

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

As Engrossed: H1/24/97

# A Bill

ACT 737 OF 1997  
HOUSE BILL 1064

4 By: Representatives Flanagin, Broadway, Capps, Choate, Cunningham, Curran, Davis, Dietz, Faris, Ferguson, Ferrell, Goodwin,  
5 Hogue, Johnson, Jones, Kidd, Lynn, Madison, McGehee, McGinnis, Miller, Molinaro, Pollan, Rorie, Schexnayder, Simmons, Judy  
6 Smith, Terry Smith, Stalnaker, Teague, Thicksten, Trammel, Wagner, Willems, Wilkinson, Wren, Wooldridge, *Bennett, Horn, Ingram,*  
7 *Laverty, Roberts, and Wallis*

8  
9

## For An Act To Be Entitled

11 "DNA DETECTION OF SEXUAL AND VIOLENT OFFENDERS ACT"

12

### Subtitle

14 "DNA DETECTION OF SEXUAL AND VIOLENT  
15 OFFENDERS ACT"

16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18

19 SECTION 1. Short Title. This act shall be known and may be cited as  
20 the "DNA Detection of Sexual and Violent Offenders Act."

21

22 SECTION 2. Purpose. The General Assembly finds and declares that DNA  
23 data banks are an important tool in criminal investigations, in the exclusion  
24 of individuals who are the subject of criminal investigations or prosecutions,  
25 and in deterring and detecting redicivist acts. Several states have enacted  
26 laws requiring persons convicted of certain crimes, especially sexual  
27 offenses, to provide genetic samples for DNA profiling. Moreover, it is the  
28 policy of this State to assist federal, state, and local criminal justice and  
29 law enforcement agencies in the identification and detection of individuals in  
30 criminal investigations. It is therefore in the best interest of the State of  
31 Arkansas to establish a DNA data base and a DNA data bank containing DNA  
32 samples submitted by individuals convicted of sex offenses and violent  
33 offenses.

34

35 SECTION 3. Definitions. As used in this act:

36 (1) "Administration of criminal justice" means performing functions of

1 investigation, apprehension, detention, prosecution, adjudication,  
2 correctional supervision, or rehabilitation of accused persons or criminal  
3 offenders. The administration of criminal justice also includes criminal  
4 identification activities and the collection, maintenance, and dissemination  
5 of criminal justice information.

6 (2) "CODIS" means the FBI's national DNA identification index system  
7 that allows the storage and exchange of DNA records submitted by State and  
8 local forensic laboratories. The term is derived from Combined DNA Index  
9 System.

10 (3) "Adjudication of guilt" and words of similar import mean a plea of  
11 guilty, a plea of nolo contendere, a negotiated plea, a finding of guilt by a  
12 judge, or a finding of guilt by a jury.

13 (4) "Criminal justice agency" means a government agency, or any subunit  
14 thereof, which is authorized by law to perform the administration of criminal  
15 justice, and which allocates more than one-half (1/2) its annual budget to the  
16 administration of criminal justice.

17 (5) "DNA" means deoxyribonucleic acid. DNA is located in the cells and  
18 provides an individual's personal genetic blueprint. DNA encodes genetic  
19 information that is the basis of human heredity and forensic identification.

20 (6) "DNA Record" means DNA identification information stored in the  
21 State DNA Data Base or CODIS for the purpose of generating investigative leads  
22 or supporting statistical interpretation of DNA test results. The DNA record  
23 is the result obtained from the DNA typing tests. The DNA record is comprised  
24 of the characteristics of a DNA sample which are of value in establishing the  
25 identity of individuals. The results of all DNA identification tests on an  
26 individual's DNA sample are also collectively referred to as the DNA profile  
27 of an individual.

28 (7) "DNA Sample" means a blood or tissue sample provided by any person  
29 with respect to offenses covered by this act or submitted to the State Crime  
30 Laboratory for analysis or storage or both.

31 (8) "FBI" means the Federal Bureau of Investigation.

32 (9) "Repeat offense" means a second or subsequent adjudication of guilt  
33 in a separate criminal action for the commission of any misdemeanor or felony  
34 offense involving violence as set forth in Arkansas law, the law of another  
35 state, federal law, or military law.

- 1           (10) "Sex offense" means:  
2           (A) Rape - 5-14-103;  
3           (B) Carnal abuse in the first degree - 5-14-104;  
4           (C) Carnal abuse in the second degree - 5-14-105;  
5           (D) Carnal abuse in the third degree - 5-14-106;  
6           (E) Sexual misconduct - 5-14-107;  
7           (F) Sexual abuse in the first degree - 5-14-108;  
8           (G) Sexual abuse in the second degree - 5-14-109;  
9           (H) Sexual solicitation of a child - 5-14-110;  
10          (I) Violation of minor in the first degree - 5-14-120;  
11          (J) Violation of a minor in the second degree - 5-14-121;  
12          (K) Incest - 5-26-202;  
13          (L) Engaging children in sexually explicit conduct for use in  
14 visual or print medium - 5-27-303;  
15          (M) Transportation of minors for prohibited sexual conduct -  
16 5-27-305;  
17          (N) Employing or consenting to use of child in sexual performance  
18 - 5-27-402;  
19          (O) Producing, directing, or promoting sexual performance -  
20 5-27-403;  
21          (P) Promoting prostitution in the first degree - 5-70-104;  
22          (Q) Stalking - 5-71-229;  
23          (R) An attempt, solicitation, or conspiracy to commit any of  
24 these enumerated offenses; or  
25          (S) A violation of any former law of this state which is  
26 substantially equivalent to any of the offenses enumerated in this subsection  
27 (10).  
28          (11) "Violent offense" means:  
29          (A) Murder - 5-10-101, 5-10-102, or 5-10-103;  
30          (B) Manslaughter - 5-10-104;  
31          (C) Robbery - 5-12-102;  
32          (D) Aggravated robbery - 5-12-103;  
33          (E) Battery in the first degree - 5-13-201;  
34          (F) Battery in the second degree - 5-13-202;  
35          (G) Aggravated assault - 5-13-204;

- 1           (H) Terroristic threatening in the first degree - 5-13-301;
- 2           (I) Domestic battering - 5-26-303, 5-26-304, 5-26-305;
- 3           (J) Aggravated assault on family or household member - 5-26-306;
- 4           (K) Engaging in a continuing criminal gang, organization, or
- 5 enterprise - 5-74-104;
- 6           (L) Kidnapping - 5-11-102;
- 7           (M) False imprisonment in the first degree - 5-11-103;
- 8           (N) Permanent detention or restraint - 5-11-106;
- 9           (O) An attempt, solicitation, or conspiracy to commit any of
- 10 these enumerated offenses; or
- 11           (P) A violation of any former law of this state which is
- 12 substantially equivalent to any of the offenses enumerated in this subsection
- 13 (11).

14

15           SECTION 4. Powers and Duties of State Crime Laboratory. In addition to

16 any other powers and duties conferred by this act, the State Crime Laboratory

17 shall:

- 18           (1) Be responsible for the policy management and administration of the
- 19 State DNA identification record system to support law enforcement agencies and
- 20 other criminal justice agencies;
- 21           (2) Promulgate rules and regulations to carry out the provisions of
- 22 this act; and
- 23           (3) Provide for liaison with the FBI and other criminal justice
- 24 agencies in regard to the State's participation in CODIS or in any DNA data
- 25 base designated by the State Crime Laboratory.

26

27           SECTION 5. State DNA Data Base. There is established the State DNA

28 Data Base. It shall be administered by the State Crime Laboratory and provide

29 DNA records to the FBI for storage and maintenance in CODIS. The State DNA

30 Data Base shall have the capability provided by computer software and

31 procedures administered by the State Crime Laboratory to store and maintain

32 DNA records related to:

- 33           (1) forensic casework;
- 34           (2) offenders who are required to provide a DNA sample under this act;
- 35           (3) offenders who were required to provide a DNA sample under A.C.A.

1 12-12-1101, et seq.; and

2 (4) anonymous DNA records used for research or quality control.

3

4 SECTION 6. State DNA Data Bank. There is established the State DNA  
5 Data Bank. It shall serve as the repository of DNA samples collected under  
6 this act.

7

8 SECTION 7. State Crime Laboratory recommendation of additional  
9 offenses. The State Crime Laboratory may recommend to the General Assembly  
10 that it enact legislation for the inclusion of additional offenses for which  
11 DNA samples shall be taken and otherwise subjected to the provisions of this  
12 act. In determining whether to recommend additional offenses, the State Crime  
13 Laboratory shall consider those offenses for which DNA testing will have a  
14 substantial impact on the detection and identification of sex offenders and  
15 violent offenders.

16

17 SECTION 8. Procedural compatibility with FBI. The DNA identification  
18 system as established by the State Crime Laboratory shall be compatible with  
19 the procedures specified by the FBI, including use of comparable test  
20 procedures, laboratory equipment, supplies, and computer software.

21

22 SECTION 9. DNA sample required upon adjudication of guilt.

23 (a) Adjudication of guilt after effective date. A person who is  
24 adjudicated guilty or adjudicated delinquent for a sex offense, a violent  
25 offense, or a repeat offense on or after the effective date of this act shall  
26 have a DNA sample drawn as follows:

27 (1) A person who is adjudicated guilty or adjudicated delinquent  
28 for a sex offense, a violent offense, or a repeat offense and sentenced to a  
29 term of confinement for that sex offense, violent offense, or repeat offense  
30 shall have a DNA sample drawn upon intake to a prison, jail, juvenile  
31 detention facility, or any other detention facility or institution. If the  
32 person is already confined at the time of sentencing, the person shall have a  
33 DNA sample drawn immediately after the sentencing.

34 (2) A person who is adjudicated guilty or adjudicated delinquent  
35 for a sex offense, a violent offense, or a repeat offense shall have a DNA

1 sample drawn as a condition of any sentence which disposition will not involve  
2 an intake into a prison, jail, juvenile detention facility, or any other  
3 detention facility or institution.

4           (3) A person who is acquitted on the grounds of mental disease or  
5 defect of the commission of a sex offense, a violent offense, or a repeat  
6 offense and committed to an institution or other facility shall have a DNA  
7 sample drawn upon intake to that institution or other facility.

8           (4) Under no circumstance shall a person who is adjudicated  
9 guilty or adjudicated delinquent for a sex offense, a violent offense, or a  
10 repeat offense be released in any manner after such disposition unless and  
11 until a DNA sample has been drawn.

12           (b) Adjudication of guilt before effective date. A person who has been  
13 adjudicated guilty or adjudicated delinquent for a sex offense, a violent  
14 offense, or a repeat offense before the effective date of this act and who is  
15 still serving a term of confinement in connection therewith on the effective  
16 date of this act shall not be released in any manner prior to the expiration  
17 of his maximum term of confinement unless and until a DNA sample has been  
18 drawn.

19           (c) Supervision of DNA samples. All DNA samples taken pursuant to this  
20 section shall be taken in accordance with regulations promulgated by the State  
21 Crime Laboratory in consultation with the Department of Correction, Department  
22 of Community Punishment, the Department of Human Services, and the  
23 Administrative Office of the Courts.

24

25           SECTION 10. Procedures of withdrawal, collection and transmission of  
26 DNA samples.

27           (a) Drawing of DNA samples.

28           (1) Each DNA sample required to be drawn pursuant to Section 9 of  
29 this act from persons who are incarcerated shall be drawn at the place of  
30 incarceration or confinement as provided for in Section 9. DNA samples from  
31 persons who are not committed or sentenced to a term of confinement shall be  
32 drawn at another facility to be specified by the sentencing court. Only those  
33 individuals qualified to draw DNA samples in a medically approved manner shall  
34 draw a DNA sample to be submitted for analysis.

35           (2) In addition to the DNA sample, a right thumbprint shall be

1 taken from the person from whom the DNA sample is drawn for the exclusive  
2 purpose of verifying the identity of the person.

3 (b) Delivery of DNA samples. The DNA sample and the right thumbprint  
4 provided for in subsection (a)(2) shall be delivered to the State Crime  
5 Laboratory in accordance with guidelines established by the State Crime  
6 Laboratory.

7 (c) Limitation on liability.

8 (1) Persons authorized to draw blood by this section shall not be  
9 criminally liable for drawing a DNA sample and transmitting the DNA sample  
10 pursuant to this act if they perform these activities in good faith.

11 (2) Persons authorized to draw blood by this section shall not be  
12 civilly liable for such activities when the person acted in a reasonable  
13 manner and according to generally accepted medical and other professional  
14 practices.

15 (d) Reasonable use of force. Authorized law enforcement and  
16 corrections personnel may employ reasonable force in cases where an individual  
17 refuses to submit to DNA testing authorized under this act. No such employee  
18 shall be criminally or civilly liable for the use of reasonable force.

19 (e) Refusal to provide DNA sample. Any person who refuses to provide a  
20 DNA sample required by this act will receive no further sentence reduction  
21 from meritorious good time until such time as a sample is provided, and the  
22 Department of Correction shall notify the Post Prison Transfer Board regarding  
23 the refusal.

24

25 SECTION 11. Procedures for conduct, disposition, and use of DNA  
26 analysis.

27 (a) Conduct. The State Crime Laboratory shall adopt rules governing  
28 the procedures to be used in the submission, identification, analysis,  
29 storage, and disposition of DNA samples and typing results of DNA samples  
30 submitted under this act. These procedures shall also include quality  
31 assurance guidelines to insure that DNA identification records meet standards  
32 for laboratories which submit DNA records to the State DNA Data Base.

33 (b) Disposition. The typing results of DNA samples shall be securely  
34 stored in the State DNA Data Base and records of testing shall be retained on  
35 file with the State Crime Laboratory consistent with the procedures

1 established by the FBI.

2 (c) Use of tests. Except as otherwise provided in section 12, the  
3 tests to be performed on each DNA sample shall be used only for law  
4 enforcement identification purposes or to assist in the recovery or  
5 identification of human remains from disasters or for other humanitarian  
6 identification purposes, including identification of missing persons.

7 (d) Contracting.

8 (1) The State Crime Laboratory is authorized to contract with  
9 third parties for purposes of this act.

10 (2) Any other party contracting to carry out the functions of  
11 this act shall be subject to the same restrictions and requirements of this  
12 act, insofar as applicable, as the State Crime Laboratory as well as any  
13 additional restrictions imposed by the State Crime Laboratory.

14

15 SECTION 12.

16 (a) Receipt of DNA samples by State Crime Laboratory.

17 (1) The State Crime Laboratory shall receive DNA samples, store,  
18 perform analysis or contract for DNA typing analysis with a qualified DNA  
19 laboratory that meets the guidelines as established by the State Crime  
20 Laboratory, classify, and file the DNA record of identification characteristic  
21 profiles of DNA samples submitted under this act and make such information  
22 available from the State Data Base as provided in this section.

23 (2) The State Crime Laboratory may contract out the storage of  
24 DNA typing analysis and may contract out DNA typing analysis to a qualified  
25 DNA laboratory that meets guidelines as established by the State Crime  
26 Laboratory.

27 (b) The results of the DNA profile of individuals in the State Data  
28 Base shall be made available:

29 (1) to criminal justice agencies or to approved crime  
30 laboratories which serve these agencies; or

31 (2) upon written or electronic request and in furtherance of an  
32 official investigation of a criminal offense.

33 (c) Methods of obtaining information. The State Crime Laboratory shall  
34 adopt rules governing the methods of obtaining information from the State DNA  
35 Data Base and CODIS and procedures for verification of the identity and

1 authority of the requester.

2 (d) Population data base. The State Crime Laboratory may create a  
3 separate population data base comprised of DNA samples obtained under this act  
4 after all personal identification is removed. The State Crime Laboratory may  
5 share or disseminate the population data base with other criminal justice  
6 agencies or crime laboratories that serve to assist the State Crime Laboratory  
7 with statistical data bases. The population data base may be made available  
8 to and searched by other agencies participating in the CODIS system.

9

10 SECTION 13. Removal and destruction of the DNA record and DNA sample.

11 (a) Any person whose DNA record has been included in the State DNA Data  
12 Base and whose DNA sample is stored in the State DNA Data Bank may apply to  
13 any circuit court for removal and destruction of the DNA record and DNA sample  
14 on the grounds that the adjudication of guilt that resulted in the inclusion  
15 of the person's DNA record in the State Data Base or the inclusion of the  
16 person's DNA sample in the State Data Bank has been reversed and the case  
17 dismissed. A copy of the application for removal and destruction shall be  
18 served on the prosecutor for the county in which the adjudication of guilt was  
19 obtained not less than twenty (20) days prior to the date of the hearing on  
20 the application. A certified copy of the order reversing and dismissing the  
21 adjudication of guilt shall be attached to an order removing and destroying  
22 the DNA record and DNA sample insofar as its inclusion rests upon that  
23 adjudication of guilt.

24 (b) Upon receipt of an order of removal and destruction and unless  
25 otherwise provided, the State Crime Laboratory shall purge the DNA record and  
26 other identifiable information from the State Data Base and the DNA sample  
27 stored in the State Data Bank covered by the order. If the entry in the Data  
28 Base reflects more than one adjudication of guilt, that entry shall not be  
29 removed and destroyed unless and until the person has obtained an order of  
30 removal and destruction for each adjudication of guilt on the grounds  
31 contained in subsection (a) of this section. If one of the bases for  
32 inclusion in the DNA Data Base was other than adjudication of guilt, that  
33 entry shall not be subject to removal and destruction.

34

35 SECTION 14. Confidentiality. All DNA profiles and samples submitted to

1 the State Crime Laboratory pursuant to this act shall be treated as  
2 confidential except as otherwise provided in this act.

3

4 SECTION 15. Prohibition against disclosure.

5 (a)(1) Any person who by virtue of employment, or official position, or  
6 any person contracting to carry out any functions under this act, including  
7 any officers, employees and agents of such contractor, who has possession of,  
8 or access to, individually identifiable DNA information contained in the State  
9 DNA Data Base or State DNA Data Bank shall not disclose it in any manner to  
10 any person or agency not entitled to receive it knowing that such person is  
11 not entitled to receive it.

12 (2) No person shall obtain individually identifiable DNA  
13 information from the State DNA Data Base or the State DNA Data Bank without  
14 authorization to do so.

15 (b) Any person who knowingly violates this section is guilty of a Class  
16 A misdemeanor.

17

18 SECTION 16. Prohibition against disclosure for pecuniary gain. Any  
19 person who by virtue of employment, or official position, or any person  
20 contracting to carry out any functions under this act, including any officers,  
21 employees and agents of such contractor, who has possession of, or access to,  
22 individually identifiable DNA information contained in the State DNA Data Base  
23 or State DNA Data Bank and who for pecuniary gain for such person or for any  
24 other person discloses it in any manner to any person or agency not authorized  
25 to receive it commits a Class A misdemeanor.

26

27 SECTION 17. Injunctions. The State Crime Laboratory or any other  
28 aggrieved individual or agency may institute an action in a court of competent  
29 jurisdiction against any person, agency, or organization to enjoin any  
30 criminal justice agency, noncriminal justice agency, organization, or  
31 individual from violating the provisions of this act or to compel such agency,  
32 organization, or person to comply with the provisions of this act.

33

34 SECTION 18. Mandatory cost. Unless finding that undue hardship would  
35 result, the sentencing court shall assess at the time of sentencing a

1 mandatory fine of not less than two hundred and fifty dollars (\$250) on any  
2 person who is required to provide a DNA sample under this act.

3

4 SECTION 19. DNA Detection Fund.

5 (a) There is hereby established on the books of the Treasurer of State,  
6 Auditor of State, and Chief Fiscal Officer of the State a fund to be known as  
7 the DNA Detection Fund.

8 (b) This fund shall consist of special revenues collected pursuant to  
9 section 18 there to be used by the State Crime Laboratory for the  
10 administration of this act.

11

12 SECTION 20. Authority of law enforcement officers. Nothing in this act  
13 shall limit or abrogate any existing authority of law enforcement officers to  
14 take, maintain, store, and utilize DNA samples for law enforcement purposes.

15

16 SECTION 21. All provisions of this act of a general and permanent  
17 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
18 Code Revision Commission shall incorporate the same in the Code.

19

20 SECTION 22. If any provision of this act or the application thereof to  
21 any person or circumstance is held invalid, such invalidity shall not affect  
22 other provisions or applications of the act which can be given effect without  
23 the invalid provision or application, and to this end the provisions of this  
24 act are declared to be severable.

25

26 SECTION 23. Arkansas Code Annotated § 12-12-1101, et seq., is hereby  
27 repealed.

28 ~~12-12-1101. Definition.~~

29 ~~For purposes of this subchapter, the term "sex offense" shall have the~~  
30 ~~meaning prescribed by § 12-12-902.~~

31 ~~12-12-1102. Blood sample - Sex offense defendant.~~

32 ~~After an entry of a plea of guilty of, or nolo contendere to, or on a~~  
33 ~~return of a verdict of guilty of, committing a sex offense, including~~  
34 ~~attempts, the courts shall order the defendant to provide a sample of blood~~  
35 ~~for the purpose of determining secretor status and blood type and for~~

1 ~~deoxyribonucleic acid analysis.~~

2 ~~—— 12-12-1103. Blood sample — Sex offense inmate.~~

3 ~~—— (a) Every person incarcerated in the Department of Correction on July~~  
4 ~~28, 1995, for a sex offense, including attempts, shall provide a sample of~~  
5 ~~blood for the purpose of determining secretor status and blood type and for~~  
6 ~~deoxyribonucleic acid analysis.~~

7 ~~—— (b) Any inmate who refuses to provide the blood sample required by this~~  
8 ~~section will receive no further sentence reduction from meritorious good time~~  
9 ~~until such time as a sample is provided, and the department shall notify the~~  
10 ~~Post Prison Transfer Board regarding the refusal.~~

11 ~~—— 12-12-1104. Results of tests.~~

12 ~~—— The results of such tests and analyses shall be recorded, preserved, and~~  
13 ~~disseminated in a manner established under ~~§ 12-12-312.~~~~

14

15 SECTION 24. All other laws and parts of laws in conflict with this act  
16 are hereby repealed.

17

18 /s/Rep. Flanigan, et al

19

20 APPROVED: 3-21-97

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