

1 S.10

2 Introduced by Senators Sears and Campbell

3 Referred to Committee on Judiciary

4 Date: January 14, 2015

5 Subject: Public safety; DNA database

6 Statement of purpose of bill as introduced: This bill proposes to require a
7 DNA sample from a person convicted of any misdemeanor that carries a
8 potential penalty of imprisonment.

9 An act relating to the State DNA database

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

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

12 § 1932. DEFINITIONS

13 As used in this subchapter:

14 * * *

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

20 * * *

1 ~~(12) "Designated crime" means any of the following offenses:~~

2 (A) a felony;

3 (B) ~~13 V.S.A. § 1042 (domestic assault)~~ a misdemeanor for which
4 the maximum penalty includes any period of imprisonment;

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

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

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

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

14 § 1933. DNA SAMPLE REQUIRED

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

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

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

1 ~~(3) A a person who was convicted in a court in this state State of a~~

2 designated crime prior to April 29, 1998 and, after such date, is:

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

5 (B) on parole for a designated crime;

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

8 (D) on probation for a designated crime.

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

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

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

1 ~~connection with the designated crime for which he or she is serving the~~
2 sentence.

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

4 § 1940. EXPUNGEMENT OF RECORDS AND DESTRUCTION OF
5 SAMPLES

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

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

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

14 ~~(3) If the sample was taken post-arraignment, the felony charge which~~
15 ~~required the DNA sample is downgraded to a misdemeanor by the prosecuting~~
16 ~~attorney upon a plea agreement or the person is convicted of a lesser offense~~
17 ~~that is a misdemeanor other than domestic assault pursuant to 13 V.S.A.~~
18 ~~§ 1042 or a sex offense for which registration is required pursuant to 13 V.S.A.~~
19 ~~§ 5401 et seq.~~

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

1 ~~(5) If the sample was taken post arraignment, the charges which~~
2 ~~required the taking of the DNA sample are dismissed by either the court or the~~
3 ~~state after arraignment unless the attorney for the state can show good cause~~
4 ~~why the sample should not be destroyed.~~

5 * * *

6 Sec. 4. EFFECTIVE DATE

7 ~~This act shall take effect on passage.~~

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.

* * *

~~*(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) a misdemeanor for which a person is sentenced to and serves a period of incarceration of at least 30 days;*~~

~~*(E) an attempt to commit any offense listed in this subdivision; or*~~

~~*(~~E~~)(F) 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.*~~

(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.~~

* * *

Sec. 4. EFFECTIVE DATE

This act shall take effect on passage.