

Lawfully Owed DNA New Jersey

Last Updated: April 2023

Arrest

Question	Answer
Does the law require a DNA sample to be collected from an individual when they are arrested for a crime?	Yes, from adults and minors.
What crimes require collection of a DNA sample at arrest?	Aggravated sexual assault, sexual assault, and attempts to commit such crimes; Aggravated criminal sexual contact, criminal sexual contact, and attempts to commit such crimes; Murder; Manslaughter; Aggravated assault of the second degree; Kidnapping; Luring or enticing a child into a motor vehicle with a purpose to commit a criminal offense with or against the child. Required for every juvenile that is arrested for an act which, if committed by an adult, would constitute one of the above offenses.
Does the law mandate when the DNA sample must be collected after arrest?	Prior to arrestee's release or incarceration (and if not sentenced to a term of confinement, drawn / collected at prison or jail unit as specified by the sentencing court).
What agency collects the arrest DNA sample?	Arresting law enforcement agency.
What agency manages the analysis and preservation in the DNA database?	Division of State Police in the Department of Law and Public Safety

<p>Can the arrest DNA sample be expunged?</p>	<p>Upon application for expungement on the grounds that all charges from the arrest that provided the basis for DNA collection have been dismissed or resolved through acquittal at trial, or, if a juvenile, the adjudication that provided the basis for DNA collection has been reversed and the case dismissed.</p> <p>Any person found not guilty by reason of insanity, or adjudicated not delinquent by reason of insanity, whose DNA record or profile has been included in the State DNA database and whose DNA sample is stored in the State DNA databank may apply for expungement on the grounds that all charges resulting from the arrest that provided the basis for inclusion of the person's DNA record or profile in the State database or the inclusion of the person's DNA sample in the State databank have been dismissed or have been resolved through an acquittal at trial.</p> <p>If the entry in the database reflects more than one conviction or adjudication, that entry shall not be expunged unless and until the person or the juvenile adjudicated delinquent has obtained an order of expungement for each conviction or adjudication. If one of the bases for inclusion in the DNA database was other than conviction or adjudication, that entry shall not be subject to expungement.</p>
<p>Statutes</p>	<p>N.J. STAT. ANN. § 53:1-20.19 – DEFINITIONS REGARDING DNA DATABANKS</p> <p>§ 53:1-20.20 – DNA SAMPLES REQUIRED; CONDITIONS</p> <p>§ 53:1-20.22 – DRAWING OF DNA SAMPLES; CONDITIONS</p> <p>§ 53:1-20.24. USE OF STATE DATABASE</p> <p>§ 53:1-20.25 - EXPUNGEMENT OF RECORDS FROM STATE RECORDS; CONDITIONS</p> <p>P.L.2011, C. 104 – ARREST</p>

Conviction

Question	Answer
<p>Does the law require a DNA sample to be collected from the defendant when they are convicted of a crime?</p>	<p>Yes</p>

<p>What convictions require collection of a DNA sample?</p>	<p>Any "crime or a specified disorderly persons offense."</p> <p>Aggravated sexual assault, sexual assault, and attempts to commit such crimes;</p> <p>Aggravated criminal sexual contact, criminal sexual contact, and attempts to commit such crimes; including as to every juvenile adjudicated delinquent for an act which, if committed by an adult, would constitute aggravated sexual assault or sexual assault;</p> <p>Murder;</p> <p>Manslaughter;</p> <p>Aggravated assault of the second degree;</p> <p>Kidnapping;</p> <p>Luring or enticing a child into a motor vehicle with a purpose to commit a criminal offense with or against the child.</p> <p>Endangering the welfare of children.</p> <p>Attempt to commit any of the foregoing.</p> <p>Endangering the welfare of children.</p> <p>Attempt to commit any of the foregoing.</p>
<p>Does the law require DNA collection when a defendant is found not guilty by reason of insanity/mental defect/illness?</p>	<p>Yes. Collection of a blood sample or other biological sample still applies to any person found not guilty by reason of insanity of any of the offenses that triggers the statute, as well as being found "not guilty by reason of insanity of a crime or specified disorderly persons offense."</p>
<p>Does the law mandate when the DNAsample must be collected after conviction?</p>	<p>Each blood sample to be drawn from persons who are incarcerated shall be drawn or collected at the place of incarceration upon commencement of the period of confinement. DNA samples from persons who are not sentenced to a term of confinement shall be drawn or collected at a prison or jail unit to be specified by the sentencing court. DNA samples from persons who are adjudicated delinquent shall be drawn or collected at a prison or jail identification and classification bureau specified by the family court.</p>
<p>What agency collects the DNA sample after conviction?</p>	<p>Arresting law enforcement agency.</p> <p>However, only a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory or medical technician, phlebotomist or other health care worker with phlebotomy training shall draw any blood sample to be submitted for analysis, and only a correctional health nurse technician, physician, registered professional nurse, licensed practical</p>

	<p>nurse, laboratory or medical technician or person, including but not limited to a law enforcement officer, who has received biological sample collection training in accordance with protocols adopted by the Attorney General, in consultation with the Department of Corrections, shall collect or supervise the collection of any other biological sample to be submitted for analysis.</p>
<p>What agency manages the analysis and preservation in the DNA database?</p>	<p>Division of State Police in the Department of Law and Public Safety</p>
<p>Can the conviction DNA sample be expunged?</p>	<p>May apply for expungement on the grounds that the conviction that resulted in the inclusion of the person's DNA record or profile in the State database or the inclusion of the person's DNA sample in the State databank has been reversed and the case dismissed.</p> <p>Any person found not guilty by reason of insanity, or adjudicated not delinquent by reason of insanity, whose DNA record or profile has been included in the State DNA database and whose DNA sample is stored in the State DNA databank may apply for expungement on the grounds that the judgment that resulted in the inclusion of the person's DNA record or profile in the State database or the inclusion of the person's DNA sample in the State databank has been reversed and the case dismissed.</p> <p>If the entry in the database reflects more than one conviction or adjudication, that entry shall not be expunged unless and until the person or the juvenile adjudicated delinquent has obtained an order of expungement for each conviction or adjudication. If one of the bases for inclusion in the DNA database was other than conviction or adjudication, that entry shall not be subject to expungement.</p>
<p>Statutes</p>	<p>N.J. Stat. Ann. § 53:1-20.19 – Definitions regarding DNA databanks</p> <p>53:1-20.20 – DNA samples required; conditions</p> <p>53:1-20.22 – Drawing of DNA samples; conditions</p> <p>53:1-20.24. Use of State database</p> <p>53:1-20.25 - Expungement of records from State records; conditions</p> <p>Case Law:</p> <p><i>A.A. ex rel. B.A. v. Attorney Gen. of New Jersey</i>, 894 A.2d 31 (App. Div. 2006), <i>aff'd</i>, 914 A.2d 260 (2007) (The state's requirements for provision of DNA are constitutional.).</p> <p>Note that the law now applies "to person convicted of any crime." <i>State v. O'Hagen</i>, 380 N.J. Super. 133 (2005).</p> <p>Prior to its amendment in 2003, N.J.S.A. 53:1–20.20 required only those persons convicted of committing certain sexual offenses, or those persons convicted of murder, manslaughter or</p>

second-degree aggravated assault or the attempt to commit these offenses, to have a blood sample drawn for purposes of DNA testing. Following the 2003 amendment, the class of offenders for whom DNA testing is mandated was expanded. *State v. Vodrazka*, No. A-4379-10T1, 2012 WL 6163187, at *2 (N.J. Super. Ct. App. Div. Dec. 12, 2012).