

# CHAPTER 81

## DNA PROFILING

Referred to in §906.4

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### 81.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. “DNA” means deoxyribonucleic acid.
2. “DNA data bank” means the repository for DNA samples obtained pursuant to section 81.4.
3. “DNA database” means the collection of DNA profiles and DNA records.
4. “DNA profile” means the objective form of the results of DNA analysis performed on a DNA sample. The results of all DNA identification analysis on an individual’s DNA sample are also collectively referred to as the DNA profile of an individual.
5. “DNA profiling” means the procedure established by the division of criminal investigation, department of public safety, for determining a person’s genetic identity.
6. “DNA record” means the DNA sample and DNA profile, and other records in the DNA database and DNA data bank used to identify a person.
7. “DNA sample” means a biological sample provided by any person required to submit a DNA sample or a DNA sample submitted for any other purpose under section 81.4.
8. “Person required to submit a DNA sample” means a person convicted, adjudicated delinquent, receiving a deferred judgment, or found not guilty by reason of insanity of an offense requiring DNA profiling pursuant to section 81.2. “Person required to submit a DNA sample” also means a person determined to be a sexually violent predator pursuant to section 229A.7.

2005 Acts, ch 158, §1, 19

Referred to in §802.10

### 81.2 Persons required to submit a DNA sample.

1. A person who receives a deferred judgment for a felony or against whom a judgment or conviction for a felony has been entered shall be required to submit a DNA sample for DNA profiling pursuant to section 81.4.
2. A person determined to be a sexually violent predator pursuant to chapter 229A shall be required to submit a DNA sample for DNA profiling pursuant to section 81.4 prior to discharge or placement in a transitional release program.
3. A person found not guilty by reason of insanity of an offense that requires DNA profiling shall be required to submit a DNA sample for DNA profiling pursuant to section 81.4 as part of the person’s treatment management program.
4. A juvenile adjudicated delinquent of an offense that requires DNA profiling of an adult offender shall be required to submit a DNA sample for DNA profiling pursuant to section 81.4 as part of the disposition of the juvenile’s case.
5. An offender placed on probation shall immediately report to the judicial district department of correctional services after sentencing so it can be determined if the offender has been convicted of an offense requiring DNA profiling. If it is determined by the judicial district that DNA profiling is required, the offender shall immediately submit a DNA sample.
6. A person required to register as a sex offender shall submit a DNA sample for DNA profiling pursuant to section 81.4.

2005 Acts, ch 158, §2, 19; 2007 Acts, ch 38, §4

Referred to in §81.1, 232.52, 901.5

**81.3 Establishment of DNA database and DNA data bank.**

1. A state DNA database and a state DNA data bank are established under the control of the division of criminal investigation, department of public safety. The division of criminal investigation shall conduct DNA profiling of a DNA sample submitted in accordance with this section.

2. A DNA sample shall be submitted, and the division of criminal investigation shall store and maintain DNA records in the DNA database and DNA data bank for persons required to submit a DNA sample.

3. A DNA sample may be submitted, and the division of criminal investigation shall store and maintain DNA records in the DNA database and DNA data bank for any of the following:

a. Crime scene evidence and forensic casework.

b. A relative of a missing person.

c. An anonymous DNA profile used for forensic validation, forensic protocol development, or quality control purposes, or for the establishment of a population statistics database.

4. A fingerprint record of a person required to submit a DNA sample shall also be submitted to the division of criminal investigation with the DNA sample to verify the identity of the person required to submit a DNA sample.

2005 Acts, ch 158, §3, 19

Referred to in §81.9

**81.4 Collecting, submitting, analyzing, identifying, and storing DNA samples and DNA records.**

1. The division of criminal investigation shall adopt rules for the collection, submission, analysis, identification, storage, and disposition of DNA records.

2. A supervising agency having control, custody, or jurisdiction over a person shall collect a DNA sample from a person required to submit a DNA sample. The supervising agency shall collect a DNA sample, upon admittance to the pertinent institution or facility, of the person required to submit a DNA sample or at a determined date and time set by the supervising agency. If a person required to submit a DNA sample is confined at the time a DNA sample is required, the person shall submit a DNA sample as soon as practicable. If a person required to submit a DNA sample is not confined after the person is required to submit a DNA sample, the supervising agency shall determine the date and time to collect the DNA sample.

3. A person required to submit a DNA sample who refuses to submit a DNA sample may be subject to contempt proceedings pursuant to chapter 665 until the DNA sample is submitted.

4. The division of criminal investigation shall conduct DNA profiling on a DNA sample or may contract with a private entity to conduct the DNA profiling.

2005 Acts, ch 158, §4, 19

Referred to in §81.1, 81.2, 81.5, 229A.7, 232.52, 669.14

**81.5 Civil and criminal liability — limitation.**

A person who collects a DNA sample shall not be civilly or criminally liable for the collection of the DNA sample if the person performs the person's duties in good faith and in a reasonable manner according to generally accepted medical practices or in accordance with the procedures set out in the administrative rules of the department of public safety adopted pursuant to section 81.4.

2005 Acts, ch 158, §5, 19

**81.6 Criminal offense.**

1. A person who knowingly or intentionally does any of the following commits an aggravated misdemeanor:

a. Discloses any part of a DNA record to a person or agency that is not authorized by the division of criminal investigation to have access to the DNA record.

b. Uses or obtains a DNA record for a purpose other than what is authorized under this chapter.

2. A person who knowingly or intentionally alters or attempts to alter a DNA sample,

falsifies the source of a DNA sample, or materially alters a collection container used to collect the DNA sample, commits a class “D” felony.

2005 Acts, ch 158, §6, 19

#### **81.7 Conviction or arrest not invalidated.**

The detention, arrest, or conviction of a person based upon a DNA database match is not invalidated if it is determined that the DNA sample or DNA profile was obtained or placed into the DNA database by mistake or error.

2005 Acts, ch 158, §7, 19

#### **81.8 Confidential records.**

1. A DNA record shall be considered a confidential record and disclosure of a DNA record is only authorized pursuant to this section.

2. Confidential DNA records under this section may be released to the following agencies for law enforcement identification purposes:

a. Any criminal or juvenile justice agency as defined in section 692.1.

b. Any criminal or juvenile justice agency in another jurisdiction that meets the definition of a criminal or juvenile justice agency as defined in section 692.1.

3. The division of criminal investigation shall share the DNA record information with the appropriate federal agencies for use in a national DNA database.

4. A DNA record or other forensic information developed pursuant to this chapter may be released for use in a criminal or juvenile delinquency proceeding in which the state is a party and where the DNA record or forensic information is relevant and material to the subject of the proceeding. Such a record or information may become part of a public transcript or other public recording of such a proceeding.

5. A DNA record or other forensic information may be released pursuant to a court order for criminal defense purposes to a defendant, who shall have access to DNA samples and DNA profiles related to the case in which the defendant is charged.

2005 Acts, ch 158, §8, 19

#### **81.9 Expungement of DNA records.**

1. A person whose DNA record has been included in the DNA database or DNA data bank established pursuant to section 81.3 may request, in writing to the division of criminal investigation, expungement of the DNA record from the DNA database and DNA data bank based upon the person's conviction, adjudication, or civil commitment which caused the submission of the DNA sample being reversed on appeal and the case dismissed. The written request shall contain a certified copy of the final court order reversing the conviction, adjudication, or civil commitment, and a certified copy of the dismissal, and any other information necessary to ascertain the validity of the request.

2. The division of criminal investigation, upon receipt of a written request that validates reversal on appeal of a person's conviction, adjudication, or commitment, and subsequent dismissal of the case, or upon receipt of a written request by a person who voluntarily submitted a DNA sample pursuant to section 81.3, subsection 3, paragraph “b”, shall expunge all of the DNA records and identifiable information of the person in the DNA database and DNA data bank. However, if the division of criminal investigation determines that the person is otherwise obligated to submit a DNA sample, the DNA records shall not be expunged. If the division of criminal investigation denies an expungement request, the division shall notify the person requesting the expungement of the decision not to expunge the DNA record and the reason supporting its decision. The division of criminal investigation decision is subject to judicial review pursuant to chapter 17A. The department of public safety shall adopt rules governing the expungement procedure and a review process.

3. The division of criminal investigation is not required to expunge or destroy a DNA record pursuant to this section, if expungement or destruction of the DNA record would destroy evidence related to another person.

2005 Acts, ch 158, §9, 19

**81.10 DNA profiling after conviction.**

1. A defendant who has been convicted of a felony and who has not been required to submit a DNA sample for DNA profiling may make a motion to the court for an order to require that DNA analysis be performed on evidence collected in the case for which the person stands convicted.

2. The motion shall state the following:

- a. The specific crimes for which the defendant stands convicted in this case.
- b. The facts of the underlying case, as proven at trial or admitted to during a guilty plea proceeding.
- c. Whether any of the charges include sexual abuse or involve sexual assault, and if so, whether a sexual assault examination was conducted and evidence preserved, if known.
- d. Whether identity was at issue or contested by the defendant.
- e. Whether the defendant offered an alibi, and if so, testimony corroborating the alibi and, from whom.
- f. Whether eyewitness testimony was offered, and if so from whom.
- g. Whether any issues of police or prosecutor misconduct have been raised in the past or are being raised by the motion.
- h. The type of inculpatory evidence admitted into evidence at trial or admitted to during a guilty plea proceeding.
- i. Whether blood testing or other biological evidence testing was conducted previously in connection with the case and, if so, by whom and the result, if known.
- j. What biological evidence exists and, if known, the agency or laboratory storing the evidence that the defendant seeks to have tested.
- k. Why the requested analysis of DNA evidence is material to the issue in the case and not merely cumulative or impeaching.
- l. Why the DNA evidence would have changed the outcome of the trial or invalidated a guilty plea if DNA profiling had been conducted prior to the conviction.

3. A motion filed under this section shall be filed in the county where the defendant was convicted, and notice of the motion shall be served by certified mail upon the county attorney and, if known, upon the state, local agency, or laboratory holding evidence described in subsection 2, paragraph "k". The county attorney shall have sixty days to file an answer to the motion.

4. Any DNA profiling of the defendant or other biological evidence testing conducted by the state or by the defendant shall be disclosed and the results of such profiling or testing described in the motion or answer.

5. If the evidence requested to be tested was previously subjected to DNA or other biological analysis by either party, the court may order the disclosure of the results of such testing, including laboratory reports, notes, and underlying data, to the court and the parties.

6. The court may order a hearing on the motion to determine if evidence should be subjected to DNA analysis.

7. The court shall grant the motion if all of the following apply:

- a. The evidence subject to DNA testing is available and in a condition that will permit analysis.
- b. A sufficient chain of custody has been established for the evidence.
- c. The identity of the person who committed the crime for which the defendant was convicted was a significant issue in the crime for which the defendant was convicted.
- d. The evidence subject to DNA analysis is material to, and not merely cumulative or impeaching of, evidence included in the trial record or admitted to at a guilty plea proceeding.
- e. DNA analysis of the evidence would raise a reasonable probability that the defendant would not have been convicted if DNA profiling had been available at the time of the conviction and had been conducted prior to the conviction.

8. Upon the court granting a motion filed pursuant to this section, DNA analysis of evidence shall be conducted within the guidelines generally accepted by the scientific community. The defendant shall provide DNA samples for testing if requested by the state.

9. Results of DNA analysis conducted pursuant to this section shall be reported to the parties and to the court and may be provided to the board of parole, department of corrections,

and criminal and juvenile justice agencies, as defined in section 692.1, for use in the course of investigations and prosecutions, and for consideration in connection with requests for parole, pardon, reprieve, and commutation. DNA samples obtained pursuant to this section may be included in the DNA data bank, and DNA profiles and DNA records developed pursuant to this section may be included in the DNA database.

10. A criminal or juvenile justice agency, as defined in section 692.1, shall maintain DNA samples and evidence that could be tested for DNA for a period of three years beyond the limitations for the commencement of criminal actions as set forth in chapter 802. This section does not create a cause of action for damages or a presumption of spoliation in the event evidence is no longer available for testing.

11. If the court determines a defendant who files a motion under this section is indigent, the defendant shall be entitled to appointment of counsel as provided in chapter 815.

12. If the court determines after DNA analysis ordered pursuant to this section that the results indicate conclusively that the DNA profile of the defendant matches the profile from the analyzed evidence used against the defendant, the court may order the defendant to pay the costs of these proceedings, including costs of all testing, court costs, and costs of court-appointed counsel, if any.

2005 Acts, ch 158, §10, 19