

CHAPTER 81**DNA DATABASE AND DATABANK RULES****Authority**

N.J.S.A. 53:1-20.17 et seq.

Source and Effective Date

R.2007 d.336, effective December 3, 2007.
See: 39 N.J.R. 606(a), 39 N.J.R. 5091(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 81, DNA Database and Databank Rules, expires on June 1, 2015. See: 47 N.J.R. 78(a).

Chapter Historical Note

Chapter 81, 9-1-1 Emergency Telephone System, was adopted as R.1990 d.392, effective August 6, 1990. See: 22 N.J.R. 1234(a), 22 N.J.R. 2332(a).

Pursuant to Executive Order No. 66(1978), Chapter 81, 9-1-1 Emergency Telephone System, was readopted as R.1995 d.478, effective August 3, 1995. See: 27 N.J.R. 2539(a), 27 N.J.R. 3376(a).

Pursuant to Executive Order No. 66(1978), Chapter 81, 9-1-1 Emergency Telephone System, was readopted as R.2000 d.350, effective July 31, 2000, and was recodified to N.J.A.C. 17:24 by R.2000 d.350, effective August 21, 2000. See: 32 N.J.R. 1912(a), 32 N.J.R. 3174(b).

Chapter 81, DNA Database and Databank Rules, was adopted as new rules by R.2007 d.336, effective December 3, 2007. See: Source and Effective Date.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 81, DNA Database and Databank Rules, was scheduled to expire on December 3, 2014. See: 43 N.J.R. 1203(a).

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APPENDIX A**APPENDIX B****SUBCHAPTER 1. GENERAL PROVISIONS****13:81-1.1 Purpose and scope**

(a) This chapter establishes procedures to be used in the submission, identification, analysis and storage of DNA samples and typing results of DNA samples submitted under the "DNA Database and Databank Act of 1994," N.J.S.A. 53:1-20.17 et seq. (hereinafter, "the DNA Act"). This chapter also establishes rules governing the methods of obtaining DNA Act information from the State database and CODIS and procedures for verification of the identity and authority of the requester. These rules shall be read and interpreted consistent with the provisions of the DNA Act. If a topic is not addressed in these rules, reference shall be made to the DNA Act.

(b) It is the goal of the DNA Act to assist Federal, State and local criminal justice and law enforcement agencies in the identification, detection or exclusion of individuals who are the subjects of criminal investigations or prosecution. Identification, detection and exclusion may be facilitated by the DNA analysis of biological evidence left by the perpetrator of a crime and recovered from the crime scene.

13:81-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"AFIS" means the Automated Fingerprint Identification System, which is a computerized database allowing for the search, retrieval and comparison of fingerprints on record at the New Jersey State Police with those fingerprints obtained from other sources.

"Buccal swab" means a cotton swab or a specialized applicator with a sponge or foam tip, which is rubbed on the inside of the cheek to collect epithelial cells. This procedure is non-invasive and pain free.

"CODIS" means the FBI's national DNA identification index system that allows storage and exchange of DNA profiles submitted by state and local forensic DNA laboratories. The term is derived from "Combined DNA Index System." The NDIS, SDIS, and where applicable, the Local DNA Index System (LDIS - for states that have county or municipal labs that feed up to a state CODIS laboratory) together comprise

CODIS. CODIS comprises a series of software programs containing a collection of data files that permit comparison of biological evidence recovered at crime scenes to other crime scenes and to DNA profiles of known offenders. The system has two main data files, referred to as indices, to accomplish this task. The Forensic Index contains the DNA profiles developed from biological evidence recovered at crime scenes. The Convicted Offender Index consists of DNA profiles developed from known samples taken from qualifying offenders. Each individual state is charged with determining qualifying offenders for CODIS inclusion. The Forensic Index and the Convicted Offender Index are searched against each other, and investigative leads are generated. The Forensic Index is searched against itself, whereby matches link crime scenes.

“CODIS Compliance Unit” (CCU) means the unit within the Law Enforcement Services Bureau of the Division of Criminal Justice that oversees and tracks DNA sample collection, enters information from the DNA databank specimen submission forms into the CCU database, and represents the State of New Jersey in litigation involving the DNA Act. The CCU is responsible for training DNA collectors throughout the State in the buccal cell collection technique.

“CODIS manager” means the person who works within the CODIS Unit of the New Jersey State Police Forensic Science Technology Center and is responsible for the uploading of data from SDIS to NDIS. The CODIS manager is responsible for supervising the quality of the work entered into the database and for seeing that the laboratory follows all applicable quality assurance procedures.

“Core loci” means the 13 specific regions on the human genome at which the tetranucleotide repeats, also referred to as STRS (short tandem repeats), are measured for inclusion in CODIS.

“Division of Criminal Justice” means the New Jersey Division of Criminal Justice established by N.J.S.A. 52:17B-99.

“DNA” means deoxyribonucleic acid. DNA is a chemical substance contained in cells, and provides a unique forensic identification of an individual (except in the case of identical twins).

“DNA Act” means New Jersey’s DNA Database and Databank Act of 1994, N.J.S.A. 53:1-20.17 et seq., and any subsequent amendments to the Act.

“DNA analysis” means the process of testing performed on a DNA sample to determine the DNA profile of the individual.

“DNA databank” means the repository of DNA samples collected and maintained under New Jersey’s DNA Act.

“DNA databank specimen submission form” serves as the chain of custody form and informational sheet for the DNA sample collection. This card is completed when the DNA sample is collected.

“DNA database” means the repository of DNA profiles collected under New Jersey’s DNA Act. It is administered by the New Jersey State Police Forensic DNA Laboratory and provides DNA profiles to the FBI for storage and maintenance in CODIS.

“DNA profile” means the set of DNA identification characteristics, that is, the particular chemical form at the various core loci, which permit the DNA of one person to be distinguished from that of another person.

“DNA sample” means a blood or other biological sample provided by any person with respect to offenses covered by the DNA Act.

“FBI” means the Federal Bureau of Investigation.

“Laboratory” means the New Jersey State Police Office of Forensic Sciences DNA Laboratory, which includes the CODIS Unit. The CODIS Unit receives and maintains the DNA samples, analyzes samples in-house, sends samples out for analysis, verifies analyses, and inputs the DNA profiles into the CODIS system. The New Jersey State Police Forensic Science Technology Center is the State CODIS Laboratory in New Jersey.

“NDIS” means the National DNA Index System, which is the system administered by the FBI that is comprised of DNA identification records contributed by the various participating SDISs. NDIS compares DNA profiles associated with a crime scene to DNA profiles collected from known convicted offenders, as well as to other crime scene profiles. When the DNA profiles are uploaded to NDIS, they are searched against the other DNA profiles submitted by other participating states.

“Offender” means persons, including juveniles, who meet the criteria in N.J.S.A. 53:1-20.20 and subsequent amendments thereto as enumerated in N.J.A.C. 13:81-1.4(a).

“Sample collection kit” means the kit containing instructions and sample collection card provided by the Division of Criminal Justice for the collection of DNA samples.

“SBI number” means the State Bureau of Identification number assigned to each individual whose fingerprints are placed into AFIS. The SBI number is used to track individuals for crimes that they commit, no matter how many subsequent fingerprint cards are submitted.

“SDIS” means the State DNA Index System, which is an individual state DNA profile system comprised of the DNA profiles of the qualifying offenders of that state and DNA profiles from crime scenes. The SDIS Laboratory serves as the central point of contact for access to NDIS.

“Upload” means the digital transfer of DNA profile data between systems at different levels (for example, LDIS to SDIS or SDIS to NDIS). The transfer is from a lower level (LDIS, SDIS) to a higher level (SDIS, NDIS).

13:81-1.3 Applicability

These rules apply to the DNA samples taken from offenders for offenses covered in N.J.S.A. 53:1-20.20.

13:81-1.4 Offenders' obligation to submit DNA samples

(a) The obligation to submit a DNA sample shall be imposed upon:

1. Every person convicted on or after January 1, 1995, of aggravated sexual assault, sexual assault, aggravated criminal sexual contact, and criminal sexual contact or an attempt to commit any of these crimes and those who were convicted and incarcerated as a result of a conviction of these offenses prior to January 1, 1995 if, on that date, the person was incarcerated or on parole;

2. Every juvenile adjudicated delinquent on or after January 1, 1998, for acts, which if committed by an adult, would constitute one of the offenses set forth in (a)1 above, and persons found not guilty by reason of insanity of one of the offenses set forth in (a)1 above;

3. Every person convicted, adjudicated delinquent, or found not guilty by reason of insanity on or after January 1, 2000, of murder, manslaughter, aggravated assault pursuant to paragraph (1) or (6) of subsection b of N.J.S.A. 2C:12-1, kidnapping, luring or enticing a child, engaging in sexual conduct which would impair or debauch the morals of a child, or an attempt to commit any of these crimes and those who were convicted and incarcerated as a result of a conviction of these offenses prior to January 1, 2000, if on that date the person was incarcerated or on parole; and

4. Persons who are convicted on or after September 22, 2003 of crimes, or in the case of juveniles adjudicated delinquent for acts, which if committed by adults would constitute crimes, or found not guilty by reason of insanity of crimes and such persons whose judgments preceded September 22, 2003, if, on that date, they were serving a sentence of imprisonment, probation, parole, or other form of supervision.

(b) If the offender is sentenced to a term of imprisonment, detention, or confinement, the offender shall have the obligation to submit a DNA sample upon commencement of the period of imprisonment, detention, or confinement. If the offender is not sentenced to a term of imprisonment, detention, or confinement, the offender shall have the obligation to submit a DNA sample as a condition of the sentence or adjudication imposed. An offender who has been convicted, adjudicated delinquent, or found not guilty by reason of insanity of a crime prior to September 22, 2003, and who, on that date, is serving a sentence or adjudication of imprisonment, probation, parole or other form of supervision as a result of the crime or delinquent conduct or is confined following acquittal by reason of insanity shall have the obligation to provide a DNA sample before termination of imprisonment, probation, parole, supervision or confinement, as the case may be. The termination of imprisonment, probation,

parole, supervision or confinement, as the case may be, shall not relieve an offender of this obligation if prior thereto the offender did not submit a DNA sample or if the DNA sample or identification information is found to be inadequate for DNA analysis or identification.

(c) If an offender refuses to provide a DNA sample, the collector shall immediately contact the CCU. If such offender has been just sentenced, the collector shall immediately transport the offender back to the sentencing judge, if it is reasonably feasible to do so. If it is not feasible to do so, the collector shall refer the matter to the CCU and appropriate action shall be taken to compel the DNA sample from the offender.

SUBCHAPTER 2. COLLECTING DNA**13:81-2.1 Submission and identification**

(a) All buccal swab DNA samples shall be collected by individuals trained under the protocols established by the Division of Criminal Justice, utilizing the collection protocol prescribed in the "Instructions for State of New Jersey DNA Databank Convicted Offender DNA Collection Kit," version 8/15/07, set forth in Chapter Appendix A and incorporated herein by reference. Such samples shall be taken using only the sample collection kit approved and provided by the Division of Criminal Justice.

(b) Only one offender shall be processed at a time to avoid potential mislabeling or misidentification of the samples.

(c) The offender providing a DNA sample shall be positively identified, using photograph identification or other identification, by the agency responsible for collecting the sample prior to taking the biological specimen from such offender. The collecting agency shall utilize the New Jersey State Police Master Name Index to locate, if necessary, and to verify the offender's SBI number and also to ascertain the status of the DNA flag. No sample may be taken if the flag indicates by a "Y" that a sample previously was taken from the offender. As part of the verification process, the collector shall also use the Fast ID system, if it is available, which provides almost instantaneous comparison of the offender's fingerprints with those on record at the New Jersey State Police. If an offender does not have an assigned SBI number at the time of collection or if the collector is unable to locate or verify an SBI number, a criminal inquiry through live scan, if available, shall be conducted. If a live scan is not available or does not within a reasonable time provide an SBI number, then a 10-print criminal arrest fingerprint card shall be completed.

(d) When positive identification of the offender is accomplished, the DNA databank specimen submission form shall be completed, providing the information requested on the form as prescribed in the "Instructions for State of New

Jersey DNA Databank Specimen Submission Form,” version 8/15/07, set forth in Chapter Appendix B and incorporated herein by reference. If an offender refuses to sign the form, the collector shall write “refused” on the signature line.

(e) The offender’s obligation to provide a sample shall be deemed to include the obligation to provide fingerprints or other identifying indicators. The imprinting of the offender’s right and left index fingers, by means of an inked impression, in the spaces indicated on the DNA databank specimen submission form shall be completed. If a 10-print criminal arrest fingerprint card is being submitted in lieu of an SBI number, or if the collector is using the Fast ID system, the offender still must be fingerprinted as indicated on the submission form. If the Fast ID indicates “match,” the first box on the fingerprint verification portion of the form shall be checked, initialed and dated. In the event that no fingerprinting is possible due to absence of fingers or hands or any other reason, this fact shall be indicated in the space provided for recording the fingerprint and, if possible, toe prints shall be taken.

(f) The primary method of sample collection in New Jersey shall be by buccal swabbing using the standardized sample collection kit as supplied by the Division of Criminal Justice. The DNA sample shall be taken by inserting the applicator between the teeth and cheek of the offender and rubbing the applicator against each cheek, and then placing the swab under the tongue for 10 seconds. The wet swab shall then be pressed and rolled on the sample collection card, which will change color when the sample has been transferred from the swab to the card. The sample collection card, together with a completed submission form containing the biographical data of the offender and plain impression prints of the offender’s index fingers shall be sent to the New Jersey State Police Forensic Laboratory.

(g) Blood samples shall be taken only when a DNA sample must be obtained by force, which shall occur only pursuant to court order, or when the Department of Health and Senior Services, which supervises those found not guilty by reason of insanity, elects to take a blood sample. The offender’s finger shall be pricked while he or she is restrained, and a blood sample shall be obtained using the blood specimen collection kit.

(h) A blood sample shall be drawn by a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory or medical technician, phlebotomist, or other health worker with phlebotomy training using medically-approved procedures.

(i) The labeling, handling and transmittal of the biological sample collected shall be as prescribed in the “Instructions for State of New Jersey DNA Databank Convicted Offender DNA Collection Kit,” version 8/15/07, set forth in Chapter Appendix A. The mailing envelope shall be mailed or delivered to the Laboratory.

(j) Collection of DNA samples shall be overseen and tracked by the CCU.

(k) The CCU shall effect arrangements for the collection of samples from qualified offenders when custody is maintained by private or out-of-State, probation, parole or correction facilities.

13:81-2.2 Handling and security of samples

(a) The receipt of the samples shall be under the supervision of the authorized personnel assigned to the Laboratory.

(b) Upon submission of the sample collection kit to the Laboratory, authorized personnel assigned by the Laboratory shall scan it in to the Laboratory Information Management System (LIMS) by bar code number that does not include any personal identification information from the offender.

(c) All DNA sample kits must be received in a sealed condition. If the kit is not sealed upon receipt, authorized personnel assigned by the Laboratory shall notify the CODIS manager.

(d) The decision whether to accept or reject the sample shall be made by the CODIS manager. The decision shall be documented, and justification for rejection shall also be documented.

(e) The DNA databank specimen form shall be verified in the State Police Records and Identification Unit. A qualified fingerprint examiner shall verify the identity of the offender through AFIS. The fingerprint examiner shall document the findings. No verification is required if the offender’s fingerprints were verified by the collector using the Fast ID system. If fingerprints cannot be verified through the normal verification process due to physical limitations on the part of the offender, verification shall be accomplished through other means, such as a photograph identification procedure duly certified by the collector.

(f) If the fingerprints on file do not match the offender or are inadequate for successful identification, appropriate personnel at AFIS shall notify the CCU, which will take appropriate action to secure another DNA sample from the offender, who shall have the obligation to cooperate in submission.

(g) In the event a sample is lost or destroyed or otherwise found inadequate for analysis or identification purposes, the offender shall be obligated to provide a substitute sample.

(h) The sample collection card containing the DNA sample shall be placed in an appropriate secured storage area until analysis is performed. The Laboratory shall maintain an internal chain of custody to track the sample throughout its storage and analysis.

(i) The information on the DNA databank specimen submission form shall be forwarded to the CCU for further verification, data entry, and tracking.

SUBCHAPTER 3. TESTING DNA

13:81-3.1 Sample processing and analysis

(a) All DNA samples received by the Laboratory for DNA analysis shall be processed and analyzed in accordance with the FBI's national standards, which are set forth in the following documents: "Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories," effective April 1, 1999, and any subsequent amendments thereto, available at <http://www.fbi.gov/hq/lab/codis/offender.htm> and "Quality Assurance Audit For Forensic DNA And Convicted Offender DNA Databasing Laboratories," July 2004, revision 6, and any subsequent amendments thereto, available at <http://www.fbi.gov/hq/lab/fsc/backissu/july2004/pdfs/seubert.pdf>, incorporated herein by reference.

(b) The DNA profile shall be the result of testing of the nuclear DNA contained in the sample. The test performed shall measure the tetranucleotide repeats, also referred to as short tandem repeats at each of the core loci, and may also measure other portions of the genome that are tested by commercially-available kits approved by the FBI pursuant to the "Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories," effective April 1, 1999, and any subsequent amendments thereto, available at <http://www.fbi.gov/hq/lab/codis/offender.htm> and "Quality Assurance Audit For Forensic DNA And Convicted Offender DNA Databasing Laboratories," July 2004, revision 6, and any subsequent amendments thereto, available at www.fbi.gov/hq/lab/fsc/backissu/july2004/pdfs/seubert.pdf, incorporated herein by reference.

(c) The Laboratory may contract with a commercial laboratory for DNA analysis. The commercial laboratory must be accredited by a non-profit professional association of persons actively involved in forensic science that is nationally recognized within the forensic science community and meets the relevant quality assurance standards that are set forth in N.J.A.C. 13:81-5.1.

13:81-3.2 Storage of DNA samples and typing results of DNA samples

(a) All DNA profiles and all DNA samples shall be securely stored in the State DNA database and the State DNA databank respectively, in the following manner:

1. All DNA profiles shall be stored in a secured computer database after all personal identifiers have been removed. These records shall be confidential and only those persons authorized by the Laboratory and charged with the responsibilities under the DNA Act shall have access to

these records. Information concerning the fact that an individual has submitted a DNA sample for the DNA database is not confidential and may be released;

2. All DNA samples shall remain stored at room temperature in an appropriate storage repository. This storage repository shall be maintained within a secure storage area. Only the CODIS manager and persons authorized by the CODIS manager shall have access to these DNA samples. They shall be filed in order of the SBI number or barcode number. For buccal samples collected after September 23, 2003, the DNA samples shall be filed in order of barcode number upon sample analysis; and

3. All DNA databank specimen submission forms shall be securely stored in the CCU within the Division of Criminal Justice.

SUBCHAPTER 4. DNA ACCESS

13:81-4.1 Upload to SDIS and NDIS

(a) DNA profiles shall be uploaded to SDIS and/or NDIS by the CODIS manager or his or her designee.

(b) DNA profiles uploaded to SDIS or NDIS shall include only the DNA profile and the relating identification number, that is, as to post-2002 buccal swab samples, the bar code number supplied with the sample collection kit.

(c) The CODIS manager or his or her designee may expunge or remove a DNA profile that New Jersey has entered into SDIS or uploaded into NDIS for good cause or in obedience to a court order.

13:81-4.2 Use of and access to DNA databank and database

(a) Except insofar as the use of the results of testing would jeopardize or result in the loss of Federal funding, the DNA profiles shall be used for only the following purposes:

1. For law enforcement identification;
2. For development of a population database;
3. To support identification research and protocol development of forensic DNA analysis methods;
4. To assist in the recovery or identification of human remains from mass disasters or for other humanitarian purposes;
5. For research, administrative and quality control purposes;
6. For judicial proceedings, by order of the court, if otherwise admissible pursuant to applicable statutes or rules;

7. For criminal defense purposes, on behalf of a defendant, who shall have access to relevant samples and analyses performed in connection with the case in which the defendant is charged; and

8. For such other purposes as may be required under Federal law as a condition for obtaining Federal funding.

(b) Access shall, be afforded to the DNA database and databank only in the following circumstances:

1. For purposes delineated in (a) above, the CODIS manager and personnel authorized by the CODIS manager shall have access to the DNA database and databank;

2. When a law enforcement agency requests a search of the DNA database, a request form shall be completed and be accompanied by a brief correspondence describing the request. This correspondence shall be completed on the agency's letterhead and addressed to the CODIS manager of the Laboratory. The CODIS manager or his or her designees shall approve the request only if satisfied from the correspondence or further inquiry that the identity and authority of the requesting agency is verified;

3. When, pursuant to N.J.S.A. 53:1-20.21(f), a party to a judicial proceeding under (a)6 above seeks access to information otherwise admissible pursuant to applicable statutes or rules, the party shall move before the court for an order granting access by motion, the service of which upon the CCU shall afford the CCU timely notice and an opportunity to respond and appear. No access shall be granted without court order; or

4. Any other person or agency requesting access to the DNA database shall apply to the CCU, Division of Criminal Justice, P.O. Box 085, Trenton, New Jersey 08625 and shall include identifying information and a brief correspondence describing the request. The CCU shall review the application and, in its discretion, may demand additional information relevant to the request. The CCU shall make a recommendation to be utilized by any court for which access is sought as to whether the request should be approved in whole or in part or disapproved. The requester may then make an application to any court of competent jurisdiction that shall include the recommendation, with service upon the CCU, which will be afforded the opportunity to respond and appear at the court's consideration of the application. In considering the application, the court will give appropriate deference to the Unit's recommendation. No access shall be granted without court order.

(c) Notwithstanding (a) and (b) above, the Laboratory may create a separate population database comprised of DNA samples obtained under the Act after all personal identification is removed. The Laboratory may share or disseminate the population database with other criminal justice agencies or forensic DNA laboratories that serve to assist the Laboratory with statistical databases. The population database may be

made available to and searched by other agencies participating in the CODIS system.

(d) The CODIS manager and his or her authorized personnel may inform appropriate law enforcement agencies that there is a profile match between or among DNA samples, other profiles, and/or biological evidence.

SUBCHAPTER 5. QUALITY ASSURANCE

13:81-5.1 Quality assurance

(a) Analysis techniques and operations utilized by the Laboratory shall comply with quality assurance guidelines to ensure that DNA identification records meet audit standards for laboratories that submit DNA profiles for inclusion in CODIS. Quality assurance shall be accomplished through compliance with FBI laboratory accreditation standards, which are set forth in the following documents: "Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories," effective April 1, 1999, and any subsequent amendments thereto, available at <http://www.fbi.gov/hq/lab/codis/offender.htm>, and "Quality Assurance Audit For Forensic DNA And Convicted Offender DNA Databasing Laboratories," July 2004, revision 6, and any subsequent amendments thereto, available at www.fbi.gov/hq/lab/fsc/backissu/july2004/pdfs/seubert.pdf, incorporated herein by reference.

(b) Whether convicted offender samples are analyzed in-house or by a contract laboratory, in either case, the integrity of the sample analysis shall be checked through a quality-assurance quality-control program. This program shall include random reanalysis of samples, visual inspection and evaluation of results/data, and inclusion of quality control samples.

(c) A portion of the convicted offender samples that have been previously analyzed shall be reanalyzed for quality assurance purposes. The data for these samples shall be reviewed by authorized laboratory personnel and uploaded to SDIS. Matches shall be noted as successful completion of the quality control process.

(d) Any discrepancies in these quality control samples shall be noted. The CODIS manager shall investigate the possible source of the discrepancy and determine what further action is needed. This action may include deleting the convicted offender sample from the CODIS database, informing the contract laboratory of a discrepancy and/or requesting the submission of another sample from the convicted offender, who shall cooperate in the sample submission.

(e) At least once per year, the Laboratory shall conduct an audit in accordance with the FBI "Quality Assurance Audit For Forensic DNA And Convicted Offender DNA Databasing Laboratories," July 2004, revision 6, and any subsequent amendments thereto, available at www.fbi.gov/hq/lab/fsc/

backissu/july2004/pdfs/seubert.pdf, incorporated herein by reference.

SUBCHAPTER 6. REMEDIES AND LIABILITIES

13:81-6.1 Expungement of DNA profiles and samples

(a) A person whose DNA profile has been included in the DNA database and whose DNA sample is stored in the DNA databank may apply to the Superior Court of New Jersey, Law Division for expungement of the DNA profile and the DNA sample on the grounds that the conviction, adjudication, or finding of not guilty by reason of insanity that resulted in the inclusion of the person's DNA profile in the database or the inclusion of the person's DNA sample in the databank has been reversed and the case dismissed. A certified copy of the order shall be attached to the application. A copy of the application for expungement shall be served on the prosecutor for the county in which the adjudication or conviction was entered and on the Division of Criminal Justice not less than 20 days prior to the date of the hearing on the application.

(b) Upon receipt, review and verification by the CCU of a certified court order directing expungement and unless otherwise provided, the CODIS manager shall:

1. Delete all DNA profiles, records, and identifiable information in the CODIS Database computer pertaining to the person with regard to the reversed and dismissed conviction;
2. Notify and direct any contract laboratory used to delete any record associated with the SBI number and e-mail a confirmatory notice to the CODIS manager;
3. Destroy all samples obtained from the individual that pertained to the reversed and dismissed charge; remove any identifier from the sample; and cut the sample and the identifier into pieces and dispose of it as medical waste;
4. Send a letter to the Director of the Office of Forensic Sciences or his or her designee who shall forward it to the NDIS Custodian thus notifying NDIS of the expungement;
5. Maintain a permanent file of all requests to expunge DNA records and the disposition of those requests; and
6. Send a letter of expungement confirmation to the requesting agency.

(c) The CCU shall delete from its electronic records all identifiable information that pertains to the offender. The DNA databank specimen submission form pertaining to the

offender shall be removed from the secured general files of the CCU and shall be placed in a separate secured file that has been designated as an expunged file. The CCU shall ensure that such forms or the information contained therein is not released for any reason and is not utilized or referred to for any purpose. In response to requests for information or records of the offender whose DNA sample was expunged, the CCU shall reply that there is no record information.

(d) If the entry in the database reflects more than one conviction, adjudication, or finding of not guilty by reason of insanity, that entry shall not be expunged unless and until the person has obtained an order of expungement for each conviction, adjudication of guilt, or finding of not guilty by reason of insanity on the grounds contained in (a) above. If any one of the bases for inclusion in the database was other than adjudication of guilt or not guilty by reason of insanity, that entry shall not be subject to expungement.

13:81-6.2 Prohibition against disclosure

(a) No persons shall obtain DNA information from the DNA database or the DNA databank without authorization to do so.

(b) Any person who, by virtue of employment, or official position, has possession of, or access to, individually identifiable DNA information contained in the State DNA database or databank shall securely maintain the confidentiality of this information and shall not disclose it in any manner to any person or agency not entitled to receive it pursuant to law. Any such person who purposely discloses this information contrary to the provisions of this subsection is guilty of an offense as provided in N.J.S.A. 53:1-20.26 or other applicable provisions of law.

SUBCHAPTER 7. POST-CONVICTION DNA TESTING

13:81-7.1 Analysis and storage of DNA profile information obtained in accordance with provisions of P.L. 2001, c. 377 (N.J.S.A. 2A:84A-32a et seq.)

(a) The analysis of DNA samples obtained in accordance with provisions of P.L. 2001, c. 377 (N.J.S.A. 2A:84A-32a et seq.) shall be conducted in accordance with the analysis specified in N.J.A.C. 13:81-3.1 and 5.1(a).

(b) The DNA profile information obtained in accordance with provisions of P.L. 2001, c. 377 (N.J.S.A. 2A:84A-32a et seq.) shall be stored in the State DNA database and forwarded to the FBI for inclusion in CODIS.

APPENDIX A

Version: 08/15/07

New Jersey State Police

New Jersey Division of Criminal Justice

**INSTRUCTIONS FOR STATE OF NEW JERSEY DNA DATABANK
CONVICTED OFFENDER DNA COLLECTION KIT**

If you have any questions concerning the use of this kit, please call the New Jersey Division of Criminal Justice, CODIS Compliance Unit at (609) 292-1439.

NOTE: Before you begin, make sure that you have obtained and verified the offender's SBI number and checked the status of the DNA flag on the New Jersey State Police Master Name Index to confirm that he or she has not previously provided a sample. If it is available, use Fast ID as part of the verification. If the offender does not have an assigned SBI number or if you cannot locate or verify an SBI number, use live scan, if available. If live scan is not available or does not within a reasonable time provide an SBI number, then complete a 10-print criminal arrest fingerprint card so that an SBI number can later be created for the offender.

Step 1 You will need the following items before you begin the collection process:

- Two instruction sheets (this one and the instructions for the Specimen Submission Form)
- One Specimen Submission Form
- One Micro Card ("FTA™ card")
- One sterile packet containing a foam tip applicator
- One 2x4 envelope
- One pair of latex gloves
- Fingerprint ink pad
- Zip lock bag

Step 2 Complete the **Specimen Submission Form** (Refer to the DNA Databank Specimen Submission Form [BLUE] instructions) and place a barcode on each of the three copies of the form in the designated spaces. (If using prepared labels containing the offender's information: a) Place one label over the yellow space below "offender name" and b) Place a barcode on each of the three copies of the form in the designated spaces.)

Step 3 Place a barcode on the Micro Card horizontally over any of the three lines that appear below the circle.

Step 4 **PRINT** the offender's SBI number on the 2x4 envelope in the designated space. (If using labels place the label with the offender's SBI number only on the front of the envelope, being careful not to obstruct the space for the barcode.) Place the last barcode on the designated space on the 2x4 envelope.

NOTE: If the barcode is missing from the 2x4 envelope, the sample will not be accepted into the DNA Databank and a new collection sample will be requested. Any illegible information may also create the need for new sample collection.

Step 5 Put on the latex gloves.

Step 6 Examine the sterile swab packet to ensure that it has not been prematurely opened. If there is any evidence that the packet has been opened, discard and open a new kit.

Step 7 Carefully peel open the sterile packet, remove the foam tip applicator, and hand it to the offender.

Step 8 Instruct the offender to place the sponge portion of the foam tip applicator in his/her mouth between the cheek & gum and swab each side vigorously 15-20 times per side. After swabbing both cheeks, instruct the offender to place the sponge portion of the foam tip applicator underneath the tongue for approximately 10 seconds. (When the offender is swabbing his/her cheeks, the collector should see the offender's cheek protruding.)

Step 9 Instruct the offender to press down the sponge portion of the foam tip applicator onto the center of the circle of the Micro Card. The foam tip applicator should be pressed and turned several times to assure transfer of the specimen to the Micro Card. To confirm transfer of the specimen to the Micro Card, the specimen collector should examine the card and note that a color change has occurred.

Step 10 Instruct the offender to dispose of the used foam tip applicator in a general waste container.

Note: In the unlikely event that blood is observed on the foam tip applicator, instruct the offender to place the foam tip applicator in the clear plastic bag provided and seal the bag. The sealed plastic bag may be placed in the self-addressed envelope with the other kit components and submitted to lab for disposal.

See * below.

Step 11 The specimen collector should place the Micro Card with the offender's specimen into the 2x4 envelope, verify that the barcode is on the Micro Card, and the 2x4 envelope, and seal the envelope. The specimen collector should date and initial diagonally across the flap of the envelope. DO NOT LICK THE ENVELOPE.

Note: If the specimen collector fails to date and initial the 2x4 envelope, the specimen may be rejected by the State Police DNA Laboratory, and another specimen will need to be collected.

Step 12 Before placing the submission form and the 2x4 envelope containing the Micro Card into the self-addressed stamped envelope, verify the following:

- The sealed (initialed & dated) 2x4 envelope containing the Micro Card. (Verify that the barcode and offender's SBI number are on the 2x4 envelope).
- The Specimen Submission Form. (Verify that a barcode has been placed on all three copies of the form; that all the offender's data has been properly recorded; and that the fingerprints are legible).

Step 13 Place the 2x4 envelope containing the Micro Card and the submission form into the self-addressed envelope.

Step 14 Dispose of gloves. You are now ready for the next offender.

IMPORTANT

If the specimen collector fails to PROPERLY label, initial and package the items described in the preceding instructions, the specimen may be rejected by the New Jersey State Police DNA Laboratory and another specimen will need to be collected.

Sealing the self-addressed stamped envelope

The self-addressed stamped envelopes may hold up to ten submission forms and ten 2x4 envelopes containing samples each. Seal the self-addressed stamped envelope by removing the protective strip from the self adhesive flap and then press the envelope closed.

The specimen collector should date and sign the sealed self-addressed envelope.

* **In the event that the self-addressed envelope contains a bloody buccal swab, place a bio-hazard sticker on the outside of the envelope.**

APPENDIX B

Version: 08/15/07

**INSTRUCTIONS FOR STATE OF NEW JERSEY DNA DATABANK
SPECIMEN SUBMISSION FORM**

If you have any questions concerning the completion of this form, please call the New Jersey Division of Criminal Justice, CODIS Compliance Unit at (609) 292-1439.

The Specimen Submission Form consists of three copies (1 short white, 1 short green and 1 long white) and a strip of 5 barcode labels. Do not use the form if any of these items are missing. Contact the New Jersey Division of Criminal Justice, CODIS Compliance Unit.

Step 1 Place barcode on the space indicated on each of the three sheets of the Specimen Submission Form.

Step 2 Complete **ALL YELLOW** areas of the form. (Specific instructions for each area of the form are set forth below).

- A. If submitting from a State of New Jersey Correctional Institution (NJDOC) reception center, circle the appropriate abbreviation that corresponds to your facility. If your facility is not a correctional institution, indicate the full name of your facility under "Other Facility."
- B. **SUBMITTING AGENCY FULL NAME (Other than a state prison)**
PRINT or TYPE the FULL name of the agency submitting the specimen.
- C. **CONTACT PERSON and TELEPHONE NUMBER**
Contact Person: PRINT or TYPE the name of the person who can be contacted for confirmation/clarification of the information on the form.
- D. DNA Sample: Check Off "Buccal"
- E. **OFFENDER'S LAST NAME**
PRINT Clearly or TYPE the offender's last name. (If using labels, affix the labels containing offender information over the third yellow box, which starts with "offender name." Then go directly to "N".
- F. **OFFENDER'S FIRST NAME**
PRINT Clearly or TYPE the offender's first name.
- G. **OFFENDER'S MIDDLE INITIAL**
PRINT Clearly or TYPE.
- H. **OFFENDER CASE/ID NUMBER (Optional Field)**
Print the offender's identification number assigned by your department, if applicable.
- I. **SEX**
Circle one: M (Male) or F (Female)
- J. **RACE**
Be careful to **CIRCLE ONLY ONE:**
 - B = Black (African American)
 - NA = Native American (American Indian)
 - C = Caucasian (White)
 - A = Asian
 - H = Hispanic
 - U = Unknown Race
- K. **D.O.B.**
Provide the offender's date of birth.
- L. **SBI NUMBER**
Provide the offender's SBI Number. **If you do not have an SBI #, submit the 10-print criminal arrest fingerprint card.**
- M. If offender was **ADJUDICATED** rather than **CONVICTED**, mark yes. Otherwise mark no.
- N. **OFFENDER'S SIGNATURE**
The offender must provide his/her signature and the date. **If the offender will not sign the form, the Specimen Collector must indicate "refused to sign" and must initial this line.**

O. OFFENDER STATUS

Check all that apply.

P. Specimen Collector

The Specimen Collector must PRINT or TYPE a full name, and provide the full signature and date in the designated spaces on the form.

Step 3 Obtain fingerprints of the offender's right and left index fingers (even if you are already submitting these fingerprints on the 10-print criminal arrest fingerprint card in lieu of an SBI number or even if you are using the Fast ID system):

Note: The DNA specimen will NOT be accepted without these fingerprints. You must use the Fast ID system if it is available, as part of the verification process, but you must also take the two required fingerprints to complete the DNA Specimen Submission Form. Both index fingers must be rolled on the form.

1. Plain impression prints are not sufficient. Rolled prints ARE necessary.
2. Have the offender wipe his/her hands on a paper or cloth towel to ensure that the hands are clean of excessive perspiration or foreign matter.
3. Instruct the offender to press and roll the left index finger with uniform pressure on the inked fingerprint pad.
4. The collector shall utilize proper methods in obtaining rolled fingerprint submissions. Use the designated box on the long white copy of the submission form. Prints must be clear and distinctive.
5. Repeat the same process for the right index finger.
6. If a poor quality print has been obtained for either finger, an additional print must be entered in the designated area for reprints. Indicate below the print which finger was reprinted.
7. If the left and/or right index finger cannot be printed, other digits may be printed, but the finger which was printed must be indicated below the print.

Step 4 Remove the green copy of the form and keep it for your records. **Make sure it has a barcode label before you file it.**

Step 5 Follow the DNA Convicted Offender Collection Kit instructions for obtaining the DNA specimen and for sealing and shipping the kit for testing.