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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

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

Introduced By: Senators Bates, Walaska, McCaffrey, Hodgson, and Algieri

Date Introduced: January 16, 2013

Referred To: Senate 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
2 12-1.5-17 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 for or convicted of a crime of violence, or persons convicted of any felony,
9 ~~sexual and violent offenses~~ to provide genetic samples for DNA profiling. Moreover, it is the
10 policy of this state to assist federal, state and local criminal justice and law enforcement agencies
11 in the identification and detection of individuals in criminal investigations. It is therefore in the
12 best interest of the state to establish a DNA databank and a DNA database containing DNA
13 samples and DNA records of individuals arrested for any crime of violence as defined in section
14 12-1.5-2, or convicted of any felony, of certain sexual and violent offenses, or convicted of any
15 felony as defined in the general laws of Rhode Island, and missing persons.

16 **12-1.5-1. Policy. [Contingent effective date; see note.]** -- The general assembly finds
17 and declares that DNA databanks and DNA databases are important tools in criminal
18 investigations, in the exclusion of individuals who are the subject of criminal investigations or

1 prosecutions, and in deterring and detecting recidivism. Many states have enacted laws requiring
2 persons arrested for or convicted of a crime of violence as defined in section 12-1.5-2 ~~sexual and~~
3 ~~violent offenses~~ to provide genetic samples for DNA profiling. Moreover, it is the policy of this
4 state to assist federal, state, and local criminal justice and law enforcement agencies in the
5 identification and detection of individuals in criminal investigations. It is in the best interest of the
6 state to establish a DNA databank and a DNA database containing DNA samples and DNA
7 records of individuals arrested for any crime of violence as defined in section 12-1.5-2 or
8 convicted of any felony, a crime of violence as defined in section 11-47-2, or convicted of any
9 felony as defined in the general laws of Rhode Island, and missing persons.

10 **12-1.5-2. Definitions.** -- For the purposes of this chapter:

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

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

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

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

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

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

32 (7) "State DNA database" means the state-level DNA identification record system to
33 support law enforcement which is administered by the department of health and which provides
34 DNA records to the F.B.I. for storage and maintenance in CODIS. It is the collective capability to

1 store and maintain DNA records related to forensic casework, the DNA records of those [arrested](#)
2 [for crimes of violence as defined in section 12-1.5-2 and/or](#) convicted offenders required to
3 provide a DNA sample under state law, and anonymous DNA records used for research, quality
4 control, and other DNA analysis support systems.

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

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

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

16 (2) [Individuals arrested for any crime of violence as defined in section 12-1.5-2 and](#)
17 [convicted](#) ~~Convicted~~ [felony](#) offenders required to provide a DNA sample under this chapter; and

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

20 **12-1.5-7. Scope and applicability. [Contingent amendment; see other version]** -- For
21 law enforcement purposes, this chapter is applicable to adult persons [arrested for crimes of](#)
22 [violence as defined in section 12-1.5-2 and/or](#) convicted ~~to a period of probation for any of the~~
23 ~~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-~~
24 ~~3, and for~~ [of](#) any felony as defined ~~in the general laws of Rhode Island~~ [in this chapter.](#)

25 **12-1.5-7. Scope and applicability. [Contingent effective date; see note.]** -- For law
26 enforcement purposes, this chapter is applicable to adult persons [arrested for any crime of](#)
27 [violence as defined in section 12-1.5-2 and/or](#) convicted [of](#) or sentenced ~~to a period of probation~~
28 ~~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-~~
29 ~~23-1, and 11-23-3, for any crime of violence as defined in section 11-47-2 for offenses committed~~
30 ~~after July 1, 2001, and for any felony as defined in the general laws of Rhode Island~~ [for any](#)
31 [felony.](#)

32 **12-1.5-8. ~~DNA sample required upon conviction~~DNA sample required upon arrest**
33 **or conviction for any crime of violence.** -- (a) Every person [arrested for a crime of violence as](#)
34 [defined in section 12-1.5-2, who pleads guilty or nolo contendere, or is](#) convicted of ~~an offense as~~

1 ~~listed in section 12-1.5-7 after June 29, 1998;~~ any felony shall have a DNA sample taken for
2 analysis as follows:

3 (1) Every person who is sentenced to a term of confinement to prison, for ~~an offense as~~
4 ~~listed in section 12-1.5-7~~ any crime of violence as defined in section 12-1.5-2 or any felony shall
5 not be released prior to the expiration of his or her maximum term of confinement unless and
6 until a DNA sample has been taken;

7 (2) Every person convicted of ~~an offense or sentenced to probation as listed in section~~
8 ~~12-1.5-7~~ any crime of violence as defined in section 12-1.5-2 or any felony or who is sentenced
9 thereon to any term of probation, or whose case is referred to a diversion program or upon whose
10 case sentencing is deferred shall have a DNA sample taken for analysis by the department of the
11 health as a condition ~~for~~ of any sentence which disposition will not involve an intake into prison.

12 (b) Every person arrested for any crime of violence as defined in section 12-1.5-2 shall, at
13 the time of booking, have a DNA sample taken for analysis and included in the Rhode Island
14 DNA database and DNA databank respectively as required by this chapter and every such person
15 shall be notified of his or her expungement rights under section 12-1.5-13 at or near the time the
16 DNA sample is taken.

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

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

23 (e) The requirements of this chapter are mandatory. In the event that an arrestee's DNA
24 sample is not adequate for any reason, the arrestee shall provide another DNA sample for
25 analysis.

26 (f) A sample does not need to be collected if the person has previously provided a
27 sample sufficient for DNA testing pursuant to the provisions of this section.

28 **12-1.5-13. Expungement.** -- (a) A person whose DNA record or profile has been
29 included in the databank pursuant to this act may request expungement, on the grounds that the
30 conviction on which authority for including that person's DNA record or profile was based, has
31 been reversed. The department of health shall purge all records and identifiable information in the
32 database pertaining to the person and destroy all samples from the person upon receipt of a
33 written request for expungement pursuant to this section and a certified copy of the final court
34 order reversing the conviction. The department of health shall purge and destroy all records and

1 identifiable information in its database and all DNA samples taken pursuant to this chapter from
2 convicted persons upon official proof that the person has been deceased for a period of at least
3 three (3) years. Official proof shall include, but not be limited to, a certified copy of a death
4 certificate.

5 (b) Upon receipt of a written request for expungement from the person whose DNA
6 record or profile has been included in the database pursuant to this chapter and notification of the
7 underlying case not being charged through information or indictment, or voluntary dismissal by
8 the state, or dismissal by a court, or by a not guilty verdict after trial, or upon the vacating or the
9 reversal of a conviction in which the state does not retry the defendant or appeal the decision, or
10 loses such appeal upon hearing, or upon any plea or conviction of a lesser offense that would not
11 give rise to the mandatory sampling of the individual's DNA, or upon the completion of a
12 program of diversion or the completion of the term of a sentence of deferment, or of the granting
13 of a pardon, the record or profile shall be expunged from the state DNA identification database,
14 regardless of any prior record for which DNA sampling would not have been authorized, except
15 pursuant to subsection (e), herein and such individual may apply to the court for an order
16 directing the expungement of their DNA record and any samples, analyses, or other documents
17 relating to the DNA testing of such individual in connection with the investigation, arrest and/or
18 prosecution of the crime which resulted in the arrest of the person.

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

26 (d) The department of health shall, by rule or regulation, prescribe procedures to ensure
27 that the DNA record in the state DNA identification database, and any samples, analyses, or other
28 documents relating to such record, whether in the possession of the division, or any law
29 enforcement or police agency, or any forensic DNA laboratory, including any duplicates or
30 copies thereof are destroyed, including any records from CODIS. The director of health shall also
31 adopt by rule and regulation a procedure for the expungement in other appropriate circumstances
32 of DNA records contained in the database.

33 (e) No expungement shall be granted where an individual has a prior conviction requiring
34 a DNA sample, or a pending charge for which collection of a sample was authorized pursuant to

1 [the provisions of this chapter.](#)

2 [\(f\) The detention, arrest, or conviction of a person based upon a database match or](#)
3 [database information is not invalidated if it is determined that the sample was obtained or placed](#)
4 [in the database by mistake. Any identification, warrant, or probable cause to arrest based upon a](#)
5 [database match is not invalidated due to a failure to expunge or a delay in expunging records.](#)

6 ~~**12-1.5-17. Convicted persons -- Refusal to give DNA sample**~~**Bailed and convicted**
7 **persons – Refusal to give DNA sample. --** Any person who is required to have a DNA sample
8 taken [after having been arrested and charged with any crime of violence as defined in section 12-](#)
9 [1.5-2 or convicted of any felony](#), who refuses to do so, and who knowingly violently resists the
10 taking of a DNA sample duly authorized by medical personnel, shall be in violation of the terms
11 of his or her release, regardless of whether or not the term was a special condition of his or her
12 [bail](#), release on probation, parole, or home confinement or other form of supervised release.

13 SECTION 2. Chapter 12-1.5 of the General Laws entitled "DNA Detection of Sexual and
14 Violent Offenders" is hereby amended by adding thereto the following section:

15 **12-1.5-19. Limitation on liability. --** [Persons authorized to collect DNA samples shall](#)
16 [not be civilly or criminally liable for the collection of a DNA sample pursuant to this chapter if](#)
17 [they perform these duties in good faith and in a reasonable manner according to generally](#)
18 [accepted medical or other professional practices.](#)

19 SECTION 3. This act shall take effect on January 1, 2014.

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

8 This act would take effect on January 1, 2014.

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