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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

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

Introduced By: Representatives Kennedy, Palumbo, E Coderre, Gallison, and McNamara

Date Introduced: January 25, 2011

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 a crime of violence ~~sexual and violent offenses~~ to provide  
9 genetic samples for DNA profiling. Moreover, it is the policy of this state to assist federal, state  
10 and local criminal justice and law enforcement agencies in the identification and detection of  
11 individuals in criminal investigations. It is therefore in the best interest of the state to establish a  
12 DNA databank and a DNA database containing DNA samples and DNA records of individuals  
13 arrested for ~~convicted of certain sexual and violent offenses~~, or convicted of any ~~felony as defined~~  
14 ~~in the general laws of Rhode Island~~ crime of violence, 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

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

8 **12-1.5-2. Definitions.** -- For the purposes of this chapter:

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

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

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

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

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

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

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

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

3 (8) "Crimes of violence" include murder, manslaughter, first degree arson, kidnapping  
4 with intent to extort, robbery, larceny from the person, first degree sexual assault, second degree  
5 sexual assault, first and second degree child molestation, assault with intent to murder, assault  
6 with intent to rob, assault with intent to commit first degree sexual assault, burglary, and entering  
7 a dwelling house with intent to commit murder, robbery, sexual assault, or larceny.

8 **12-1.5-4. State DNA database.** -- There is established the state DNA database. It shall be  
9 administered by the department of health and provide DNA records for the F.B.I. for storage and  
10 maintenance by CODIS. The state DNA database shall have the capability provided by computer  
11 software and procedures administered by the department of health to store and maintain DNA  
12 records related to:

13 (1) Forensic casework, including the identification of missing persons;

14 (2) Individuals arrested for any crime of violence and convicted ~~Convicted~~ offenders  
15 required to provide a DNA sample under this chapter; and

16 (3) Anonymous DNA records used for research on identification technologies or quality  
17 control.

18 **12-1.5-7. Scope and applicability. [Contingent amendment; see other version]** -- For  
19 law enforcement purposes, this chapter is applicable to adult persons arrested for crimes of  
20 violence and/or convicted ~~to a period of probation for any of the following offenses: sections 11-~~  
21 ~~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 crime  
22 of violence as defined ~~in the general laws of Rhode Island~~ in this chapter.

23 **12-1.5-7. Scope and applicability. [Contingent effective date; see note.]** -- For law  
24 enforcement purposes, this chapter is applicable to adult persons arrested for any crime of  
25 violence and/or convicted of or sentenced ~~to a period of probation for any of the following~~  
26 ~~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~~  
27 ~~crime of violence as defined in section 11-47-2 for offenses committed after July 1, 2001, and for~~  
28 ~~any felony as defined in the general laws of Rhode Island~~ for crimes of violence.

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

33 (1) Every person who is sentenced to a term of confinement to prison, for ~~an offense as~~  
34 ~~listed in section 12-1.5-7~~ any crime of violence shall not be released prior to the expiration of his

1 or her maximum term of confinement unless and until a DNA sample has been taken;

2 (2) Every person convicted of ~~an offense or sentenced to probation as listed in section~~  
3 ~~12-1.5-7~~ any crime of violence or who is sentenced thereon to any term of diversion, deferment of  
4 sentence, or probation shall have a DNA sample taken for analysis by the department of the  
5 health as a condition for any sentence which disposition will not involve an intake into prison.

6 (b) Every person arrested for any crime of violence shall have a DNA sample taken for  
7 analysis and included in the Rhode Island DNA database and DNA databank respectively as  
8 required by this chapter.

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

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

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

26 (b) Upon receipt of a written request for expungement from the person whose DNA  
27 record or profile has been included in the database pursuant to this chapter and notification of the  
28 underlying case not being charged through information or indictment, or voluntary dismissal by  
29 the state, or dismissal by a court, or by a not guilty verdict after trial, or upon the vacating or the  
30 reversal of a conviction in which the state does not retry the defendant or appeal the decision, or  
31 loses such appeal upon hearing, or upon any plea or conviction of a lesser offense that would not  
32 give rise to the mandatory sampling of the individual's DNA, or upon the completion of a  
33 program of diversion or the completion of the term of a sentence of deferment, or of the granting  
34 of a pardon, the record or profile shall be expunged from the state DNA identification database,

1 regardless of any prior record for which DNA sampling would not have been authorized, except  
2 pursuant to subsection (e), herein and such individual may apply to the court for an order  
3 directing the expungement of their DNA record and any samples, analyses, or other documents  
4 relating to the DNA testing of such individual in connection with the investigation, arrest and/or  
5 prosecution of the crime which resulted in the arrest of the person.

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

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

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

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

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

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

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1           This act would require the collection of DNA samples for any person arrested for a crime  
2 of violence as defined in this act. This act would expand the list of crimes for which a DNA  
3 sample is required. The samples would be included in the Rhode Island DNA database to be  
4 administered by the FBI's national DNA identification index system, which allows for the storage  
5 and exchange of DNA records submitted by state and local forensic DNA laboratories for the  
6 identification and/or exclusion of individuals who are the subject of criminal investigations or  
7 prosecutions.

8           This act would take effect upon passage.

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