

No. 122. An act relating to the State DNA database.

(S.10)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 20 V.S.A. § 1932 is amended to read:

§ 1932. DEFINITIONS

As used in this subchapter:

* * *

(5) “DNA sample” means a forensic unknown tissue sample or a tissue sample provided by any person convicted of a designated crime ~~or for whom the court has determined at arraignment there is probable cause that the person has committed a felony.~~ The DNA sample may be blood or other tissue type specified by the ~~department~~ Department.

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(12) “Designated crime” means any of the following offenses:

(A) a felony;

(B) 13 V.S.A. § 1042 (domestic assault);

(C) any crime for which a person is required to register as a sex offender pursuant to 13 V.S.A. chapter 167, subchapter 3 ~~of chapter 167 of Title 13~~;

(D) 13 V.S.A. § 1062 (stalking);

(E) 13 V.S.A. § 1025 (reckless endangerment);

(F) a violation of an abuse prevention order as defined in 13 V.S.A. § 1030, excluding violation of an abuse prevention order issued pursuant to 15 V.S.A. § 1104 (emergency relief) or 33 V.S.A. § 6936 (emergency relief);

(G) a misdemeanor violation of 13 V.S.A. chapter 28, relating to abuse, neglect, and exploitation of vulnerable adults;

(H) an attempt to commit any offense listed in this subdivision; or

(E)(I) any other offense, if, as part of a plea agreement in an action in which the original charge was a crime listed in this subdivision and probable cause was found by the court, there is a requirement that the defendant submit a DNA sample to the DNA data bank.

Sec. 2. 20 V.S.A. § 1933 is amended to read:

§ 1933. DNA SAMPLE REQUIRED

(a) The following persons shall submit a DNA sample:

(1) ~~A~~ a person convicted in a court in this ~~state~~ State of a designated crime on or after April 29, 1998;

(2) ~~A person for whom the court has determined at arraignment there is probable cause that the person has committed a felony in this state on or after July 1, 2011.~~

~~(3) A~~ a person who was convicted in a court in this ~~state~~ State of a designated crime prior to April 29, 1998 and, after such date, is:

(A) in the custody of the ~~commissioner of corrections~~ Commissioner of Corrections pursuant to 28 V.S.A. § 701;

(B) on parole for a designated crime;

(C) serving a supervised community sentence for a designated crime; or

(D) on probation for a designated crime.

~~(b) At the time of arraignment, the court shall set a date and time for the person to submit a DNA sample.~~

(e) A person required to submit a DNA sample who is serving a sentence in a correctional facility shall have his or her DNA samples collected or taken at the receiving correctional facility, or at a place and time designated by the ~~commissioner of corrections~~ Commissioner of Corrections or by a court, if the person has not previously submitted a DNA sample.

~~(d)~~(c) A person serving a sentence for a designated crime not confined to a correctional facility shall have his or her DNA samples collected or taken at a place and time designated by the ~~commissioner of corrections~~ Commissioner of Corrections, the ~~commissioner of public safety~~ Commissioner of Public Safety, or a court if the person has not previously submitted a DNA sample in connection with the designated crime for which he or she is serving the sentence.

Sec. 3. 20 V.S.A. § 1940 is amended to read:

§ 1940. EXPUNGEMENT OF RECORDS AND DESTRUCTION OF
SAMPLES

(a) In accordance with procedures set forth in subsection (b) of this section, the ~~department~~ Department shall destroy the DNA sample and any records of a person related to the sample that were taken in connection with a particular alleged designated crime in ~~any~~ either of the following circumstances:

(1) A person's conviction related to an incident that caused the DNA sample to be taken is reversed, and the case is dismissed.

(2) The person is granted a full pardon related to an incident that caused the DNA sample to be taken.

~~(3) If the sample was taken post-arraignment, the felony charge which required the DNA sample is downgraded to a misdemeanor by the prosecuting attorney upon a plea agreement or the person is convicted of a lesser offense that is a misdemeanor other than domestic assault pursuant to 13 V.S.A. § 1042 or a sex offense for which registration is required pursuant to 13 V.S.A. § 5401 et seq.~~

~~(4) If the sample was taken post-arraignment, the person is acquitted after a trial of the charges which required the taking of the DNA sample.~~

~~(5) If the sample was taken post-arraignment, the charges which required the taking of the DNA sample are dismissed by either the court or the~~

~~state after arraignment unless the attorney for the state can show good cause
why the sample should not be destroyed.~~

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Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.

Date Governor signed bill: May 23, 2016