

**FREQUENTLY ASKED QUESTIONS (FAQ's) ABOUT**  
**DNA SAMPLES TAKEN AT TIME OF ARREST OR CONVICTION &**  
**OPPORTUNITIES FOR EXPUNGEMENT**

**FAQ #1:**     ***Am I required to submit a DNA sample in connection with my criminal case?***

**ANSWER:**    Under Rhode Island there are two instances where you will be required to submit a DNA sample:

1. If you have been convicted of a any felony. A felony is any crime that has a potential sentence of more than one (1) year in prison.
2. If you have been arrested for any "crime of violence". This includes murder, manslaughter, first-degree arson, kidnapping with intent to extort, robbery, larceny from the person, first-degree sexual assault, second-degree sexual assault, first-and-second degree child molestation, assault with intent to murder, assault with intent to rob, assault with intent to commit first-degree sexual assault, burglary, and entering a dwelling house with intent to commit murder, robbery, sexual assault, or larceny.

**FAQ #2:**     ***How will my DNA be collected?***

**ANSWER:**    The DNA sample may be collected by the police at the time of arrest or after conviction by the RI Department of Corrections / Probation Department. DNA is usually collected via a "buccal swab" in which cells are obtained by gently swabbing the inside of the mouth.

**FAQ #3:**     ***What will be done with my DNA sample?***

**ANSWER:**    The buccal swab is submitted to the RI Department of Health (RIDOH) where it is analyzed in order to develop a genetic profile. The genetic profile is then uploaded to the Rhode Island and national CODIS databases. These can be searched during a criminal investigation. The known genetic profiles in the database can then be compared to an unknown genetic profile developed from a crime scene sample or other unknown source.

- The comparison of a known to an unknown genetic profile is a tool available to law enforcement as part of a criminal investigation or may be used to exonerate someone wrongfully accused of a crime.

**FAQ #4:** *Am I eligible to have my genetic profile expunged from the DNA databases?*

**ANSWER:** Yes, in the following situations:

- Persons arrested for a “crime of violence” are eligible for expungement when any of the following occur:
  - a charge through information or indictment does not result from the arrest
  - there is a voluntary dismissal of the charge by the state or dismissal by a court
  - a verdict of not guilty after trial results
  - the vacating or the reversal of a conviction in which the state does not retry the defendant or appeal the decision or loses such appeal upon hearing
  - upon any plea or conviction of a lesser offense that is not a “crime of violence” and that would not give rise to the mandatory sampling of the individual's DNA
  - upon completion of a program of diversion or the completion of the term of a sentence of deferment, or of the granting of a pardon
- Persons convicted of a felony are eligible for expungement when any of the following occur:
  - the conviction is reversed after trial by the Rhode Island Supreme Court or
  - the person has been deceased for three (3) years

**CAVEAT:** Having a previous case in which you were required and did provide a DNA sample may disqualify you from receiving an expungement.

**FAQ #5:** *What procedures do I need to follow to have my genetic profile expunged from the DNA databases?*

**ANSWER:** It depends. In some cases expungement is supposed to be automatic; in others you need to contact RIDOH or file a motion with the court.

**FAQ #6:** *When is expungement automatic?*

**ANSWER:** Expungement is supposed to be automatic when you have been arrested for a “crime of violence” and:

- a charge through information or indictment does not result from the arrest

- there is a voluntary dismissal of the charge by the state or dismissal by a court
- a verdict of not guilty after trial results
- the vacating or reversal of a conviction in which the state does not retry the case or appeal the decision or loses such appeal
- upon any plea or conviction of a lesser offense that is not a “crime of violence” and that would not give rise to the mandatory sampling of the individual's DNA

In such cases the prosecuting authority is obliged to notify RIDOH of such events. RIDOH must then destroy and expunge the person's DNA record and any samples, analyses, or other documents relating to the DNA testing. RIDOH is also obliged to notify the individual of such action within thirty (30) days.

**FAQ #7:** ***In what situations do I have to file a motion to expunge with the court in order to obtain an expungement?***

**ANSWER:** After you successfully completed Diversion Program or Deferred Sentence or received a pardon from the Governor.

**FAQ #8:** ***What procedures do I need to follow in order to obtain a court ordered expungement?***

- ANSWER:**
1. A copy of the expungement motion must be filed in the court in which you were convicted
  2. You must serve a copy of the motion on the Attorney General's Office and the arresting police department with ten (10) days' notice prior to the court hearing date
  3. An order directing expungement will only be granted if the court finds that the appropriate conditions necessary for the expungement are satisfied.

**FAQ #9:** ***When can I contact RIDOH directly to receive an expungement?***

**ANSWER:** For persons convicted of any felony opportunities for expungement are extremely limited and available only to those who have had their convictions reversed after trial by the Rhode Island Supreme Court or that of a person who has been deceased for three (3) years. In these situations an expungement can be effectuated by contacting the RIDOH directly at 3 Capitol Hill, Providence, RI 02908 and providing them with a written request containing your name and a certified copy of the court order overturning the

conviction or the name of the deceased person and a certified copy of the death certificate.

**FAQ #9:** *Can I represent myself in these expungement proceedings?*

**ANSWER:** You can but it is not recommended for several reasons:

1. The expungement provisions are a relatively new provision of Rhode Island law and the necessary procedures to effectuate them are still being developed.
2. In some instances the question of eligibility for expungement is unclear and it may be necessary to consult other laws and rules of procedure.
3. The issue of DNA collection and expungement are both new and complex.

**CAVEAT:** It is therefore recommended that you contact an attorney when seeking an expungement and if you cannot afford one contact the Rhode Island Public Defender at:

### **Rhode Island Public Defender**

#### **Main Office**

160 Pine Street  
Providence, RI 02903

Phone: (401)222-3492

Fax: (401)222-5225

E-MAIL: [information@ripd.org](mailto:information@ripd.org)

<http://www.ripd.org>

# TITLE 12

## Criminal Procedure

### CHAPTER 12-1.5

#### DNA Detection of Sexual and Violent Offenders

##### SECTION 12-1.5-7

**§ 12-1.5-7 Scope and applicability. [Contingent effective date; see note.][Effective July 1, 2015].** – For law enforcement purposes, this chapter is applicable to adult persons arrested for any crime of violence as defined in § 12-1.5-2 and/or convicted of, or sentenced for, any felony.

History of Section.

(P.L. 1998, ch. 33, § 1; P.L. 1998, ch. 120, § 1; P.L. 2001, ch. 42, § 2; P.L. 2001, ch. 76, § 2; P.L. 2004, ch. 391, § 1; P.L. 2004, ch. 455, § 1; P.L. 2014, ch. 176, § 1; P.L. 2014, ch. 192, § 1.)

**§ 12-1.5-13 Expungement. [Effective July 1, 2015].** – (a) A person whose DNA record or profile has been included in the databank pursuant to this act may request expungement on the grounds that the conviction on which authority for including that person's DNA record or profile was based has been reversed. The department of health shall purge all records and identifiable information in the database pertaining to the person and destroy all samples from the person upon receipt of a written request for expungement pursuant to this section and a certified copy of the final court order reversing the conviction. The department of health shall purge and destroy all records and identifiable information in its database and all DNA samples taken pursuant to this chapter from convicted persons upon official proof that the person has been deceased for a period of at least three (3) years. Official proof shall include, but not be limited to, a certified copy of a death certificate.

(b) If the offense for which a DNA sample has been taken pursuant to § 12-1.5-8(b) does not result in a charge through information or indictment; or leads to voluntary dismissal of the charge by the state, or dismissal by a court; or by a not guilty verdict after trial; or upon the vacating or the reversal of a conviction in which the state does not retry the defendant or appeal the decision; or loses such appeal upon hearing; or upon any plea or conviction of a lesser offense that would not give rise to the mandatory sampling of the individual's DNA; the record or profile shall be expunged from the state DNA identification database,

regardless of any prior record for which DNA sampling would not have been authorized, except pursuant to subsection (e) herein.

(1) The prosecuting authority shall, within thirty (30) days of an event listed in this subsection, notify the department of health of such event for purposes of expunging the person's DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation, arrest, and/or prosecution of the crime that resulted in the arrest of the person. The department shall, within thirty (30) days of receiving such notification, destroy and expunge the person's DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual and shall notify the individual of such action.

(c) Upon receipt of a written request for expungement from the person whose DNA record or profile has been included in the database pursuant to this chapter and notification of the completion of a program of diversion or the completion of the term of a sentence of deferment, or of the granting of a pardon, the record or profile shall be expunged from the state DNA identification database, regardless of any prior record for which DNA sampling would not have been authorized, except pursuant to subsection (e) herein, and such individual may apply to the court for an order directing the expungement of their DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation, arrest, and/or prosecution of the crime that resulted in the arrest of the person.

(d) A copy of the expungement motion shall be served on the attorney general and the arresting police department with ten (10) days' notice prior to hearing, and an order directing expungement shall be granted if the court finds any of the appropriate conditions of the prior subsection are satisfied.

(e) The department of health shall, by rule or regulation, prescribe procedures to ensure that the DNA record in the state DNA identification database, and any samples, analyses, or other documents relating to such record, whether in the possession of the division, or any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies thereof are destroyed, including any records from CODIS. The director of health shall also adopt, by rule and regulation, a procedure for the expungement in other appropriate circumstances of DNA records contained in the database.

(f) No expungement shall be granted where an individual has a prior conviction requiring a DNA sample, or a pending charge for which collection of a sample was authorized pursuant to the provisions of this chapter.

(g) The detention, arrest, or conviction of a person based upon a database match or database information is not invalidated if it is determined that the sample was obtained or placed in the database by mistake. Any identification,

warrant, or probable cause to arrest based upon a database match is not invalidated due to a failure to expunge or a delay in expunging records.

(h) At the time of collection of the DNA sample upon arrest of any crime of violence as defined in § 12-1.5-2, the individual from whom a sample is collected shall be given written notice that the DNA record may be expunged and the DNA sample destroyed in accordance with this section. In addition, the department of health, the office of the attorney general, and the office of the public defender shall post on their websites the expungement provisions of this section.