidence sought either has not been previously tested or it has been previously tested but the requested test would provide results that are reasonably more discriminating and probative of the identity of the offender or have a reasonable probability of contradicting prior tests results; (7) the testing employs a method which is generally accepted and (8) the motion is not made solely for the purpose of delay.

The bill requires that the cost of the test be borne by the convicted person.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

Information obtained from the Division of State Police in the Department of Law and Public Safety, which is responsible for the identification, analysis and storage of the blood samples in a State data bank notes that the cost of conducting a DNA analysis through a private vendor is currently \$40 per sample.

The Administrative Office of the Courts notes that the impact on the Judiciary would be the number of motions entered by defendants, and the need to examine these defendants for indigence status. The AOC notes that since there are a number of requirements that must be met before DNA testing can be undertaken, the number of defendants who would need to be tested is likely to be small.

### ***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) concurs with the Judiciary estimate that the number of defendants to be affected by this bill would be small. Therefore the cost of

implementation would be minimal. The OLS adds that while individuals who request DNA testing and analysis shall be liable for the cost of such procedure, since the majority of offenders incarcerated in State correctional institutions are indigent, it is unlikely that the State would recoup these costs.

Section: *Judiciary*

Analyst: *Anne C. Raughley*  
*Lead Fiscal Analyst*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

[Second Reprint]  
**SENATE, No. 1920**

---

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

---

INTRODUCED DECEMBER 4, 2000

**Sponsored by:**

**Senator ROBERT J. MARTIN**

**District 26 (Essex, Morris and Passaic)**

**Senator EDWARD T. O'CONNOR, JR.**

**District 31 (Hudson)**

**Co-Sponsored by:**

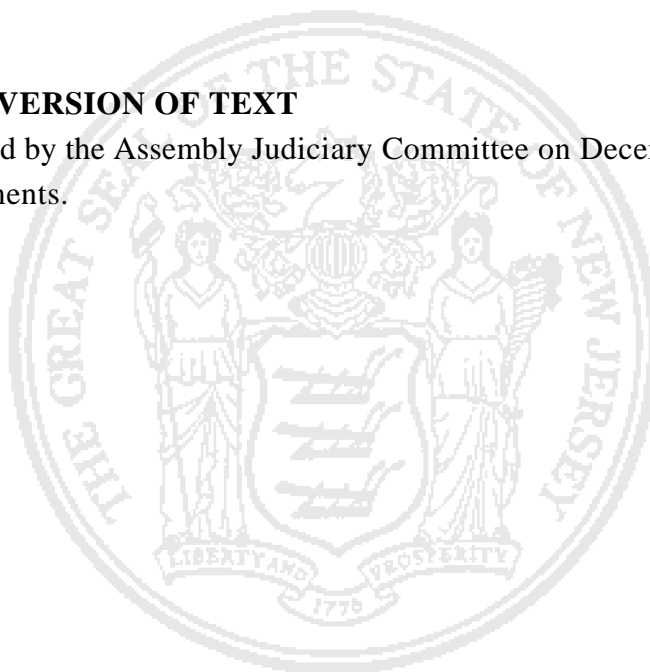
**Senators Himelman, Allen, Sacco, Assemblyman Geist, Assemblywomen  
Buono and Greenstein**

**SYNOPSIS**

Provides for post-conviction DNA testing; allows post-conviction DNA profile information to be used in the investigation and prosecution of other crimes.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Judiciary Committee on December 13, 2001, with amendments.



**(Sponsorship Updated As Of: 1/8/2002)**

1 AN ACT concerning certain testing of evidence and supplementing  
2 Title 2A and Title 53 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. a. Any person who was convicted of a crime and is currently  
8 serving a term of imprisonment may make a motion before the trial  
9 court that entered the judgment of conviction for the performance of  
10 forensic DNA testing.

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

13 (a) explain why the identity of the defendant was <sup>1</sup>[or should have  
14 been]<sup>1</sup> a significant issue in the case;

15 (b) explain in light of all the evidence, how <sup>1</sup>if the results of <sup>1</sup> the  
16 requested DNA testing <sup>1</sup>[would raise a reasonable probability that the  
17 convicted person's verdict or sentence would be more] are<sup>1</sup> favorable  
18 <sup>1</sup>[if the results of the DNA testing had been available at the time of  
19 conviction; and] to the defendant, a motion for a new trial based upon  
20 newly discovered evidence would be granted;<sup>1</sup>

21 (c) <sup>1</sup>explain whether DNA testing was done at any prior time,  
22 whether the defendant objected to providing a biological sample for  
23 DNA testing, and whether the defendant objected to the admissibility  
24 of DNA testing evidence at trial. If evidence was subjected to DNA  
25 or other forensic testing previously by either the prosecution or the  
26 defense, the court shall order the prosecution or defense to provide  
27 all parties and the court with access to the laboratory reports,  
28 underlying data and laboratory notes prepared in connection with the  
29 DNA testing;<sup>1</sup>

30 (d) make every reasonable attempt to identify both the evidence  
31 that should be tested and the specific type of DNA testing sought <sup>1</sup>;and

32 (e) include consent to provide a biological sample for DNA  
33 testing<sup>1</sup>.

34 (2) Notice of the motion shall be served on the Attorney General,  
35 the prosecutor in the county of conviction, and if known, the  
36 governmental agency or laboratory holding the evidence sought to be  
37 tested. Responses, if any, shall be filed within 60 days of the date on  
38 which the Attorney General <sup>1</sup>[or] and<sup>1</sup> the prosecutor are served with  
39 the motion, unless a continuance is granted. <sup>1</sup>The Attorney General or  
40 prosecutor may support the motion for DNA testing or oppose it with

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and 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 SJU committee amendments adopted June 28, 2001.

<sup>2</sup> Assembly AJU committee amendments adopted December 13, 2001.

1 a statement of reasons and may recommend to the court that if any  
2 DNA testing is ordered, a particular type of testing be conducted.<sup>1</sup>

3 <sup>1</sup>[(3) If any DNA or other biological evidence testing was  
4 conducted previously by either the prosecution or defense, the results  
5 of that testing shall be revealed in the motion for testing, if known. If  
6 evidence was subjected to DNA or other forensic testing previously by  
7 either the prosecution or the defense, the court shall order the  
8 prosecution or defense to provide all parties and the court with access  
9 to the laboratory reports, underlying data, and laboratory notes  
10 prepared in connection with the DNA testing.]<sup>1</sup>

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

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

18 d. The court shall <sup>1</sup>not<sup>1</sup> grant the motion for DNA testing  
19 <sup>1</sup>[if]unless, after conducting a hearing,<sup>1</sup> it determines <sup>1</sup>that<sup>1</sup> all of the  
20 following have been established:

21 (1) the evidence to be tested is available and in a condition that  
22 would permit the DNA testing that is requested in the motion <sup>1</sup>[.]<sup>1</sup>

23 (2) the evidence to be tested has been subject to a chain of custody  
24 sufficient to establish it has not been substituted, tampered with,  
25 replaced or altered in any material aspect <sup>1</sup>[.]<sup>1</sup>

26 (3) the identity of the defendant was <sup>1</sup>[or should have been]<sup>1</sup> a  
27 significant issue <sup>1</sup>[int he] in the<sup>1</sup> case <sup>1</sup>[.]<sup>1</sup>

28 (4) the convicted person has made a prima facie showing that the  
29 evidence sought to be tested is material to the issue of the convicted  
30 person's identity as the offender <sup>1</sup>[of or accomplice to the crime,  
31 special circumstance, or enhancement allegation that resulted in the  
32 conviction or sentence.]<sup>1</sup>

33 (5) the requested DNA testing result would raise a reasonable  
34 probability that <sup>1</sup>[, in light of all the evidence, the convicted person's  
35 verdict or sentence would have been more] if the results were<sup>1</sup>  
36 favorable <sup>1</sup>[ if the results of the DNA testing had been available at the  
37 time of conviction] to the defendant, a motion for a new trial based  
38 upon newly discovered evidence would be granted<sup>1</sup>. The court in its  
39 discretion may consider any evidence whether or not it was introduced  
40 at trial <sup>1</sup>[.]<sup>1</sup>

41 (6) <sup>1</sup>[The] the<sup>1</sup> evidence sought to be tested meets either of the  
42 following conditions:

43 (a) it was not tested previously;

44 (b) it was tested previously, but the requested DNA test would  
45 provide results that are reasonably more discriminating and probative

1 of the identity of the offender <sup>1</sup>[or accomplice]<sup>1</sup> or have a reasonable  
2 probability of contradicting prior test results <sup>1</sup>[.]; <sup>1</sup>

3 (7) <sup>1</sup>[The] the<sup>1</sup> testing requested employs a method generally  
4 accepted within the relevant scientific community <sup>1</sup>[.]; and<sup>1</sup>

5 (8) <sup>1</sup>[The] the<sup>1</sup> motion is not made solely for the purpose of delay.

6 e. If the court grants the motion for DNA testing, the court order  
7 shall identify the specific evidence to be tested and the DNA  
8 technology to be used. <sup>2</sup>[The testing shall be conducted <sup>1</sup>by the New  
9 Jersey State Police Forensic Science Laboratory or, if that laboratory  
10 is unable to perform the testing, at<sup>1</sup> a laboratory <sup>1</sup>[mutually agreed  
11 upon by the prosecutor, the Attorney General and the person filing the  
12 motion. If the parties cannot agree, the court's order shall designate  
13 the laboratory to conduct the testing and shall consider designating a  
14 laboratory] that is<sup>1</sup> ] (1) If the parties agree upon a mutually  
15 acceptable laboratory that is<sup>2</sup> accredited by the American Society of  
16 Crime Laboratory Directors Laboratory Accreditation Board <sup>1</sup>or a  
17 laboratory that has a certificate of compliance with national standards  
18 issued pursuant to 42 U.S.C.A. section 14131 from the National  
19 Forensic Science Technology Center<sup>1</sup> <sup>2</sup>, the testing shall be  
20 conducted by that laboratory<sup>2</sup>.

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

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

33 g. The costs of the DNA testing ordered pursuant to this section  
34 shall be borne by the <sup>1</sup>[State] convicted person<sup>1</sup>.

35 h. An order granting or denying a motion for DNA testing pursuant  
36 to this section may be appealed, pursuant to Rules of Court. <sup>1</sup>[Any  
37 such appeal shall be filed within 20 days after the court's order  
38 granting or denying the motion for DNA testing.]<sup>1</sup>

39 i. DNA testing ordered by the court pursuant to this section shall  
40 be done as soon as practicable. <sup>1</sup>[However, if the court finds that a  
41 miscarriage of justice will otherwise occur and that it is necessary in  
42 the interests of justice to give priority to the DNA testing, a DNA  
43 laboratory shall be required to give priority to the DNA testing



1 ordered pursuant to this section over the laboratory's other pending  
2 casework.]<sup>1</sup>

3 j. DNA profile information from biological samples taken from a  
4 convicted person pursuant to a motion for <sup>1</sup>[postconviction] post-  
5 conviction<sup>1</sup> DNA testing <sup>1</sup>[pursuant to] in accordance with the  
6 provisions of<sup>1</sup> this section <sup>1</sup>[is exempt from any law requiring  
7 disclosure of information to the public] shall be treated as confidential  
8 and shall not be deemed a public record under P.L.1963, c.73  
9 (C.47:1A-1 et seq.) or the common law concerning access to public  
10 records; except as provided in section 2 of P.L. c.  
11 (C. ) (now pending before the Legislature as section 2 of this bill)<sup>1</sup>.

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

15

16 2. a. Notwithstanding any other provision of law to the contrary  
17 <sup>1</sup>[and subject to subsection b. of this section]<sup>1</sup>, the Division of State  
18 Police in the Department of Law and Public Safety shall retain <sup>1</sup>[any  
19 biological material secured in connection with a criminal case for the  
20 period of time that the convicted person remains incarcerated in  
21 connection with the case] all DNA profile information from biological  
22 samples taken from a convicted person pursuant to the provisions of  
23 section 1 of P.L. c. (C. ) (now pending before the  
24 Legislature as this bill) and may use the profile information in the  
25 investigation and prosecution of other crimes.<sup>1</sup> The <sup>1</sup>[material] DNA  
26 profile information<sup>1</sup> shall be <sup>1</sup>added to,<sup>1</sup> stored and maintained in the  
27 State DNA databank established pursuant to the "DNA Database and  
28 Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.) <sup>1</sup>and  
29 shall be forwarded to the FBI for inclusion in CODIS<sup>1</sup>. <sup>1</sup>[The division  
30 shall have the discretion to determine how the evidence is retained  
31 pursuant to this section, provided that the evidence is retained in a  
32 condition suitable for DNA testing.]<sup>1</sup>

33 <sup>1</sup>[b. The division may dispose of biological material before the  
34 expiration of the period of time described in subsection a. if all the  
35 conditions set forth below are met:

36 (1) The division notifies all of the following persons of the  
37 provisions of this section and of the intention of the division to dispose  
38 of the material: any person who as a result of a conviction in the case  
39 is currently serving a term of imprisonment and who remains  
40 incarcerated in connection with the case; any counsel of record; the  
41 public defender in the county of the conviction; the prosecutor in the  
42 county of the conviction and the Attorney General.

43 (2) The division does not receive, within 90 days of sending the  
44 notification, any of the following:

1 (a) A copy of the motion filed pursuant to section 1 of  
2 P.L. c. , (C. )(now pending before the Legislature as section 1  
3 of this bill), however, upon filing of that motion, the division shall  
4 retain the material only until the time that the court's denial of the  
5 motion is final.

6 (b) A sworn request that the material not be destroyed or disposed  
7 of because the declarant will file within 180 days a motion for DNA  
8 testing pursuant to section 1 of P.L. c. , (C. )(now pending  
9 before the Legislature as section 1 of this bill) that is followed within  
10 180 days by a copy of the motion for DNA testing pursuant to section  
11 1 of P.L. c. , (C. )(now pending before the Legislature as  
12 section 1 of this bill), unless a request for an extension is requested by  
13 the convicted person and agreed to by the governmental entity in  
14 possession of the evidence.

15 (c) A copy of a sworn declaration of innocence that has been filed  
16 with the court within 180 days of the judgment of conviction.  
17 However, the court shall permit the destruction of the evidence upon  
18 a showing that the declaration is false or there is no issue of identity  
19 that would be affected by additional testing. The convicted person  
20 may be cross-examined on the declaration at any hearing conducted  
21 pursuant to this section or on an application by or on behalf of the  
22 convicted person pursuant to section 1 of P.L. c. , (C. )(now  
23 pending before the Legislature as section 1 of this bill).

24 (3) No other provision of law requires that biological evidence be  
25 preserved or retained.]<sup>1</sup>

26 <sup>1</sup>[c]b<sup>1</sup>. The <sup>1</sup>[division] Attorney General<sup>1</sup> shall adopt rules  
27 governing the procedures to be used in the analysis and storage of  
28 DNA <sup>1</sup>[samples and DNA testing results submitted pursuant]<sup>1</sup> profile  
29 information obtained in accordance with the provisions of<sup>1</sup>  
30 P.L. c. , (C. )(now pending before the Legislature as this bill).

31  
32 3. The Supreme Court of New Jersey may adopt rules appropriate  
33 and necessary to effectuate the purpose of this act.

34  
35 4. This act shall take effect on the <sup>1</sup>[120th] 180th<sup>1</sup> day after  
36 enactment <sup>1</sup>, but the Attorney General may take such anticipatory  
37 administrative action in advance as shall be necessary for the  
38 implementation of the act<sup>1</sup>.

# ASSEMBLY, No. 3996

## STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED DECEMBER 6, 2001

**Sponsored by:**

**Assemblyman GEORGE F. GEIST**

**District 4 (Camden and Gloucester)**

**Assemblywoman BARBARA BUONO**

**District 18 (Middlesex)**

**SYNOPSIS**

Provides for post-conviction DNA testing; allows post-conviction DNA profile information to be used in the investigation and prosecution of other crimes.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 12/14/2001)

1 AN ACT concerning certain testing of evidence and supplementing  
2 Title 2A and Title 53 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. a. Any person who was convicted of a crime and is currently  
8 serving a term of imprisonment may make a motion before the trial  
9 court that entered the judgment of conviction for the performance of  
10 forensic DNA testing.

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

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

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

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

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

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

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

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

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

46 d. The court shall not grant the motion for DNA testing unless,

1 after conducting a hearing, it determines that all of the following have  
2 been established:

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

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

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

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

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

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

19 (a) it was not tested previously;

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

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

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

27 e. If the court grants the motion for DNA testing, the court order  
28 shall identify the specific evidence to be tested and the DNA  
29 technology to be used. The testing shall be conducted by the New  
30 Jersey State Police Forensic Science Laboratory or, if that laboratory  
31 is unable to perform the testing, at a laboratory that is accredited by  
32 the American Society of Crime Laboratory Directors Laboratory  
33 Accreditation Board or a laboratory that has a certificate of  
34 compliance with national standards issued pursuant to 42 U.S.C.A.  
35 section 14131 from the National Forensic Science Technology Center.

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

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

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

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

46 j. DNA profile information from biological samples taken from a

1 convicted person pursuant to a motion for post-conviction DNA  
2 testing in accordance with the provisions of this section shall be  
3 treated as confidential and shall not be deemed a public record under  
4 P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law concerning  
5 access to public records; except as provided in section 2 of P.L. , c.  
6 (C. )(now pending before the Legislature as section 2 of this bill).

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

10  
11 2. a. Notwithstanding any other provision of law to the contrary,  
12 the Division of State Police in the Department of Law and Public  
13 Safety shall retain all DNA profile information from biological samples  
14 taken from a convicted person pursuant to the provisions of section 1  
15 of P.L. , c. (C. )(now pending before the Legislature as this  
16 bill) and may use the profile information in the investigation and  
17 prosecution of other crimes. The DNA profile information shall be  
18 added to, stored and maintained in the State DNA databank  
19 established pursuant to the "DNA Database and Databank Act of  
20 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.) and shall be forwarded  
21 to the FBI for inclusion in CODIS.

22 b. The Attorney General shall adopt rules governing the procedures  
23 to be used in the analysis and storage of DNA profile information  
24 obtained in accordance with the provisions of  
25 P.L. , c. (C. )(now pending before the Legislature as this bill).

26  
27 3. The Supreme Court of New Jersey may adopt rules appropriate  
28 and necessary to effectuate the purpose of this act.

29  
30 4. This act shall take effect on the 180th day after enactment, but  
31 the Attorney General may take such anticipatory administrative action  
32 in advance as shall be necessary for the implementation of the act.

33  
34  
35 STATEMENT

36  
37 This bill establishes procedures for post-conviction DNA testing.  
38 Section 1 of the bill provides that any person who has been convicted  
39 of a crime and is currently serving a term of imprisonment may make  
40 an application to the court for the performance of forensic DNA  
41 testing. The motion should do all of the following: (1) explain why the  
42 identity of the convicted person's was a significant issue in the case;  
43 (2) explain, in light of all the evidence, how if the results of the  
44 requested DNA testing are favorable to the defendant, a motion for a  
45 new trial based would be granted; (3) explain whether DNA testing  
46 was done at any prior time, whether the defendant objected to

1 providing a biological sample for DNA testing, and whether the  
2 defendant objected to the admissibility of DNA testing evidence at  
3 trial; (4) make a reasonable attempt to identify the evidence to be  
4 tested and the type of DNA testing sought; and (5) include a consent  
5 to provide a biological sample for DNA testing. In addition, if there  
6 were any previous DNA testing conducted, the motion would also  
7 have to include the results of those tests.

8 In addition, the bill provides that, if any DNA testing is ordered, the  
9 Attorney General or prosecutor may recommend a particular type of  
10 testing be conducted.

11 Further, the bill provides that the court could not grant the motion  
12 for DNA testing unless, after conducting a hearing, it determines that  
13 all of the following conditions have been established: (1) the evidence  
14 to be tested is available and in a condition to be tested; (2) the  
15 evidence to be tested has been subject to a chain of custody sufficient  
16 to establish that it has not be tampered with, replaced or altered in any  
17 material aspect; (3) the identity of the defendant was a significant  
18 issue in the case; (4) the convicted person has made a prima facie  
19 showing that the evidence sought to be tested is material to the issue  
20 of identity ; (5) the requested DNA testing results would raise a  
21 reasonable probability, if the results were favorable to the defendant,  
22 that a motion for a new trial based upon the newly discovered  
23 evidence would be granted; (6) the evidence sought either has not been  
24 previously tested or it has been previously tested but the requested test  
25 would provide results that are reasonably more discriminating and  
26 probative of the identity of the offender or have a reasonable  
27 probability of contradicting prior tests results; (7) the testing employs  
28 a method which is generally accepted and (8) the motion is not made  
29 solely for the purpose of delay.

30 The bill also provides that the DNA tests would be conducted by  
31 the New Jersey State Police Forensic Science Laboratory or, if the  
32 laboratory was unable to perform the testing at a lab that was  
33 accredited by the American Society of Crime Laboratory Directors  
34 Accreditation Board or a laboratory that has a certificate of  
35 compliance. The costs of the test would be borne by the convicted  
36 person.

37 Under the bill, all post-conviction DNA profile information  
38 obtained from a convicted person could be used in the investigation  
39 and prosecution of other crimes. The bill gives the rule-making  
40 authority to the Attorney General.

# ASSEMBLY JUDICIARY COMMITTEE

## STATEMENT TO

### **ASSEMBLY, No. 3996**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: DECEMBER 13, 2001

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 3996.

This bill establishes procedures for post-conviction DNA testing. Section 1 of the bill provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make an application to the court for the performance of forensic DNA testing. The motion before the trial court which entered the judgment of conviction should do all of the following: (1) explain why the identity of the convicted person's was a significant issue in the case; (2) explain, in light of all the evidence, how if the results of the requested DNA testing are favorable to the defendant, a motion for a new trial based would be granted; (3) explain whether DNA testing was done at any prior time, whether the defendant objected to providing a biological sample for DNA testing, and whether the defendant objected to the admissibility of DNA testing evidence at trial; (4) make a reasonable attempt to identify the evidence to be tested and the type of DNA testing sought; and (5) include consent to provide a biological sample for DNA testing. In addition, if any previous DNA testing was conducted, the motion would also have to include the results of those tests.

If any DNA testing is ordered, the Attorney General or prosecutor may recommend a particular type of testing be conducted.

The bill provides that the court could not grant the motion for DNA testing unless, after conducting a hearing, it determines that all of the following conditions have been established: (1) the evidence to be tested is available and in a condition to be tested; (2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not be tampered with, replaced or altered in any material aspect; (3) the identity of the defendant was a significant issue in the case; (4) the convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of identity; (5) the requested DNA testing results would raise a reasonable probability, if the results were favorable to the defendant, that a motion for a new trial based upon the newly discovered evidence would be granted; (6) the evidence sought either has not



been previously tested or it has been previously tested but the requested test would provide results that are reasonably more discriminating and probative of the identity of the offender or have a reasonable probability of contradicting prior tests results; (7) the testing employs a method which is generally accepted and (8) the motion is not made solely for the purpose of delay.

In its original form, the bill provided that the DNA tests would be conducted by the New Jersey State Police Forensic Science Laboratory or, if the laboratory was unable to perform the testing, at a lab accredited by the American Society of Crime Laboratory Directors Accreditation Board or a laboratory that has a certificate of compliance with certain national standards.

The committee amended the bill to provide that if the parties agree upon a mutually acceptable laboratory which is accredited by the appropriate board, then the testing would be done by that laboratory. If the parties fail to agree on a laboratory, then the testing would be conducted by the New Jersey State Police Forensic Science Laboratory. However, the court may direct that the evidence be given to an alternative accredited laboratory if good cause is shown.

The bill provides that the costs of the test would be borne by the convicted person.

Section 2 of the bill provides that all post-conviction DNA profile information obtained from a convicted person could be used in the investigation and prosecution of other crimes.

The bill gives rule-making authority to the Attorney General and the Supreme Court.

As amended this bill is identical to Senate, No. 1920 (2R).

[First Reprint]

**ASSEMBLY, No. 3996**

---

**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

---

INTRODUCED DECEMBER 6, 2001

**Sponsored by:**

**Assemblyman GEORGE F. GEIST**

**District 4 (Camden and Gloucester)**

**Assemblywoman BARBARA BUONO**

**District 18 (Middlesex)**

**Co-Sponsored by:**

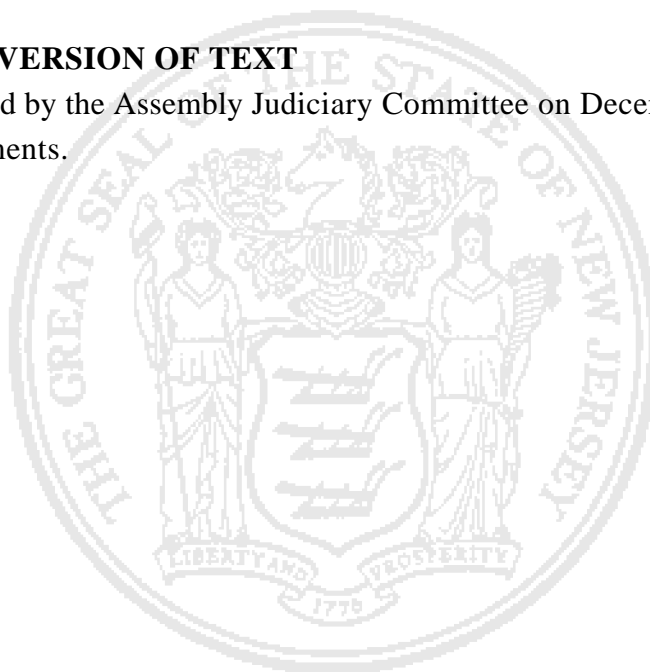
**Assemblywoman Greenstein**

**SYNOPSIS**

Provides for post-conviction DNA testing; allows post-conviction DNA profile information to be used in the investigation and prosecution of other crimes.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Judiciary Committee on December 13, 2001, with amendments.



**(Sponsorship Updated As Of: 1/4/2002)**

1 AN ACT concerning certain testing of evidence and supplementing  
2 Title 2A and Title 53 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. a. Any person who was convicted of a crime and is currently  
8 serving a term of imprisonment may make a motion before the trial  
9 court that entered the judgment of conviction for the performance of  
10 forensic DNA testing.

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

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

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

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

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

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

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

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

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and 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> Assembly AJU committee amendments adopted December 13, 2001.**

1 convicted person be present at the hearing of the motion.

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

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

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

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

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

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

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

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

23 (a) it was not tested previously;

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

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

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

31 e. If the court grants the motion for DNA testing, the court order  
32 shall identify the specific evidence to be tested and the DNA  
33 technology to be used. <sup>1</sup> [The testing shall be conducted by the New  
34 Jersey State Police Forensic Science Laboratory or, if that laboratory  
35 is unable to perform the testing, at a] (1) If the parties agree upon a  
36 mutually acceptable<sup>1</sup> laboratory that is accredited by the American  
37 Society of Crime Laboratory Directors Laboratory Accreditation  
38 Board or a laboratory that has a certificate of compliance with national  
39 standards issued pursuant to 42 U.S.C.A. section 14131 from the  
40 National Forensic Science Technology Center <sup>1</sup>, the testing shall be  
41 conducted by that laboratory<sup>1</sup>.

42 <sup>1</sup>(2) If the parties fail to agree, the testing shall be conducted by the  
43 New Jersey State Police Forensic Science Laboratory. For good cause  
44 shown, however, the court may direct the evidence to an alternative  
45 laboratory that is accredited by the American Society of Crime  
46 Laboratory Directors Laboratory Accreditation Board or a laboratory

1 that has a certificate of compliance with national standards issued  
2 pursuant to 42 U.S.C.A. section 14131 from the National Forensic  
3 Science Technology Center.<sup>1</sup>

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

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

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

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

14 j. DNA profile information from biological samples taken from a  
15 convicted person pursuant to a motion for post-conviction DNA  
16 testing in accordance with the provisions of this section shall be  
17 treated as confidential and shall not be deemed a public record under  
18 P.L.1963, c.73 (C.47:1A-1 et seq.) or the common law concerning  
19 access to public records; except as provided in section 2 of  
20 P.L. , c. (C. )(now pending before the Legislature as section 2 of  
21 this bill).

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

25  
26 2. a. Notwithstanding any other provision of law to the contrary,  
27 the Division of State Police in the Department of Law and Public  
28 Safety shall retain all DNA profile information from biological samples  
29 taken from a convicted person pursuant to the provisions of section 1  
30 of P.L. , c. (C. )(now pending before the Legislature as this  
31 bill) and may use the profile information in the investigation and  
32 prosecution of other crimes. The DNA profile information shall be  
33 added to, stored and maintained in the State DNA databank  
34 established pursuant to the "DNA Database and Databank Act of  
35 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.) and shall be forwarded  
36 to the FBI for inclusion in CODIS.

37 b. The Attorney General shall adopt rules governing the procedures  
38 to be used in the analysis and storage of DNA profile information  
39 obtained in accordance with the provisions of  
40 P.L. , c. (C. )(now pending before the Legislature as this bill).

41  
42 3. The Supreme Court of New Jersey may adopt rules appropriate  
43 and necessary to effectuate the purpose of this act.

44  
45 4. This act shall take effect on the 180th day after enactment, but  
46 the Attorney General may take such anticipatory administrative action  
47 in advance as shall be necessary for the implementation of the act.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

## ASSEMBLY, No. 3996

## STATE OF NEW JERSEY

## 209th LEGISLATURE

DATED: JANUARY 18, 2002

### SUMMARY

**Synopsis:** Provides for post-conviction DNA testing; allows post-conviction DNA profile information to be used in the investigation and prosecution of other crimes.

**Type of Impact:** General Fund expenditure

**Agencies Affected:** Department of Law and Public Safety, Judiciary

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Year 1</u></b>	<b><u>Year 2</u></b>	<b><u>Year 3</u></b>
<b>State Cost</b>	Minimal	Minimal	Minimal

- ! The Office of Legislative Services (OLS) **concurs** with the Executive estimate and the number of defendants to be affected by this bill would be small. Therefore the cost of implementation would be minimal.
- ! The bill provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make an application to the court for the performance of forensic DNA testing.
- ! The bill also notes that the court could not grant the motion for DNA testing unless, after conducting a hearing, it determines a number of conditions have been met.
- ! Information obtained from the Division of State Police in the Department of Law and Public Safety, which is responsible for the identification, analysis and storage of the blood samples in a State databank notes that the cost of conducting a DNA analysis through a private vendor is currently \$40 per sample.
- ! The Administrative Office of the Courts notes that the impact on the Judiciary would be the number of motions entered by defendants, and the need to examine these defendants for indigency status. The AOC also notes that since there are a number of requirements that must be met before DNA testing can be undertaken, the number of defendants who would need to be tested is likely to be small.

## **BILL DESCRIPTION**

Assembly Bill No. 3996 (1R) of 2001 establishes procedures for post-conviction DNA testing. The bill provides that any person who has been convicted of a crime and is currently serving a term of imprisonment may make an application to the court for the performance of forensic DNA testing. This motion should: (1) explain why the identity of the convicted person's was a significant issue in the case; (2) explain, in light of all the evidence, how if the results of the requested DNA testing are favorable to the defendant, a motion for a new trial based would be granted; (3) explain whether DNA testing was done at any prior time, whether the defendant objected to providing a biological sample for DNA testing, and whether the defendant objected to the admissibility of DNA testing evidence at trial; (4) make a reasonable attempt to identify the evidence to be tested and the type of DNA testing sought; and (5) include a consent to provide a biological sample for DNA testing. In addition, if there were any previous DNA testing conducted, the motion would also have to include the results of those tests.

The bill also notes that the court could not grant the motion for DNA testing unless, after conducting a hearing, it determines that all of the following conditions have been established: (1) the evidence to be tested is available and in a condition to be tested; (2) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been tampered with, replaced or altered in any material aspect; (3) the identity of the defendant was a significant issue in the case; (4) the convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of identity; (5) the requested DNA testing results would raise a reasonable probability, if the results were favorable to the defendant, that a motion for a new trial based upon the newly discovered evidence would be granted; (6) the evidence sought either has not been previously tested or it has been previously tested but the requested test would provide results that are reasonably more discriminating and probative of the identity of the offender or have a reasonable probability of contradicting prior tests results; (7) the testing employs a method which is generally accepted and (8) the motion is not made solely for the purpose of delay.

The bill requires that the cost of the test be borne by the convicted person.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

Information obtained from the Division of State Police in the Department of Law and Public Safety, which is responsible for the identification, analysis and storage of the blood samples in a State data bank notes that the cost of conducting a DNA analysis through a private vendor is currently \$40 per sample.

The Administrative Office of the Courts notes that the impact on the Judiciary would be the number of motions entered by defendants, and the need to examine these defendants for indigency status. The AOC notes that since there are a number of requirements that must be met before DNA testing can be undertaken, the number of defendants who would need to be tested is likely to be small.

***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services (OLS) concurs with the Executive estimate and the number of defendants to be affected by this bill would be small. Therefore the cost of implementation would be minimal. The OLS adds that while individuals who request DNA testing and analysis shall be liable for the cost of such procedure, since the majority of offenders incarcerated in State correctional institutions are indigent, it is unlikely that the State would recoup these costs.

Section: *Judiciary*

Analyst: *Anne C. Raughley*  
*Lead Fiscal Analyst*

Approved: *Alan R. Kooney*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.



§1,3 -  
C.2A:84A-32a  
& 2A:84A-32b  
§2 - C.53:1-20.37  
§4 - Note to §§1-3

P.L. 2001, CHAPTER 377, *approved January 8, 2002*  
Senate, No. 1920 (*Second Reprint*)

1 **AN ACT** concerning certain testing of evidence and supplementing  
2 Title 2A and Title 53 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. a. Any person who was convicted of a crime and is currently  
8 serving a term of imprisonment may make a motion before the trial  
9 court that entered the judgment of conviction for the performance of  
10 forensic DNA testing.

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

13 (a) explain why the identity of the defendant was <sup>1</sup>[or should have  
14 been]<sup>1</sup> a significant issue in the case;

15 (b) explain in light of all the evidence, how <sup>1</sup>if the results of<sup>1</sup> the  
16 requested DNA testing <sup>1</sup>[would raise a reasonable probability that the  
17 convicted person's verdict or sentence would be more] are<sup>1</sup> favorable  
18 <sup>1</sup>[if the results of the DNA testing had been available at the time of  
19 conviction; and] to the defendant, a motion for a new trial based upon  
20 newly discovered evidence would be granted;<sup>1</sup>

21 (c) <sup>1</sup>explain whether DNA testing was done at any prior time,  
22 whether the defendant objected to providing a biological sample for  
23 DNA testing, and whether the defendant objected to the admissibility  
24 of DNA testing evidence at trial. If evidence was subjected to DNA  
25 or other forensic testing previously by either the prosecution or the  
26 defense, the court shall order the prosecution or defense to provide  
27 all parties and the court with access to the laboratory reports,  
28 underlying data and laboratory notes prepared in connection with the  
29 DNA testing;<sup>1</sup>

30 (d) make every reasonable attempt to identify both the evidence  
31 that should be tested and the specific type of DNA testing sought <sup>1</sup>;and

32 (e) include consent to provide a biological sample for DNA  
33 testing<sup>1</sup>.

34 (2) Notice of the motion shall be served on the Attorney General,  
35 the prosecutor in the county of conviction, and if known, the  
36 governmental agency or laboratory holding the evidence sought to be

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and 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 SJU committee amendments adopted June 28, 2001.

<sup>2</sup> Assembly AJU committee amendments adopted December 13, 2001.

1 tested. Responses, if any, shall be filed within 60 days of the date on  
2 which the Attorney General <sup>1</sup>[or] and<sup>1</sup> the prosecutor are served with  
3 the motion, unless a continuance is granted. <sup>1</sup>The Attorney General or  
4 prosecutor may support the motion for DNA testing or oppose it with  
5 a statement of reasons and may recommend to the court that if any  
6 DNA testing is ordered, a particular type of testing be conducted.<sup>1</sup>

7 <sup>1</sup>[(3) If any DNA or other biological evidence testing was  
8 conducted previously by either the prosecution or defense, the results  
9 of that testing shall be revealed in the motion for testing, if known. If  
10 evidence was subjected to DNA or other forensic testing previously by  
11 either the prosecution or the defense, the court shall order the  
12 prosecution or defense to provide all parties and the court with access  
13 to the laboratory reports, underlying data, and laboratory notes  
14 prepared in connection with the DNA testing.]<sup>1</sup>

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

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

22 d. The court shall <sup>1</sup>not<sup>1</sup> grant the motion for DNA testing  
23 <sup>1</sup>[if]unless, after conducting a hearing,<sup>1</sup> it determines <sup>1</sup>that<sup>1</sup> all of the  
24 following have been established:

25 (1) the evidence to be tested is available and in a condition that  
26 would permit the DNA testing that is requested in the motion <sup>1</sup>[.]<sup>1</sup>

27 (2) the evidence to be tested has been subject to a chain of custody  
28 sufficient to establish it has not been substituted, tampered with,  
29 replaced or altered in any material aspect <sup>1</sup>[.]<sup>1</sup>

30 (3) the identity of the defendant was <sup>1</sup>[or should have been]<sup>1</sup> a  
31 significant issue <sup>1</sup>[int he] in the<sup>1</sup> case <sup>1</sup>[.]<sup>1</sup>

32 (4) the convicted person has made a prima facie showing that the  
33 evidence sought to be tested is material to the issue of the convicted  
34 person's identity as the offender <sup>1</sup>[of or accomplice to the crime,  
35 special circumstance, or enhancement allegation that resulted in the  
36 conviction or sentence.]<sup>1</sup>

37 (5) the requested DNA testing result would raise a reasonable  
38 probability that <sup>1</sup>[, in light of all the evidence, the convicted person's  
39 verdict or sentence would have been more] if the results were<sup>1</sup>  
40 favorable <sup>1</sup>[ if the results of the DNA testing had been available at the  
41 time of conviction] to the defendant, a motion for a new trial based  
42 upon newly discovered evidence would be granted<sup>1</sup>. The court in its  
43 discretion may consider any evidence whether or not it was introduced  
44 at trial <sup>1</sup>[.]<sup>1</sup>

45 (6) <sup>1</sup>[The] the<sup>1</sup> evidence sought to be tested meets either of the

1 following conditions:

2 (a) it was not tested previously;

3 (b) it was tested previously, but the requested DNA test would  
4 provide results that are reasonably more discriminating and probative  
5 of the identity of the offender <sup>1</sup>[or accomplice]<sup>1</sup> or have a reasonable  
6 probability of contradicting prior test results <sup>1</sup>[.]; <sup>1</sup>

7 (7) <sup>1</sup>[The] the<sup>1</sup> testing requested employs a method generally  
8 accepted within the relevant scientific community <sup>1</sup>[.]; and<sup>1</sup>

9 (8) <sup>1</sup>[The] the<sup>1</sup> motion is not made solely for the purpose of delay.

10 e. If the court grants the motion for DNA testing, the court order  
11 shall identify the specific evidence to be tested and the DNA  
12 technology to be used. <sup>2</sup>[The testing shall be conducted <sup>1</sup>by the New  
13 Jersey State Police Forensic Science Laboratory or, if that laboratory  
14 is unable to perform the testing, at<sup>1</sup> a laboratory <sup>1</sup>[mutually agreed  
15 upon by the prosecutor, the Attorney General and the person filing the  
16 motion. If the parties cannot agree, the court's order shall designate  
17 the laboratory to conduct the testing and shall consider designating a  
18 laboratory] that is<sup>1</sup> ] (1) If the parties agree upon a mutually  
19 acceptable laboratory that is<sup>2</sup> accredited by the American Society of  
20 Crime Laboratory Directors Laboratory Accreditation Board <sup>1</sup>or a  
21 laboratory that has a certificate of compliance with national standards  
22 issued pursuant to 42 U.S.C.A. section 14131 from the National  
23 Forensic Science Technology Center<sup>1</sup> <sup>2</sup>, the testing shall be  
24 conducted by that laboratory<sup>2</sup>.

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

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

37 g. The costs of the DNA testing ordered pursuant to this section  
38 shall be borne by the <sup>1</sup>[State] convicted person<sup>1</sup>.

39 h. An order granting or denying a motion for DNA testing pursuant  
40 to this section may be appealed, pursuant to Rules of Court. <sup>1</sup>[Any  
41 such appeal shall be filed within 20 days after the court's order  
42 granting or denying the motion for DNA testing.]<sup>1</sup>

43 i. DNA testing ordered by the court pursuant to this section shall  
44 be done as soon as practicable. <sup>1</sup>[However, if the court finds that a  
45 miscarriage of justice will otherwise occur and that it is necessary in

1 the interests of justice to give priority to the DNA testing, a DNA  
2 laboratory shall be required to give priority to the DNA testing  
3 ordered pursuant to this section over the laboratory's other pending  
4 casework.]<sup>1</sup>

5 j. DNA profile information from biological samples taken from a  
6 convicted person pursuant to a motion for <sup>1</sup>[postconviction] post-  
7 conviction<sup>1</sup> DNA testing <sup>1</sup>[pursuant to] in accordance with the  
8 provisions of <sup>1</sup> this section <sup>1</sup>[is exempt from any law requiring  
9 disclosure of information to the public] shall be treated as confidential  
10 and shall not be deemed a public record under P.L.1963, c.73  
11 (C.47:1A-1 et seq.) or the common law concerning access to public  
12 records; except as provided in section 2 of P.L. c.  
13 (C. ) (now pending before the Legislature as section 2 of this bill)<sup>1</sup>.

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

17

18 2. a. Notwithstanding any other provision of law to the contrary  
19 <sup>1</sup>[and subject to subsection b. of this section]<sup>1</sup>, the Division of State  
20 Police in the Department of Law and Public Safety shall retain <sup>1</sup>[any  
21 biological material secured in connection with a criminal case for the  
22 period of time that the convicted person remains incarcerated in  
23 connection with the case] all DNA profile information from biological  
24 samples taken from a convicted person pursuant to the provisions of  
25 section 1 of P.L. c. (C. ) (now pending before the  
26 Legislature as this bill) and may use the profile information in the  
27 investigation and prosecution of other crimes.<sup>1</sup> The <sup>1</sup>[material] DNA  
28 profile information<sup>1</sup> shall be <sup>1</sup>added to,<sup>1</sup> stored and maintained in the  
29 State DNA databank established pursuant to the "DNA Database and  
30 Databank Act of 1994," P.L.1994, c.136 (C.53:1-20.17 et seq.) <sup>1</sup>and  
31 shall be forwarded to the FBI for inclusion in CODIS<sup>1</sup>. <sup>1</sup>[The division  
32 shall have the discretion to determine how the evidence is retained  
33 pursuant to this section, provided that the evidence is retained in a  
34 condition suitable for DNA testing.]<sup>1</sup>

35 <sup>1</sup>[b. The division may dispose of biological material before the  
36 expiration of the period of time described in subsection a. if all the  
37 conditions set forth below are met:

38 (1) The division notifies all of the following persons of the  
39 provisions of this section and of the intention of the division to dispose  
40 of the material: any person who as a result of a conviction in the case  
41 is currently serving a term of imprisonment and who remains  
42 incarcerated in connection with the case; any counsel of record; the  
43 public defender in the county of the conviction; the prosecutor in the  
44 county of the conviction and the Attorney General.

45 (2) The division does not receive, within 90 days of sending the

1 notification, any of the following:

2 (a) A copy of the motion filed pursuant to section 1 of  
3 P.L. c. , (C. )(now pending before the Legislature as section 1  
4 of this bill), however, upon filing of that motion, the division shall  
5 retain the material only until the time that the court's denial of the  
6 motion is final.

7 (b) A sworn request that the material not be destroyed or disposed  
8 of because the declarant will file within 180 days a motion for DNA  
9 testing pursuant to section 1 of P.L. c. , (C. )(now pending  
10 before the Legislature as section 1 of this bill) that is followed within  
11 180 days by a copy of the motion for DNA testing pursuant to section  
12 1 of P.L. c. , (C. )(now pending before the Legislature as  
13 section 1 of this bill), unless a request for an extension is requested by  
14 the convicted person and agreed to by the governmental entity in  
15 possession of the evidence.

16 (c) A copy of a sworn declaration of innocence that has been filed  
17 with the court within 180 days of the judgment of conviction.  
18 However, the court shall permit the destruction of the evidence upon  
19 a showing that the declaration is false or there is no issue of identity  
20 that would be affected by additional testing. The convicted person  
21 may be cross-examined on the declaration at any hearing conducted  
22 pursuant to this section or on an application by or on behalf of the  
23 convicted person pursuant to section 1 of P.L. c. , (C. )(now  
24 pending before the Legislature as section 1 of this bill).

25 (3) No other provision of law requires that biological evidence be  
26 preserved or retained.]<sup>1</sup>

27 <sup>1</sup>[c]b<sup>1</sup>. The <sup>1</sup>[division] Attorney General<sup>1</sup> shall adopt rules  
28 governing the procedures to be used in the analysis and storage of  
29 DNA <sup>1</sup>[samples and DNA testing results submitted pursuant]<sup>1</sup> profile  
30 information obtained in accordance with the provisions of <sup>1</sup>  
31 P.L. c. , (C. )(now pending before the Legislature as this bill).

32

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

35

36 4. This act shall take effect on the <sup>1</sup>[120th] 180th<sup>1</sup> day after  
37 enactment <sup>1</sup>, but the Attorney General may take such anticipatory  
38 administrative action in advance as shall be necessary for the  
39 implementation of the act<sup>1</sup>.

40

41

42

43

44 Provides for post-conviction DNA testing; allows post-conviction  
45 DNA profile information to be used in the investigation and  
46 prosecution of other crimes.

## CHAPTER 377

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) it was not tested previously;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved January 8, 2002.