

2010 -- H 7186

LC00181

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO CRIMINAL PROCEDURE -- DNA DETECTION OF SEXUAL AND
VIOLENT OFFENDERS

Introduced By: Representatives Kennedy, Palumbo, E Coderre, Naughton, and Carter

Date Introduced: January 21, 2010

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 12-1.5-1, 12-1.5-2, 12-1.5-4, 12-1.5-7, 12-1.5-8, 12-1.5-13 and 12-
2 1.5-17 of the General Laws in Chapter 12-1.5 entitled "DNA Detection of Sexual and Violent
3 Offenders" are hereby amended to read as follows:

4 **12-1.5-1. Policy. [Contingent amendment; see other version]** -- The general assembly
5 finds and declares that DNA databanks and DNA databases are important tools in criminal
6 investigations, in the exclusion of individuals who are the subject of criminal investigations or
7 prosecutions, and in deterring and detecting recidivism. Many states have enacted laws requiring
8 persons arrested or convicted of any felony ~~sexual and violent offenses~~ to provide genetic
9 samples for DNA profiling. Moreover, it is the policy of this state to assist federal, state and local
10 criminal justice and law enforcement agencies in the identification and detection of individuals in
11 criminal investigations. It is therefore in the best interest of the state to establish a DNA databank
12 and a DNA database containing DNA samples and DNA records of individuals arrested ~~convicted~~
13 ~~of certain sexual and violent offenses~~, or convicted of any felony as defined in the general laws of
14 Rhode Island, and missing persons.

15 **12-1.5-1. Policy. [Contingent effective date; see note.]** -- The general assembly finds
16 and declares that DNA databanks and DNA databases are important tools in criminal
17 investigations, in the exclusion of individuals who are the subject of criminal investigations or
18 prosecutions, and in deterring and detecting recidivism. Many states have enacted laws requiring

persons [arrested or](#) convicted of [any felony](#) ~~sexual and violent offenses~~ to provide genetic samples for DNA profiling. Moreover, it is the policy of this state to assist federal, state, and local criminal justice and law enforcement agencies in the identification and detection of individuals in criminal investigations. It is in the best interest of the state to establish a DNA databank and a DNA database containing DNA samples and DNA records of individuals [arrested](#) ~~convicted of a crime of violence as defined in section 11-47-2,~~ or convicted of any felony as defined in the general laws of Rhode Island, and missing persons.

12-1.5-2. Definitions. -- For the purposes of this chapter:

(1) "CODIS" is derived from combined DNA index system, the Federal Bureau of Investigation's national DNA identification index system that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories;

(2) "DNA" means deoxyribonucleic acid, which is located in the cells of the body and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human hereditary and forensic identification;

(3) "DNA record" means DNA identification information only, which is stored in the state DNA database or the combined DNA index system for the purpose of generating investigative leads or supporting statistical interpretation of DNA test results. The DNA record is the result obtained from the DNA typing tests. The DNA record is comprised of the characteristics of a DNA sample which are of value only in establishing the identity of individuals. The DNA record, however, does not include the DNA sample, and the DNA record may never include the results of tests of any structural genes. The results of all DNA identification tests on an individual's DNA sample are also collectively referred to as the DNA profile of an individual;

(4) "DNA sample" means a blood or tissue sample provided by any person with respect to offenses covered by this chapter, or submitted to the department of health laboratory pursuant to this chapter for DNA analysis or storage, or both;

(5) "F.B.I." means the Federal Bureau of Investigation;

(6) "State DNA databank" means the repository of DNA samples collected under this chapter, which is administered by the department of health; and

(7) "State DNA database" means the state-level DNA identification record system to support law enforcement which is administered by the department of health and which provides DNA records to the F.B.I. for storage and maintenance in CODIS. It is the collective capability to store and maintain DNA records related to forensic casework, the DNA records of those [arrested for a felony and/or](#) convicted offenders required to provide a DNA sample under state law, and

anonymous DNA records used for research, quality control, and other DNA analysis support systems.

12-1.5-4. State DNA database. -- There is established the state DNA database. It shall be administered by the department of health and provide DNA records for the F.B.I. for storage and maintenance by CODIS. The state DNA database shall have the capability provided by computer software and procedures administered by the department of health to store and maintain DNA records related to:

- (1) Forensic casework, including the identification of missing persons;
- (2) Individuals arrested for any felony and convicted ~~Convicted~~ offenders required to provide a DNA sample under this chapter; and
- (3) Anonymous DNA records used for research on identification technologies or quality control.

12-1.5-7. Scope and applicability. [Contingent amendment; see other version] -- For law enforcement purposes, this chapter is applicable to adult persons arrested for a felony and/or convicted ~~or sentenced to a period of probation for any of the following offenses: sections 11-37-2, 11-37-4, 11-37-8, 11-37-8.1, 11-37-8.3, 11-23-1 and 11-23-3, and for~~ of any felony as defined in the general laws of Rhode Island.

12-1.5-7. Scope and applicability. [Contingent effective date; see note.] -- For law enforcement purposes, this chapter is applicable to adult persons arrested for any felony and/or convicted or sentenced ~~to a period of probation for any of the following offenses: sections 11-37-2, 11-37-4, 11-37-8, 11-37-8.1, 11-37-8.3, 11-23-1, and 11-23-3, for any crime of violence as defined in section 11-47-2 for offenses committed after July 1, 2001, and for~~ of any felony as defined in the general laws of Rhode Island.

12-1.5-8. ~~DNA sample required upon conviction~~ DNA sample required upon arrest for any felony or any felony conviction. -- (a) Every person arrested for a felony, who pleads guilty or nolo contendere, or is convicted of ~~an offense as listed in section 12-1.5-7 after June 29, 1998;~~ any felony shall have a DNA sample taken for analysis as follows:

- (1) Every person who is sentenced to a term of confinement to prison, for ~~an offense as listed in section 12-1.5-7~~ any felony offense shall not be released prior to the expiration of his or her maximum term of confinement unless and until a DNA sample has been taken;
- (2) Every person convicted of ~~an~~ any felony offense ~~or sentenced to probation as listed in section 12-1.5-7~~ or who is sentenced to any term of diversion, deferment of sentence, or probation shall have a DNA sample taken for analysis by the department of the health as a condition for any sentence which disposition will not involve an intake into prison.

1 (b) Every person arrested for any felony offense shall have a DNA sample taken for
2 analysis and included in the Rhode Island DNA database and DNA databank respectively as
3 required by this chapter.

4 ~~(c)(b)~~ All DNA samples taken pursuant to this section shall be taken in accordance with
5 regulations promulgated by the department of health.

6 (d) The director of the department of health shall promulgate rules and regulations
7 governing the periodic review of the DNA identification database to determine whether or not the
8 database contains DNA profiles that should not be in the database, including the steps necessary
9 to expunge any profiles which the department determines should not be in the database.

10 **12-1.5-13. Expungement.** -- (a) A person whose DNA record or profile has been
11 included in the databank pursuant to this act may request expungement, on the grounds that the
12 conviction on which authority for including that person's DNA record or profile was based, has
13 been reversed. The department of health shall purge all records and identifiable information in the
14 database pertaining to the person and destroy all samples from the person upon receipt of a
15 written request for expungement pursuant to this section and a certified copy of the final court
16 order reversing the conviction. The department of health shall purge and destroy all records and
17 identifiable information in its database and all DNA samples taken pursuant to this chapter from
18 convicted persons upon official proof that the person has been deceased for a period of at least
19 three (3) years. Official proof shall include, but not be limited to, a certified copy of a death
20 certificate.

21 (b) Upon receipt of notification of a case not being charged through information or
22 indictment, or voluntary dismissal by the state, or dismissal by a court, or by a not guilty verdict
23 after trial, or upon the vacating or the reversal of a conviction in which the state does not retry the
24 defendant or appeal the decision, or loses such appeal upon hearing, or upon any plea or
25 conviction of a lesser offense that would not give rise to the mandatory sampling of the
26 individual's DNA, the completion of a program of diversion or the completion of the term of a
27 sentence of deferment, or of the granting of a pardon, an individual whose DNA record has been
28 stored in the state DNA identification database in accordance with this chapter, shall be expunged
29 from the state DNA identification database, regardless of any prior record for which DNA
30 sampling would not have been authorized, except pursuant to subsection (e), such individual may
31 apply to the court for an order directing the expungement of their DNA record and any samples,
32 analyses, or other documents relating to the DNA testing of such individual in connection with
33 the investigation, arrest and/or prosecution of the crime which resulted in the arrest of the person.

34 (c) A copy of the expungement motion shall be served on the attorney general and the

1 arresting police department with ten (10) days notice prior to hearing, and an order directing
2 expungement shall be granted if the court finds any of the appropriate conditions of subsection
3 (b) are satisfied; or in the case of a mistrial or dismissal of such charges by the court, that all
4 appeals relating to the charges have been concluded; that such individual will not be retried, or if
5 a retrial has occurred, the trier of fact has rendered a verdict of complete acquittal of the charges
6 that gave rise to the requirement to collect the DNA sample.

7 (d) The department of health shall, by rule or regulation, prescribe procedures to ensure
8 that the DNA record in the state DNA identification database, and any samples, analyses, or other
9 documents relating to such record, whether in the possession of the division, or any law
10 enforcement of police agency, or any forensic DNA laboratory, including any duplicates or
11 copies thereof are destroyed, including any records from CODIS. The commissioner shall also
12 adopt by rule and regulation a procedure for the expungement in other appropriate circumstances
13 of DNA records contained in the database.

14 (e) No expungement shall be granted where an individual has a prior conviction requiring
15 a DNA sample, or a pending felony charge for which collection of a sample was authorized
16 pursuant to the provisions of this chapter.

17 **12-1.5-17. ~~Convicted persons — Refusal to give DNA sample~~ Bailed and convicted**
18 **persons – Refusal to give DNA sample. --** Any person who is required to have a DNA sample
19 taken after having been arrested and charged for any felony offense, who refuses to do so, and
20 who knowingly violently resists the taking of a DNA sample duly authorized by medical
21 personnel, shall be in violation of the terms of his or her release, regardless of whether or not the
22 term was a special condition of his or her bail, release on probation, parole, or home confinement
23 or other form of supervised release.

24 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE -- DNA DETECTION OF SEXUAL AND
VIOLENT OFFENDERS

1 This act would require the collection DNA samples of any person arrested for a felony
2 offense under Rhode Island law. The samples would be included in the Rhode Island DNA
3 database to be administered by the FBI's national DNA identification index system, which allows
4 for the storage and exchange of DNA records submitted by state and local forensic DNA
5 laboratories for the identification and/or exclusion of individuals who are the subject of criminal
6 investigations or prosecutions.

7 This act would take effect upon passage.

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