

53:1-20.17

LEGISLATIVE HISTORY CHECKLIST
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(DNA Database and Databank
Act of 1994)

NJSA: 53:1-20.17

LAWS OF: 1994 **CHAPTER:** 136

BILL NO: A1592

SPONSOR(S): Quigley and others

DATE INTRODUCED: March 28, 1994

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Budget

AMENDED DURING PASSAGE: Yes **Amendments during passage**
Second reprint enacted **denoted by superscript numbers**

DATE OF PASSAGE: **ASSEMBLY:** August 29, 1994
SENATE: October 3, 1994

DATE OF APPROVAL: October 31, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: ~~No~~

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

[SECOND REPRINT]
ASSEMBLY, No. 1592

STATE OF NEW JERSEY

INTRODUCED MARCH 28, 1994

By Assemblywoman QUIGLEY, Assemblymen FELICE, Impreveduto, Dalton, Doria, Cohen, Russo, Assemblywomen Farragher, Turner, Assemblymen Williams, Oros, Yuhas, Zisa, Lance, Augustine, Stuhltrager, Albohn, Arnone, Azzolina, Bateman, Cottrell, Assemblywoman Crecco, Assemblymen Gaffney, Geist, Assemblywoman Haines, Assemblymen Kelly, Mikulak, Assemblywoman Ogden, Assemblymen Rocco, Romano, Rooney, Solomon, Suliga, Assemblywomen Vandervalk, Weinberg, Wright, Assemblymen Zangari, Petrillo, T. Smith, Garrett, Assemblywoman Murphy and Assemblymen Corodemus, Bodine, Malone and Assemblywoman J. Smith

1 AN ACT concerning DNA testing of certain offenders and
2 supplementing Title 53 of the New Jersey Statutes.

3

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

6 1. This act shall be known and may be cited as the "DNA
7 Database and Databank Act of 1994."

8 2. The Legislature finds and declares that DNA databanks are
9 an important tool in criminal investigations and in deterring and
10 detecting recidivist acts. Several states have enacted laws
11 requiring persons convicted of certain crimes, especially serious
12 sexual offenses, to provide genetic samples for DNA profiling.
13 Moreover, it is the policy of this State to assist federal, state and
14 local criminal justice and law enforcement agencies in the
15 identification and detection of individuals who are the subjects of
16 criminal investigations. It is therefore in the best interest of the
17 State of New Jersey to establish a DNA database and a DNA
18 databank containing blood samples submitted by certain serious
19 sexual offenders.

20 3. As used in this act:

21 "CODIS" means the FBI's national DNA identification index
22 system that allows the storage and exchange of DNA records
23 submitted by State and local forensic laboratories.

24 "DNA" means deoxyribonucleic acid.

25 "DNA Record" means DNA identification information stored in
26 the State DNA database or CODIS for the purpose of generating
27 investigative leads or supporting statistical interpretation of
28 DNA test results.

29 "DNA Sample" means a blood sample provided by any person
30 convicted of any offense enumerated in section 4 of this act or
31 submitted to the division for analysis pursuant to a criminal
32 investigation.

33 "Division" means the Division of State Police in the Department
34 of Law and Public Safety.

35 "FBI" means the Federal Bureau of Investigation.

36 "State DNA Database" means the DNA identification record

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJL committee amendments adopted June 23, 1994.

² Senate SBA committee amendments adopted September 12, 1994.

1 system to be administered by the division which provides DNA
2 records to the FBI for storage and maintenance in CODIS.

3 "State DNA Databank" means the repository of DNA samples
4 collected under the provisions of this act.

5 4. On or after January 1, 1995 every person convicted of
6 1aggravated sexual assault and¹ sexual assault under
7 N.J.S.2C:14-2 or 1aggravated criminal sexual contact and¹
8 criminal sexual contact under N.J.S.2C:14-3 ¹or any attempt to
9 commit any of these crimes¹ and who is sentenced to a term of
10 imprisonment shall have a blood sample drawn for purposes of
11 DNA testing upon commencement of the period of confinement.
12 In addition, every person convicted on or after January 1, 1995 of
13 these offenses, but who is not sentenced to a term of
14 confinement, shall provide a DNA sample as a condition of the
15 sentence imposed. A person who has been convicted and
16 incarcerated as a result of a conviction of one or more of these
17 offenses prior to ¹[July 1, 1994] January 1, 1995¹ shall have a
18 DNA sample drawn before parole or release from incarceration.

19 5. Tests shall be performed on each blood sample submitted
20 pursuant to section 4 of this act in order to analyze and type the
21 genetic markers contained in or derived from the DNA. ¹[The]
22 Except insofar as the use of the results of these tests for such
23 purposes would jeopardize or result in the loss of federal funding,
24 the¹ results of these tests shall be used for the following purposes:
25 a. For law enforcement identification purposes;
26 b. For development of a population database;
27 c. To support identification research and protocol development
28 of forensic DNA analysis methods;
29 d. To assist in the recovery or identification of human remains
30 from mass disasters or for other humanitarian purposes; ¹[and]¹
31 e. For research, administrative and quality control purposes¹;
32 f. For judicial proceedings, by order of the court, if otherwise
33 admissible pursuant to applicable statutes or rules;
34 g. For criminal defense purposes, on behalf of a defendant,
35 who shall have access to relevant samples and analyses performed
36 in connection with the case in which the defendant is charged; and
37 h. For such other purposes as may be required under federal
38 law as a condition for obtaining federal funding¹.

39 The DNA record of identification characteristics resulting
40 from the DNA testing conducted pursuant to this section shall be
41 stored and maintained in the State DNA database ¹and forwarded
42 to the FBI for inclusion in CODIS¹. The DNA sample itself will
43 be stored and maintained in the State DNA databank.

44 6. Each DNA sample required to be drawn pursuant section 4
45 of this act from persons who are incarcerated shall be drawn at
46 the place of incarceration. DNA samples from persons who are
47 not sentenced to a term of confinement shall be drawn at a prison
48 or jail unit to be specified by the sentencing court. Only a
49 correctional health nurse technician, physician, registered
50 professional nurse, licensed practical nurse, laboratory
51 technician, phlebotomist or other health care worker with
52 phlebotomy training shall draw any DNA sample to be submitted
53 for analysis. No civil liability shall attach to any person
54 authorized to draw blood by this section as a result of drawing

1 blood from any person if the blood was drawn according to
2 recognized medical procedures. No person shall be relieved from
3 liability for negligence in the drawing of any DNA sample. No
4 sample shall be drawn if the division has previously received an
5 adequate blood sample from the convicted person.

6 7. The division shall adopt rules governing the procedures to be
7 used in the submission, identification, analysis and storage of
8 DNA samples and typing results of DNA samples submitted under
9 this act. The DNA sample shall be securely stored in the State
10 databank. The typing results shall be securely stored in the State
11 database. These procedures shall also include quality assurance
12 guidelines to insure that DNA identification records meet audit
13 standards for laboratories which submit DNA records to the State
14 database. The DNA identification system established pursuant to
15 this act shall be shall be compatible with that utilized by the
16 FBI.

17 8. a. It shall be the duty of the division to store, ¹[to]¹
18 analyze ^{1,1} classify and file ¹in the State database and with the
19 FBI for inclusion in CODIS¹ the DNA record of identification
20 characteristic profiles of DNA samples submitted pursuant to
21 section 4 of this act and to make such information available
22 ¹from the State database¹ as provided in this section. The
23 division may contract out DNA typing analysis to a qualified DNA
24 laboratory that meets established guidelines. The results of the
25 DNA profile of individuals in the State database shall be made
26 available to local, State or federal law enforcement agencies, and
27 approved crime laboratories which serve these agencies, upon
28 written or electronic request and in furtherance of an official
29 investigation of a criminal offense. These records shall also be
30 available upon receipt of a valid court order issued by a judge of
31 the Superior Court directing the division to release these results
32 to appropriate parties not listed above. The division shall
33 maintain a file of such court orders.

34 b. The division shall adopt rules governing the methods of
35 obtaining information from the State database and CODIS and
36 procedures for verification of the identity and authority of the
37 requester.

38 c. The division shall create a separate population database
39 comprised of ¹[blood samples] records¹ obtained pursuant to this
40 act after all personal identification is removed. Nothing shall
41 prohibit the division from sharing or disseminating population
42 databases with other law enforcement agencies, and crime
43 laboratories that serve these agencies, upon written or electronic
44 request and in furtherance of an official investigation of a
45 criminal offense, or other third parties deemed necessary to
46 assist with statistical analysis of the population databases. The
47 population database may be made available to and searched by
48 other agencies participating in the CODIS system.

49 9. a. Any person whose DNA record or profile has been
50 included in the State DNA database and whose DNA sample is
51 stored in the State DNA databank may apply for expungement on
52 the grounds that the conviction that resulted in the inclusion of
53 the person's DNA record or profile in the State database or the
54 inclusion of the person's DNA sample in the State databank has

1 been reversed and the case dismissed. The person, either
 2 individually or through an attorney, may apply to the court for
 3 expungement of the record. A copy of the application for
 4 expungement shall be served on the prosecutor for the county
 5 which the conviction was obtained not less than 20 days prior to
 6 the date of the hearing on the application. A certified copy of
 7 the order reversing and dismissing the conviction shall be
 8 attached to an order ¹[of expungement] expunging the DNA
 9 record or profile insofar as its inclusion rests upon that
 10 conviction¹.

11 b. Upon receipt of an order of expungement ¹and unless
 12 otherwise provided¹, the division shall purge the DNA record and
 13 all other identifiable information from the State database and the
 14 DNA sample stored in the State databank covered by the order.
 15 ¹[If the individual has more than one entry in the State database
 16 and databank, then only the entry covered by the expungement
 17 order shall be deleted from the State database or databank] If the
 18 entry in the database reflects more than one conviction, that
 19 entry shall not be expunged unless and until the person has
 20 obtained an order of expungement for each conviction on the
 21 grounds contained in subsection a. of this section. If one of the
 22 bases for inclusion in the DNA database was other than
 23 conviction, that entry shall not be subject to expungement¹.

24 10. Any person who by virtue of employment, or official
 25 position, has possession of, or access to, individually identifiable
 26 DNA information contained in the State DNA database or
 27 databank and who purposely discloses it in any manner to any
 28 person or agency not entitled to receive it is guilty of a
 29 disorderly persons offense.

30 11. All DNA profiles and samples submitted to the division
 31 pursuant to this act shall be treated as confidential except as
 32 provided in section 8 of this act.

33 ¹[12. If federal funds are received to implement this act, any
 34 State fund appropriation shall lapse and revert to the general
 35 fund.]¹

36 ²12. The Attorney General shall use funds obtained through
 37 seizure, forfeiture or abandonment pursuant to any federal or
 38 State statutory or common law, and the proceeds of the sale of
 39 any such confiscated property or goods, as may be available and
 40 appropriate for the costs of implementing P.L. c.
 41 (C.)(now pending before the Legislature as this bill) during
 42 the first year following enactment.²

43 ¹[13.]²[12.¹] 13.² This act shall take effect immediately.

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48 Requires convicted sex offenders to provide blood specimen for
 49 DNA analysis; creates a DNA databank and DNA database.

1 pursuant to this act shall be treated as confidential except as
2 provided in section 8 of this act.

3 12. If federal funds are received to implement this act, any
4 State fund appropriation shall lapse and revert to the general
5 fund.

6 13. This act shall take effect immediately.

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STATEMENT

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11 This bill requires persons convicted of certain sexual offenses
12 to provide samples of blood for DNA profiling and for use in
13 connection with subsequent criminal investigations. The bill
14 requires the Division of State Police to analyze and classify these
15 blood samples and store the results in a DNA database. The
16 records created as a result of such testing would then be
17 available to federal, state and local law enforcement agencies
18 involved in investigating criminal offenses. The bill further
19 requires the creation of a DNA databank where DNA samples
20 would be stored.

21 The creation of the DNA database would, in addition, permit
22 the inclusion of DNA records in CODIS, the Federal Bureau of
23 Investigation's national identification index system. The FBI is
24 currently developing this system which will provide for the
25 storage and exchange of DNA records on a national basis.

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Requires convicted sex offenders to provide blood specimen for
31 DNA analysis; creates a DNA databank and DNA database.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1592

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 23, 1994

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 1592.

This bill requires persons convicted of certain sexual offenses to provide samples of blood for DNA profiling and for use in connection with subsequent criminal investigations. The bill requires the Division of State Police to analyze and classify these blood samples and store the results in a DNA database. The records created as a result of such testing would then be available to federal, State and local law enforcement agencies involved in investigating criminal offenses. The bill further requires the creation of a DNA databank where DNA samples would be stored.

The creation of the DNA database would, in addition, permit the inclusion of DNA records in CODIS, the Federal Bureau of Investigation's national identification index system. The FBI is currently developing this system which will provide for the storage and exchange of DNA records on a national basis.

The committee amended section 4 of the bill to clarify that persons convicted of aggravated sexual assault, sexual assault, aggravated criminal sexual contact and criminal sexual contact would be required to submit to DNA testing. Section 5 was expanded to include additional uses for the results of the test, including such purposes as may be required as a condition of federal funding. The committee also amended section 8 of the bill to clarify that the division's database would be comprised of "records" and not "blood samples" as the bill in its original form stated and to clarify that the records shall be filed in the State database and in CODIS. Section 9 was amended to clarify that separate orders of expungement must be obtained in the event of multiple convictions. The amendments also provide that if the basis for inclusion was other than conviction, the entry shall not be subject to expungement. Section 12 of the bill which required that any State funds appropriated for the implementation of the act would lapse and revert to the general fund if federal funds were received was deleted in its entirety.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 1592

with Senate committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 12, 1994

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 1592 (1R), with committee amendments.

Assembly Bill No. 1592 (1R) of 1994, as amended, requires persons convicted and incarcerated as a result of certain sexual offenses to provide samples of blood for DNA profiling and use in connection with subsequent criminal investigations.

The bill requires the Division of State Police in the Department of Law and Public Safety to analyze the blood samples and record the test results in a State database. In addition, the division will submit these records to the Federal Bureau of Investigation for inclusion in its national identification index system (CODIS). The DNA sample itself will be stored and maintained by the division in a databank.

As reported, this bill is identical to Senate Bill No. 995 (1R) of 1994 with committee amendments adopted September 12, 1994.

COMMITTEE AMENDMENTS

The committee amended the bill to require the Attorney General to use available forfeiture funds for the costs of implementing the bill during the first year following enactment.

FISCAL IMPACT

The Division of State Police estimates the cost of implementing this bill at \$443,100 for the first year, \$353,200 for the second year and \$374,100 for the third year.

In a fiscal note prepared by the Office of Legislative Services (OLS) on an identical Assembly bill, OLS concurred with the division's estimate; however, OLS noted that the bill permits the division to contract DNA typing analysis to a qualified private DNA laboratory. Using private laboratory services may reduce the cost of performing this function. However, according to the Division of State Police, their analysis reveals that the costs of performing DNA analysis may be significantly less if performed within the division rather than by private laboratories.

OLS also noted that the division's estimate does not include the costs to the Department of Corrections and the counties of drawing blood samples as required by the bill. The department has informally estimated that drawing these blood samples will be a minor addition to the workload of the department's existing health care staff and should not result in increased costs. Reliable information is not readily available which would permit OLS to estimate this cost to counties.

FISCAL NOTE TO
[FIRST REPRINT]
ASSEMBLY, No. 1592

STATE OF NEW JERSEY

DATED: September 1, 1994

Assembly Bill No. 1592(1R) of 1994 requires persons convicted and incarcerated as a result of certain sexual offenses to provide samples of blood for DNA profiling and for use in connection with subsequent criminal investigations. The bill requires the Division of State Police in the Department of Law and Public Safety to analyze the blood samples and record the test results in a State database. In addition, the division will submit these records to the Federal Bureau of Investigation for inclusion in its national identification index system (CODIS). The DNA sample itself will be stored and maintained by the division in a databank. The bill further provides that these records will be available for use by federal, State, and local law enforcement agencies.

The Division of State Police estimates the cost of implementing this bill at \$443,100 in the first year following enactment. This estimate includes \$214,100 for salary and fringe benefits of three forensic scientists, \$114,500 for materials and supplies, \$63,500 for one-time forensic laboratory equipment, \$5,000 for maintenance contract costs, \$6,000 for continuing education and proficiency testing costs, and \$40,000 for one-time costs for data processing and other equipment. The division estimates second and third year costs at \$353,200 and \$374,100, respectively, after adjusting for one-time equipment costs and a 6 percent annual inflation rate.

The Office of Legislative Services (OLS) concurs with the division's cost estimate. However, OLS notes that the bill permits the division to contract DNA typing analysis to a qualified private DNA laboratory. Using private laboratory services may reduce the cost of performing this function. OLS also notes that the division's cost estimate does not include the costs to the Department of Corrections and the counties of drawing blood samples as required by the bill. The department has informally estimated that drawing these blood samples will be a minor addition to the workload of the department's existing health care staff and should not result in increased costs. Reliable information is not readily available which would permit OLS to estimate this cost to counties.

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