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**OFFICE OF THE ATTORNEY GENERAL
DIVISION OF STATE POLICE
DNA Database and Databank Rules
Readoption with Amendments: N.J.A.C. 13:81
Adopted Repeals: N.J.A.C. 13:81 Appendices A and B
Adopted New Rules: N.J.A.C. 13:81 Appendices A, B, and C**

Proposed: January 5, 2015, at 47 N.J.R. 78(a).

Adopted: May 29, 2015, by John J. Hoffman, Acting Attorney General of New Jersey and Colonel Joseph R. Fuentes, Superintendent, Division of State Police.

Filed: June 1, 2015, as R.2015 d.107, **without change**.

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

Effective Dates: June 1, 2015, Readoption;
July 6, 2015, Amendments, New Rules, and Repeals.

Expiration Date: June 1, 2022.

Summary of Public Comments and Agency Responses:

The agencies received comments from the American Civil Liberties Union of New Jersey and The Unitarian Universalist Legislative Ministry of New Jersey.

1. COMMENT: Both commenters believe that N.J.A.C. 13:81 should be modified to contain a requirement that the certain arrestees be provided notice by the arresting agency at the time of arrest and/or by the county prosecutor upon acquittal or dismissal of the charges of their right to apply for expungement of their DNA sample. They suggest that the State provide legal advice to the certain arrestees concerning the expungement provisions of the DNA Database and Databank Act of 1994 (DNA Act) and that the State simplify the process to apply for expungement.

RESPONSE: The rule has not been modified to incorporate additional expungement requirements because expungement is provided for and governed by statutory provisions appearing in N.J.S.A. 53:1-20.25. N.J.S.A. 53:1-20.25.a(1)(ii) and (2)(ii) authorize eligible persons, including juveniles, either individually or through an attorney, to apply for expungement. The rule provides a simple process by which eligible persons may seek expungement of their DNA records in accordance with N.J.S.A. 53:1-20.25 and the agency believes no further simplification is necessary. Under the rules, the Division of State Police in the Department of Law and Public Safety expunges the DNA information of a person included in the database on the basis of an arrest if it receives a certified copy of a final court order establishing that the qualifying charge(s) has been dismissed or has resulted in an acquittal at trial. This process is necessary in order that the CODIS Compliance Unit in the Division of Criminal Justice can review the criminal history because the DNA information may not be eligible for expungement based upon a separate qualifying offense (arrest or conviction) from a different case or occurrence from the one which was the basis for the person's arrest. In any event, law enforcement agencies may not assume the responsibility of administering legal advice to arrestees on the expungement process. That is clearly the responsibility of the defense counsel and the agencies believe such is outside of the scope of this chapter, which is to administer the DNA database.

2. COMMENT: A commenter states in a footnote that it will be requesting the Administrative Office of the Courts to provide information to arrestees seeking expungement of DNA information.

RESPONSE: The agencies, through the Division of Criminal Justice, intend to work with the Administrative Office of the Courts to draft forms to facilitate the expungement process. The forms may be provided on a public website. Consequently, the rule has not been modified on this point.

3. COMMENT: A commenter suggests that the regulations should clarify that the DNA record of an arrestee should not be uploaded to the

National DNA Index System (NDIS) until after a conviction/adjudication because the commenter believes that there is no system to withdraw a profile from NDIS should there be a dismissal or acquittal of the charge(s).

RESPONSE: The premise of this objection is mistaken. It is well-established that the State CODIS Administrator, who works within the CODIS Unit of the New Jersey State Police Office of Forensic Sciences, can remove any DNA profile that New Jersey has uploaded to NDIS, as the need arises. See *A.A. v. Attorney General of New Jersey*, 189 NJ 128, 133 (2007). The expungement of an arrestee DNA profile that has been previously uploaded to NDIS is performed in accordance with protocols set forth in the National DNA Index System (NDIS) Operational Procedures Manual at <http://www.fbi.gov/about-us/lab/biometric-analysis/codis/ndis-procedures-manual>, Version 3, effective January 1, 2015. The Office of Forensic Sciences has procedures for expungements in accordance with the above-referenced Federal protocol. This objection also presupposes that the DNA sample collection is not justifiable unless there has been a conviction/adjudication. Expanding DNA sample collection to arrestees charged with certain violent crimes/delinquent acts is the central purpose of the amendment to the DNA Act that became effective in 2013 and which this rule implements. The rule reflects a legislative judgment that the arrest of persons for certain violent crimes supports the taking of certain identification information from such individuals. Collecting DNA upon arrest offers critical benefits that would be lost if DNA collection were authorized only after an arrested person is convicted/adjudicated delinquent.

4. COMMENT: A commenter opines that juveniles should not be charged with "Refusal to Allow Blood, Biological Sample to be Drawn" under N.J.S.A. 2C:29-11 because they are not legally capable of providing consent to the collection of a DNA sample.

RESPONSE: This regulatory provision is based on the statutory authorization provided in N.J.S.A. 2C:29-11. The Legislature has specifically declared that the refusal statute applies to both adults and juveniles without restriction. N.J.S.A. 2C:29-11 expressly provides that "A person or juvenile who knowingly refuses to allow a blood sample to be drawn or a biological sample to be collected pursuant to the provisions of the 'DNA Database and Databank Act of 1994,' P.L. 1994, c.136 (C.53:1-20.17 et seq.) is guilty of a crime of the fourth degree."

5. COMMENT: A commenter requests that the rule be modified to include a requirement that the State CODIS Administrator provide written proof to the arrestee that the DNA profile has been expunged and if the profile is not expunged in accordance with court order, it would be deemed a per se violation of the Consumer Fraud Act.

RESPONSE: The agency believes it is unnecessary to require direct notice to the arrestee because neither the DNA Database, the DNA Act, nor the Federal law require such notice. The certified court order does not include the arrestee's personal contact information. Also, the agency does not agree that failure to comply with the requirements of the rules would constitute a violation of the Consumer Fraud Act. The commenter has provided no basis to even speculate that the State CODIS Administrator would not abide by a court order for expungement. The CODIS Administrator may certainly provide a letter confirming the expungement is completed upon request of the arrestee.

6. COMMENT: A commenter suggests that the rule be modified to include a provision that any outside law enforcement agency that obtains the DNA profiles, records, and identifiable information be required to comply with an expungement order from a New Jersey Court.

RESPONSE: The concerns are misplaced in relation to this rule, under which collected DNA samples and resulting DNA profiles are subject to stringent privacy protections of NDIS, reinforced and secured through numerous design elements and governing laws and rules that limit the use of DNA information to proper law enforcement identification purposes. In any event, there is no apparent legal authority for New Jersey to prescribe such rules that would be applicable to out-of-State law enforcement agencies on a country-wide basis.

7. COMMENT: A commenter also requests that the rule be modified to specify that the State CODIS Administrator should not share the DNA samples with other law enforcement agencies.

RESPONSE: The concern raised by the commenter is based on a misguided premise. The rule will not be modified because this limitation

of scope is explicit in the DNA Act, which imposes strict confidentiality requirements and privacy protections. DNA samples are not shared with other law enforcement agencies. Rather, the samples are maintained in secure storage and are subject to strict restrictions and privacy protections. N.J.S.A. 53:1-20.27.

Federal Standards Statement

The rules readopted with amendments, repeals, and new rules are consistent with, but do not exceed Federal standards. New Jersey's DNA Database and Databank Rules are consistent with the FBI's requirements for indexing, quality assurance, and proficiency testing for forensic DNA analysis that are set forth in the following documents: "Quality Assurance Standards for Forensic DNA Testing Laboratories," effective September 1, 2011, and any subsequent amendments thereto, available at <http://www.fbi.gov/about-us/lab/biometric-analysis/codis> and "Quality Assurance Standards for DNA Databasing Laboratories," effective September 1, 2011, and any subsequent amendments thereto, available at <http://www.fbi.gov/about-us/lab/biometric-analysis/codis>. Accordingly, a Federal standards analysis is not required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 13:81.

Full text of the adopted amendments and new rules follows:

SUBCHAPTER 1. GENERAL PROVISIONS

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:

...
 "CODIS" means the FBI's national DNA identification index system that allows storage and exchange of DNA profiles submitted by Federal, 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 three 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 convicted offenders. The Arrestee Index consists of DNA profiles developed from known samples taken from qualifying arrestees. Each individual state is charged with determining qualifying offenders for CODIS inclusion. The Forensic Index is searched against the Convicted Offender Index and the Arrestee Index, and investigative leads are generated. The Forensic Index is searched against itself, whereby matches link crime scenes. The Unidentified Human Remains and Missing Persons Indices are searched against the Forensic Index and Offender Index.

...
 "CODIS administrator" means the person who works within the CODIS Unit of the New Jersey State Police Office of Forensic Sciences DNA Laboratory and is responsible for the uploading of data from SDIS to NDIS. The CODIS administrator 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 specific regions on the human genome, also referred to as STRs (short tandem repeats), that are measured for inclusion in CODIS.

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

...
 "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 Office of Forensic Sciences DNA Laboratory is the State CODIS Laboratory in New Jersey.

"LDIS" means the Local DNA Index System, which is the level of the CODIS program in which a local DNA laboratory maintains its DNA records for searching and uploading to higher level indices such as SDIS and NDIS.

"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 and Federal laboratories. NDIS compares DNA profiles associated with a crime scene to DNA profiles collected from known 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.

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

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

1. (No change.)
 2. Every person arrested on or after February 1, 2013, for one of the offenses set forth in (a)1 above;
 3. (No change in text.)
 4. Every juvenile arrested on or after February 1, 2013, for acts, which if committed by an adult, would constitute one of the offenses set forth in (a)1 above;
 5. 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;
 6. Every person arrested on or after February 1, 2013, for one of the offenses set forth in (a)5 above;
 7. Every juvenile arrested on or after February 1, 2013, for acts, which if committed by an adult, would constitute one of the offenses set forth in (a)5 above; and
 8. (No change in text.)
- (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. An offender who has been arrested for a qualifying offense or a qualifying delinquent act shall have the obligation to provide a DNA sample before release from custody. The termination of imprisonment, probation, parole, supervision, confinement, or the release from custody, 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 allow a DNA sample to be collected pursuant to the provisions of the DNA Act, the offender shall be arrested for refusal to allow a blood or biological sample to be drawn, a crime of the fourth degree under N.J.S.A. 2C:29-11.

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 Offender DNA Collection Kit," version 11/5/14, 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) (No change.)

(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 "Collected" or "Profile in CODIS" meaning that a sample previously was taken from the offender. As part of the verification process, the collector shall also use the Fast ID system or the live scan, 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" (pertaining to the previous version of the form with three copies), version 11/5/14, set forth in Chapter Appendix B and incorporated herein by reference, or as prescribed in the "Instructions for State of New Jersey DNA Databank Specimen Submission Form" (pertaining to the new one-page version of the form), version 11/5/14, set forth in Chapter Appendix C 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 or live scan, the offender still must be fingerprinted as indicated on the submission form. If the Fast ID indicates "match," or the live scan confirms the SBI number, 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 or a Fingerprint Certification shall be completed with a photograph attached that is initialed and dated.

(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 Office of Forensic Sciences DNA 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, which supervises those found not guilty by reason of insanity, elects to take a blood sample. The offender's finger

or other appropriate body part shall be pricked while he or she is restrained, and a blood sample shall be obtained using the standardized sample collection kit as supplied by the Division of Criminal Justice.

(h) (No change.)

(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 Offender DNA Collection Kit," version 11/5/14, set forth in Chapter Appendix A. The mailing envelope shall be mailed or delivered to the Laboratory.

(j) (No change.)

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

13:81-2.2 Handling and security of samples

(a)-(b) (No change.)

(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 administrator.

(d) The decision whether to accept or reject the sample shall be made by the CODIS administrator. 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 Biometric 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 or live scan. 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 the State Police Biometric Identification Unit 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) (No change.)

(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 custody of the sample throughout its analysis and storage.

(i) (No change.)

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 Forensic DNA Testing Laboratories," effective September 1, 2011, available at <http://www.fbi.gov/about-us/lab/biometric-analysis/codis> and "Quality Assurance Standards for DNA Databasing Laboratories," effective September 1, 2011, available at <http://www.fbi.gov/about-us/lab/biometric-analysis/codis>, both of which are incorporated herein by reference, as amended and supplemented.

(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 Forensic DNA Testing Laboratories," effective September 1, 2011, available at <http://www.fbi.gov/about-us/lab/biometric-analysis/codis> and "Quality Assurance Standards for DNA Databasing Laboratories," effective September 1, 2011, available at <http://www.fbi.gov/about-us/lab/biometric-analysis/codis>, both of which are incorporated herein by reference, as amended and supplemented.

(c) (No change.)

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. (No change.)
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 administrator and persons authorized by the CODIS administrator shall have access to these DNA samples. They shall be filed in order of the SBI number or barcode number. For biological 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 or in a secure facility approved by the New Jersey Division of Archives and Record Management (NJDRAM).

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 administrator or persons authorized by the CODIS administrator.

- (b) (No change.)
- (c) The CODIS administrator or persons authorized by the CODIS administrator 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) (No change.)
- (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 administrator and personnel authorized by the CODIS administrator 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 administrator of the Laboratory. The CODIS administrator or persons authorized by the CODIS administrator shall approve the request only if satisfied from the correspondence or further inquiry that the identity and authority of the requesting agency is verified, the searched profile meets all Office of Forensic Sciences Quality Assurance criteria, and the request fulfills the criteria established by NDIS for searches of CODIS data;
 - 3.-4. (No change.)
 - (c) (No change.)
 - (d) The CODIS administrator and persons authorized by the CODIS administrator 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 Forensic DNA Testing Laboratories," effective September 1, 2011, available at <http://www.fbi.gov/about-us/lab/biometric-analysis/codis> and "Quality Assurance Standards for DNA Databasing Laboratories," effective September 1, 2011, available at <http://www.fbi.gov/about-us/lab/biometric-analysis/codis>, both of which are incorporated herein by reference, as amended and supplemented.

(b) Whether 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 established at the laboratory.

(c) A portion of the offender samples that have been previously analyzed are reanalyzed for quality assurance purposes. The data for these samples shall be reviewed by authorized laboratory personnel. Matches shall signify successful completion of the quality control process.

(d) Any discrepancies in these quality control samples shall be noted. The CODIS administrator shall investigate the possible source of the discrepancy and determine what further action is needed. This action may include deleting the offender sample from the CODIS database, informing the contract laboratory of a discrepancy, and/or requesting the submission of another sample from the 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 Standards for Forensic DNA Testing Laboratories," effective September 1, 2011, available at <http://www.fbi.gov/about-us/lab/biometric-analysis/codis/> and "Quality Assurance Standards for DNA Databasing Laboratories," effective September 1, 2011, available at <http://www.fbi.gov/about-us/lab/biometric-analysis/codis>, both of which are incorporated herein by reference, as amended and supplemented.

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:

1. 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 CCU in the Division of Criminal Justice not less than 20 days prior to the date of the hearing on the application; or
2. All charges from the arrest that resulted in the inclusion of the person's DNA profile in the database or in the inclusion of the person's DNA sample in the databank have been dismissed or have been resolved through an acquittal at trial. A certified copy of the order of dismissal 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 charge or charges were brought and on the CCU in 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 administrator 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 or adjudication, or with regard to the dismissed or acquitted charges;
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 administrator;
3. Destroy all samples obtained from the individual that pertained to the reversed and dismissed charge or dismissed charges; remove any identifier from the sample; and cut the sample and the identifier into pieces and dispose of it pursuant to laboratory policy for biological samples;

Recodify existing 5.-6. as 4.-5. (No change in text.)

(c) (No change.)

(d) If the entry in the database reflects more than one charge, 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 charge, conviction, adjudication of

guilt, or finding of not guilty by reason of insanity on the grounds contained in (a)1 or 2 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.

(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 NDIS.

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) (No change.)

APPENDIX A

Version: 11/05/2014

New Jersey State Police
New Jersey Division of Criminal JusticeINSTRUCTIONS 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
- Step 2** Complete the Specimen Submission Form (Refer to the DNA Databank Specimen Submission Form instructions). If using the previous version of the submission form that has 3 copies, 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.) If using the new one-page submission form, omit this step.
- Step 3** Place a barcode on the Micro Card horizontally in the space designated.
- 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 Take the swab from the offender and rock the foam tip applicator back and forth 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 Dispose of the used foam tip applicator in a general waste container.

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, if using the previous version of the form with three copies; 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 Office of Forensic Sciences 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. Do not wait for multiple submissions to be collected. Submissions should be sent in as soon as possible.

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

APPENDIX B

Version: 11/05/2014

INSTRUCTIONS FOR STATE OF NEW JERSEY DNA DATABANK

SPECIMEN SUBMISSION FORM
(for Previous Version of Form with 3 Copies)

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 or live scan):

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.

APPENDIX C

Version: 11/05/2014

**INSTRUCTIONS FOR STATE OF NEW JERSEY DNA DATABANK
SPECIMEN SUBMISSION FORM for New One-Page Version of the 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 is one page with 3 barcodes - one is printed on the form and two can be peeled off. 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 Complete ALL areas of the form. (*Specific instructions for each area of the form are set forth below*).

- A. Originating Agency Identification (ORI) Number
- B. SUBMITTING AGENCY FULL NAME
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. OFFENDER'S LAST NAME
PRINT Clearly or TYPE the offender's last name.
- E. OFFENDER'S FIRST NAME
PRINT Clearly or TYPE the offender's first name.
- F. OFFENDER'S MIDDLE INITIAL
PRINT Clearly or TYPE
- G. D.O.B.
Provide the offender's date of birth.
- H. SBI NUMBER
Provide the offender's SBI Number. If you do not have an SBI #, submit the 10-print criminal arrest fingerprint card.
- I. SEX
Check one: M (Male) or F (Female)
- J. Check Arrestee or Convicted Offender - if both, check both boxes
Provide a Complaint number or CDR number, if arrestee

Provide an Indictment Number, Accusation Number, or FJ Number, if Convicted Offender, Adjudicated Delinquent, or Found Not Guilty by Reason of Insanity (NGRI)
- K. Check Adult or Juvenile
- L. OFFENDER'S SIGNATURE
The offender must provide his/her signature and the date. If the offender refuses to sign the form, the Specimen Collector shall indicate "refused to sign" and shall initial this line.

M. 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 2 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 or live scan):

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 3 Follow the DNA Offender Collection Kit instructions for obtaining the DNA specimen and for sealing and shipping the kit for testing