

§§2,3 -
C.2A:84A-32c &
2A:84A-32d
§4 - Note

P.L.2014, CHAPTER 127, *approved November 9, 2015*
Assembly Substitute for
Assembly, No. 1678

1 AN ACT concerning DNA evidence, amending P.L.2001, c.377, and
2 supplementing Title 2A of the New Jersey Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.2001, c.377 (C.2A:84A-32a) is amended to
8 read as follows:

9 1. a. Any eligible person **【**who was convicted of a crime and is
10 currently serving a term of imprisonment**】** may make a motion
11 before the trial court that entered the judgment of conviction for the
12 performance of forensic DNA testing.

13 (1) The motion shall be verified by the **【**convicted**】** eligible
14 person under penalty of perjury and shall do all of the following:

15 (a) explain why the identity of the defendant was a significant
16 issue in the case;

17 (b) explain in light of all the evidence, how if the results of the
18 requested DNA testing are favorable to the defendant, a motion for
19 a new trial based upon newly discovered evidence would be
20 granted;

21 (c) explain whether DNA testing was done at any prior time,
22 whether the defendant objected to providing a biological sample for
23 DNA testing, and whether the defendant objected to the
24 admissibility of DNA testing evidence at trial. If evidence was
25 subjected to DNA or other forensic testing previously by either the
26 prosecution or the defense, the court shall order the prosecution or
27 defense to provide all parties and the court with access to the
28 laboratory reports, underlying data and laboratory notes prepared in
29 connection with the DNA testing;

30 (d) make every reasonable attempt to identify both the evidence
31 that should be tested and the specific type of DNA testing sought;
32 and

33 (e) include consent to provide a biological sample for DNA
34 testing.

35 (2) Notice of the motion shall be served on the Attorney
36 General, the prosecutor in the county of conviction, and if known,
37 the governmental agency or laboratory holding the evidence sought

EXPLANATION – Matter enclosed in bold-faced brackets **【thus**】** in the above bill is not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 to be tested. Responses, if any, shall be filed within 60 days of the
2 date on which the Attorney General and the prosecutor are served
3 with the motion, unless a continuance is granted. The Attorney
4 General or prosecutor may support the motion for DNA testing or
5 oppose it with a statement of reasons and may recommend to the
6 court that if any DNA testing is ordered, a particular type of testing
7 be conducted.

8 b. The court, in its discretion, may order a hearing on the
9 motion. The motion shall be heard by the judge who conducted the
10 trial unless the presiding judge determines that judge is unavailable.
11 Upon request of either party, the court may order, in the interest of
12 justice, that the **【convicted】 eligible person who is serving a term of**
13 **imprisonment at the time of the hearing** be present at the hearing of
14 the motion.

15 c. The court shall appoint counsel for the **【convicted】 eligible**
16 person who brings a motion pursuant to this section if that person is
17 indigent.

18 d. The court shall not grant the motion for DNA testing unless,
19 after conducting a hearing, it determines that all of the following
20 have been established:

21 (1) the evidence to be tested is available and in a condition that
22 would permit the DNA testing that is requested in the motion;

23 (2) the evidence to be tested has been subject to a chain of
24 custody sufficient to establish it has not been substituted, tampered
25 with, replaced or altered in any material aspect;

26 (3) the identity of the defendant was a significant issue in the
27 case;

28 (4) the **【convicted】 eligible** person has made a prima facie
29 showing that the evidence sought to be tested is material to the issue
30 of the **【convicted】 eligible** person's identity as the offender;

31 (5) the requested DNA testing result would raise a reasonable
32 probability that if the results were favorable to the defendant, a
33 motion for a new trial based upon newly discovered evidence would
34 be granted. The court in its discretion may consider any evidence
35 whether or not it was introduced at trial;

36 (6) the evidence sought to be tested meets either of the
37 following conditions:

38 (a) it was not tested previously;

39 (b) it was tested previously, but the requested DNA test would
40 provide results that are reasonably more discriminating and
41 probative of the identity of the offender or have a reasonable
42 probability of contradicting prior test results;

43 (7) the testing requested employs a method generally accepted
44 within the relevant scientific community; and

45 (8) the motion is not made solely for the purpose of delay.

- 1 e. If the court grants the motion for DNA testing, the court
2 order shall identify the specific evidence to be tested and the DNA
3 technology to be used.
- 4 (1) If the parties agree upon a mutually acceptable laboratory
5 that is accredited by **【the American Society of Crime Laboratory**
6 **Directors Laboratory Accreditation Board or a laboratory that has a**
7 **certificate of compliance with national standards issued pursuant**
8 **to】** a nonprofit professional association of persons actively involved
9 in forensic science that is nationally recognized within the forensic
10 science community and approved by the Director of the Federal
11 Bureau of Investigation in accordance with the provisions of the
12 Federal DNA Identification Act, 42 U.S.C.A. s.14131 **【from the**
13 **National Forensic Science Technology Center】**, the testing shall be
14 conducted by that laboratory.
- 15 (2) If the parties fail to agree, the testing shall be conducted by
16 the New Jersey State Police Office of Forensic **【Science】** Sciences
17 Laboratory. For good cause shown, however, the court may,
18 subject to the provisions of section of P.L. , c. (C.)
19 (pending before the Legislature as this bill), direct the evidence to
20 an alternative laboratory that is accredited by **【the American**
21 **Society of Crime Laboratory Directors Laboratory Accreditation**
22 **Board or a laboratory that has a certificate of compliance with**
23 **national standards issued pursuant to】** a nonprofit professional
24 association of persons actively involved in forensic science that is
25 nationally recognized within the forensic science community and
26 approved by the Director of the Federal Bureau of Investigation in
27 accordance with the provisions of the Federal DNA Identification
28 Act, 42 U.S.C.A. s.14131 **【from the National Forensic Science**
29 **Technology Center】**.
- 30 f. The result of any testing ordered pursuant to this section
31 shall be fully disclosed to the person filing the motion, the
32 prosecutor and the Attorney General. If requested by any party, the
33 court shall order production of the underlying laboratory data and
34 notes.
- 35 g. The costs of the DNA testing ordered pursuant to this
36 section shall be borne by the **【convicted】** eligible person.
- 37 h. An order granting or denying a motion for DNA testing
38 pursuant to this section may be appealed, pursuant to the Rules of
39 Court.
- 40 i. DNA testing ordered by the court pursuant to this section
41 shall be done as soon as practicable.
- 42 j. DNA profile information from biological samples taken
43 from **【a convicted】** an eligible person pursuant to a motion for post-
44 conviction DNA testing in accordance with the provisions of this
45 section shall be treated as confidential and shall not be deemed a
46 public record under P.L.1963, c.73 (C.47:1A-1 et seq.) or the

1 common law concerning access to public records; except as
2 provided in section 2 of P.L.2001, c.377 (C.53:1-20.37).

3 k. As used in this act **【the terms】** and in P.L. , c. (C.)
4 (pending before the Legislature as this bill):

5 "DNA," "DNA sample," "State DNA databank," "CODIS" and
6 "FBI" shall have the meaning set forth in section 3 of P.L.1994,
7 c.136 (C.53:1-20.19).

8 "NDIS-participating laboratory" is a laboratory that has been
9 designated to operate CODIS and participate in the National and
10 State DNA Index System.

11 l. If evidence tested at a non-NDIS-participating laboratory
12 pursuant to this section reveals a DNA profile that is not that of the
13 eligible person or the victim, the court shall direct the prosecuting
14 agency appearing on the motion to request that the New Jersey State
15 Police Office of Forensic Services DNA Laboratory or other NDIS-
16 participating laboratory involved in the matter submit the profile to
17 CODIS, if the requirements and prerequisites for acceptance and
18 submission are met, to determine whether it matches a DNA profile
19 of a known individual or a DNA profile from an unsolved crime.

20 m. An eligible person may file a motion for the performance of
21 forensic DNA testing with the trial court that entered the judgment
22 of conviction. The motion may be considered in accordance with
23 the provisions of this section only if the court finds just cause to
24 hear the motion.

25 For a person who was convicted of a crime and is serving a
26 sentence imposed for that criminal conviction, a determination of just
27 cause shall be based on a reasonable probability that, if the results of
28 the requested DNA testing were favorable, a motion for a new trial
29 based on newly discovered evidence would be granted.

30 For a person who has been convicted of a crime and has completed
31 serving the sentence for that conviction, a determination of just cause
32 shall be based on a significant likelihood that, if the results of the
33 requested DNA testing were favorable, a motion for a new trial based
34 on newly discovered evidence would be granted.

35 n. For the purposes of this section, "eligible person" means a
36 person who was convicted of a crime:

37 (1) and is currently serving a sentence imposed for that criminal
38 conviction which includes a period of imprisonment; or

39 (2) who has completed serving the sentence for that conviction
40 and demonstrates just cause as established in subsection m. of this
41 section.

42 (cf: P.L.2001, c.377, s.1)

43

44 2. (New section) a. If a party seeks to conduct DNA testing at
45 an accredited non-NDIS participating laboratory that otherwise

1 meets the requirements set forth in paragraphs (1) and (2) of
2 subsection e. of section 1 of P.L.2001, c.377 (C.2A:84A-32a) and
3 the party seeks to submit the DNA profile information to CODIS in
4 accordance with subsection l. of section 1 of P.L. 2001, c.377
5 (C.2A:84A-32a) the party, upon notice to the Attorney General and
6 to the NDIS-participating laboratory, may request the court to order
7 the NDIS-participating laboratory within the State to evaluate
8 whether the laboratory at which the party seeks to conduct DNA
9 testing is in compliance with the FBI Quality Assurance Standards
10 for Forensic DNA Testing Laboratories for the purpose of
11 uploading crime scene profiles to CODIS. The Attorney General
12 may appear on the motion on his own behalf or on behalf of the
13 NDIS-participating laboratory, if that laboratory is a public entity.

14 b. The court may order the NDIS-participating laboratory to
15 conduct an evaluation pursuant to subsection b. of this section only
16 if the court finds that the moving party clearly demonstrates:

17 (1) the New Jersey State Police Office of Forensic Sciences
18 DNA Laboratory is not able to, or for practical reasons has
19 determined not to, perform the specific testing and analysis sought
20 by the moving party, or that its performance of the testing and
21 analysis would not be substantially equivalent to that of the other
22 laboratory, or that the testing would not otherwise be appropriate;

23 (2) there is a significant likelihood that, if the results of the
24 requested DNA testing were favorable to the moving party, a
25 motion for a new trial based upon newly discovered evidence would
26 be granted;

27 (3) requiring the NDIS-participating laboratory to conduct the
28 evaluation will not delay investigations or unduly burden the
29 resources of the New Jersey State Police Office of Forensic
30 Sciences DNA Laboratory or other NDIS-participating laboratory
31 that may be involved in the matter; and

32 (4) if an evaluation were undertaken, there would be a reasonable
33 likelihood that the results of the evaluation would conclude in a
34 finding by the NDIS-participating laboratory that the laboratory at
35 which the party seeks to conduct DNA testing is in compliance with
36 the FBI Quality Assurance Standards for Forensic DNA Testing
37 Laboratories for the purpose of uploading crime scene profiles to
38 CODIS, and that the results of that laboratory's DNA testing, if a
39 DNA profile is generated, would comply with federal requirements
40 for inclusion in CODIS.

41 c. If the court orders an evaluation pursuant to subsection b. of
42 this section, within 120 days of receiving the court's order, the
43 NDIS-participating laboratory shall complete the pre-approval

1 process to determine if the non-NDIS-participating laboratory at
2 which the party is seeks to conduct DNA testing is in compliance
3 with FBI Quality Assurance Standards for Forensic DNA Testing
4 Laboratories, by obtaining and reviewing the records of an on-site
5 visit and assessment conducted by the FBI or another NDIS-
6 participating laboratory. If an on-site visit and assessment have not
7 been conducted within the time frames required by federal law or
8 the laboratory does not comply with other applicable standards, or
9 the results of an on-site visit and assessment are unavailable, the
10 NDIS-participating laboratory may, within the limits of available
11 resources, conduct its own on-site visit and assessment of the
12 laboratory at which the party seeks to conduct DNA testing,
13 provided that the laboratory agrees to cooperate with the on-site
14 visit and assessment and the moving party bears the costs associated
15 with the on-site visit and assessment.

16 d. In the event that the requirements set forth in the FBI Quality
17 Assurance Standards for Forensic DNA Testing Laboratories
18 following the effective date of P.L. , c. (C.) (pending
19 before the Legislature as this bill) are amended or otherwise
20 superseded, the NDIS-participating laboratory shall complete such
21 other process as may be prescribed for the assessment of non-NDIS-
22 participating laboratories.

23 e. A determination by the NDIS-participating laboratory as to
24 whether the laboratory at which the party seeks to conduct DNA
25 testing is in compliance with FBI Quality Assurance Standards for
26 Forensic DNA Testing Laboratories shall not be subject to judicial
27 review.

28

29 3. (New section) Nothing in P.L. , c. (C.) (pending
30 before the Legislature as this bill) shall be construed to:

31 a. create a right, obligation, or requirement regarding the
32 preservation of evidence, including evidence that may contain a
33 biological sample;

34 b. provide a basis for a remedy or cause of action based on a
35 failure to preserve or retain evidence, including evidence that may
36 contain a biological sample; or

37 c. affect or modify the Guidelines for the Retention of Evidence
38 promulgated by the Attorney General and any successor guidelines
39 or directives promulgated or issued by the Attorney General.

40

41 4. This act shall take effect on the first day of the fourth month
42 next following the date of enactment.

STATEMENT

1

2 The Assembly Substitute for Assembly Bill No. 1678: (1)
3 provides for certain forensic DNA evidence obtained from a crime
4 scene to be submitted to the Combined DNA Index System
5 (CODIS) for testing, (2) authorizes the court to order the evaluation
6 of certain laboratories for compliance with certain Federal Bureau
7 of Investigation (FBI) standards, and (3) allows certain eligible
8 persons who were convicted of a crime to request forensic DNA
9 testing.

10 *MOTION BY PERSON CONVICTED OF A CRIME:* Currently, under
11 section 1 of P.L.2001, c.377 (C.2A:84A-32a), any person who has
12 been convicted of a crime and is serving a term of imprisonment
13 may make a motion before the court for forensic DNA testing.
14 Under the substitute, a person who has completed a term of
15 incarceration and demonstrates just cause also may make a motion
16 for forensic DNA testing. A court may find that just cause exists
17 when there is a “significant likelihood” that, if the results of the
18 DNA testing were favorable to the person, a motion for a new trial
19 based upon newly discovered evidence would be granted.

20 The substitute sets a lower standard for a person serving a term
21 of imprisonment at the time the motion is made with the court for
22 forensic DNA testing. Under the substitute, a court may find that
23 just cause exists when there is a “reasonable probability” that, if the
24 results of the DNA testing were favorable to the person, a motion
25 for a new trial based upon newly discovered evidence would be
26 granted.

27 *FORENSIC DNA TESTING AND CODIS:* The Combined DNA Index
28 System (CODIS) is a software program that operates national, state,
29 and local level databases of DNA profiles from convicted offenders,
30 missing persons, and unsolved crime scene evidence. Data stored at
31 the national level is kept in the National DNA Index System
32 (NDIS). An NDIS-laboratory is one that has been designated to
33 operate the State DNA Index System and participate in the National
34 DNA Index System and CODIS.

35 Under federal law, forensic DNA analysis may be conducted by
36 either an “NDIS” laboratory or an accredited non-NDIS laboratory.
37 However, the accredited non-NDIS laboratory is required to comply
38 with certain additional conditions if the samples are to be uploaded
39 to CODIS for a search for potential DNA matches.

40 Under this substitute, if evidence tested at a non-NDIS
41 laboratory reveals a DNA profile that is not the convicted person or
42 a victim, a court is authorized to direct the prosecuting authority to
43 request the State Police forensic DNA laboratory or other NDIS-
44 participating laboratory to submit DNA evidence to CODIS in order
45 to determine whether the evidence matches a DNA profile from an
46 unsolved crime or of a known individual.

1 *EVALUATION OF NON-NDIS LABORATORIES* Because non-
2 NDIS laboratories do not have direct access to the CODIS database,
3 any DNA profiles they produce can be uploaded to the system only
4 with the assistance of an NDIS laboratory. Additionally, before
5 testing any samples in a particular case, the non-NDIS laboratory is
6 required to be evaluated by an NDIS laboratory and receive pre-
7 approval for samples to be eligible for uploading to CODIS for a
8 search for potential matches. Currently, if DNA samples are tested
9 by an accredited laboratory which has not been pre-approved by an
10 NDIS laboratory, the results of the testing may be used in court, but
11 may not be uploaded to CODIS for a search for potential matches.

12 Under this substitute, if a party seeks to conduct DNA analysis at
13 a non-NDIS laboratory that otherwise meets the accreditation
14 requirements set forth in section 1 of P.L.2001, c.377 (C.2A:84A-
15 32a), and the party seeks to order a CODIS search, that party may
16 request the court to order the NDIS laboratory to evaluate the non-
17 NDIS laboratory. Prior to requesting the CODIS search, the party is
18 required to notify the Attorney General and the NDIS laboratory
19 that would be conducting the evaluation. The substitute permits the
20 Attorney General to appear on the motion on his own behalf or the
21 behalf of the NDIS laboratory, if the laboratory is a public entity.

22 If the court grants the motion, within 120 days of receiving the
23 court order, the NDIS laboratory will be required to complete the
24 pre-approval process to determine if the non-NDIS laboratory is in
25 compliance with the FBI standards by obtaining and reviewing the
26 records of an on-site visit conducted by the FBI or another NDIS
27 laboratory. If an on-site visit and assessment have not been
28 conducted within the federally required time frames or the non-
29 NDIS laboratory does not comply with other applicable standards,
30 or the results of an on-site visit and assessment are unavailable, the
31 NDIS-participating laboratory may conduct its own on-site visit.

32 Under the substitute, a determination by the NDIS laboratory as
33 to whether the laboratory at which the party seeks to conduct DNA
34 testing is in compliance with the FBI standards would not be subject
35 to judicial review. The substitute further provides that if the FBI
36 requirements are amended or superseded, the NDIS laboratory will
37 be required to complete any other process as may be prescribed for
38 the assessment.

39 *INTERPRETATION AND IMPLEMENTATION:* The substitute provides
40 that its provisions are not to be construed to create a right,
41 obligation, or requirement regarding the preservation of evidence,
42 or to provide a basis for a remedy or cause of action based on a
43 failure to preserve or retain evidence. The substitute further
44 provides that its provisions are not to be construed to affect or
45 modify the Guidelines for the Retention of Evidence, and any
46 successor guidelines, promulgated by the Attorney General.

1
2 Authorizes court to order submission of DNA evidence to
3 national database to determine whether evidence matches known
4 individual or DNA profile from an unsolved crime.