

2014 -- H 7304 SUBSTITUTE A AS AMENDED

=====
LC004027/SUB A
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

—————
A N A C T

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

Introduced By: Representatives Kennedy, E Coderre, Chippendale, Palumbo, and
Williams

Date Introduced: January 30, 2014

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
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 § 12-
14 1.5-2, or convicted of certain sexual and violent offenses, or convicted of any felony as defined in
15 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 § 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 § 12-1.5-2 or convicted of a
8 crime of violence as defined in section 11-47-2, or convicted of any felony as defined in the
9 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 § 12-1.5-2 and/or convicted offenders required to provide a
3 DNA sample under state law, and anonymous DNA records used for research, quality control,
4 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 § 12-1.5-2 and convicted
17 ~~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 § 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 § 12-1.5-2 and/or convicted of or sentenced ~~to a period of probation for any~~
28 ~~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~~
29 ~~11-23-3, for any crime of violence as defined in section 11-47-2 for offenses committed after July~~
30 ~~1, 2001, and for any felony as defined in the general laws of Rhode Island~~ for any felony.

31 **12-1.5-8. ~~DNA sample required upon conviction~~ DNA sample required upon arrest**
32 **or conviction for any crime of violence.** -- (a) Every person arrested for a crime of violence as
33 defined in § 12-1.5-2, who pleads guilty or nolo contendere, or is convicted of ~~an offense as listed~~
34 ~~in section 12-1.5-7 after June 29, 1998, any felony~~ shall have a DNA sample taken for analysis as

1 follows:

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

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

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

16 (1) The DNA sample shall be submitted by the arresting authority to the department of
17 health. The department of health shall not test or place the sample in the statewide DNA database
18 prior to arraignment unless one of the following conditions has been met:

19 (i) The arrestee appeared before any judicial officer for an arraignment and the judicial
20 officer made a finding that there was probable cause for the arrest; or

21 (ii) The defendant was released and then failed to appear for the initial hearing, or
22 escaped custody prior to appearing before a judicial officer;

23 (2) If all qualifying criminal charges are determined to be unsupported by probable cause:

24 (i) The DNA sample shall be immediately destroyed; and

25 (ii) Notice shall be sent by the prosecuting authority to the defendant and counsel of
26 record for the defendant that the sample was destroyed.

27 (3) The arrestee requests or consents to having their DNA sample processed prior to
28 arraignment for the sole purpose of having the sample checked against a sample that has been
29 processed from the crime scene or the hospital, and is related to the charges against the person.

30 (4) A second DNA sample shall be taken if needed to obtain sufficient DNA for the
31 statewide DNA database system or if ordered by the court for good cause shown.

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

34 (d) The director of the department of health shall promulgate rules and regulations

1 governing the periodic review of the DNA identification database to determine whether or not the
2 database contains DNA profiles that should not be in the database, including the steps necessary
3 to expunge any profiles which the department determines should not be in the database.

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

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

9 **12-1.5-13. Expungement.** -- (a) A person whose DNA record or profile has been
10 included in the databank pursuant to this act may request expungement, on the grounds that the
11 conviction on which authority for including that person's DNA record or profile was based, has
12 been reversed. The department of health shall purge all records and identifiable information in the
13 database pertaining to the person and destroy all samples from the person upon receipt of a
14 written request for expungement pursuant to this section and a certified copy of the final court
15 order reversing the conviction. The department of health shall purge and destroy all records and
16 identifiable information in its database and all DNA samples taken pursuant to this chapter from
17 convicted persons upon official proof that the person has been deceased for a period of at least
18 three (3) years. Official proof shall include, but not be limited to, a certified copy of a death
19 certificate.

20 (b) If the offense for which a DNA sample has been taken pursuant to § 12-1.5-8(b) does
21 not result in a charge through information or indictment, or leads to voluntary dismissal of the
22 charge by the state, or dismissal by a court, or by a not guilty verdict after trial, or upon the
23 vacating or the reversal of a conviction in which the state does not retry the defendant or appeal
24 the decision, or loses such appeal upon hearing, or upon any plea or conviction of a lesser offense
25 that would not give rise to the mandatory sampling of the individual's DNA, the record or profile
26 shall be expunged from the state DNA identification database, regardless of any prior record for
27 which DNA sampling would not have been authorized, except pursuant to subsection (e) herein.

28 (1) The prosecuting authority shall, within thirty (30) days of an event listed in this
29 subsection, notify the department of health of such event for purposes of expunging the person's
30 DNA record and any samples, analyses, or other documents relating to the DNA testing of such
31 individual in connection with the investigation, arrest and/or prosecution of the crime which
32 resulted in the arrest of the person. The department shall, within thirty (30) days of receiving such
33 notification, destroy and expunge the person's DNA record and any samples, analyses, or other
34 documents relating to the DNA testing of such individual and shall notify the individual of such

1 action.

2 (c) Upon receipt of a written request for expungement from the person whose DNA
3 record or profile has been included in the database pursuant to this chapter and notification of the
4 completion of a program of diversion or the completion of the term of a sentence of deferment, or
5 of the granting of a pardon, the record or profile shall be expunged from the state DNA
6 identification database, regardless of any prior record for which DNA sampling would not have
7 been authorized, except pursuant to subsection (e) herein, and such individual may apply to the
8 court for an order directing the expungement of their DNA record and any samples, analyses, or
9 other documents relating to the DNA testing of such individual in connection with the
10 investigation, arrest and/or prosecution of the crime which resulted in the arrest of the person.

11 (d) A copy of the expungement motion shall be served on the attorney general and the
12 arresting police department with ten (10) days' notice prior to hearing, and an order directing
13 expungement shall be granted if the court finds any of the appropriate conditions of the prior
14 subsection are satisfied.

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

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

25 (g) The detention, arrest, or conviction of a person based upon a database match or
26 database information is not invalidated if it is determined that the sample was obtained or placed
27 in the database by mistake. Any identification, warrant, or probable cause to arrest based upon a
28 database match is not invalidated due to a failure to expunge or a delay in expunging records.

29 (h) At the time of collection of the DNA sample upon arrest of any crime of violence as
30 defined in § 12-1.5-2, the individual from whom a sample is collected shall be given written
31 notice that the DNA record may be expunged and the DNA sample destroyed in accordance with
32 this section. In addition, the department of health, the office of the attorney general, and the office
33 of the public defender shall post on their websites the expungement provisions of this section.

34 **12-1.5-17. ~~Convicted persons — Refusal to give DNA sample~~Bailed and convicted**

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

7 SECTION 2. This act shall take effect on July 1, 2015.

=====
LC004027/SUB A
=====

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

8 This act would take effect on July 1, 2015.

=====
LC004027/SUB A
=====