

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1143

H.P. 849

House of Representatives, March 16, 2011

An Act To Require That Law Enforcement Officials Collect DNA Samples from Persons Arrested for Certain Crimes

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative MALONEY of Augusta.
Cosponsored by Representatives: CHIPMAN of Portland, ROSEN of Bucksport, Senator
MARTIN of Kennebec and Representatives: CLARKE of Bath, HANLEY of Gardiner,
Senator: MASON of Androscoggin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 17-A MRSA §1301, sub-§7** is enacted to read:

3 **7. State DNA Data Base Fund surcharge.** As part of a fine imposed under this
4 chapter, the court shall impose an additional assessment in an amount equal to 7% of the
5 original fine. The Treasurer of State shall disburse the assessment required under this
6 subsection to the State DNA Data Base Fund established under Title 25, section 1579.
7 For purposes of collection and collection procedures, this assessment is considered part of
8 the fine. At the time of commitment, the court shall inform the Department of
9 Corrections or the county sheriff of any unpaid balances on assessments owed by the
10 offender to the State DNA Data Base Fund.

11 **Sec. 2. 25 MRSA §1572, sub-§6**, as amended by PL 2003, c. 393, §1, is further
12 amended to read:

13 **6. DNA sample.** "DNA sample" means a biological sample ~~provided by a person~~
14 ~~convicted or a juvenile adjudicated of one of the offenses listed in~~ collected pursuant to
15 this chapter or submitted to the crime lab for analysis pursuant to a criminal investigation.

16 **Sec. 3. 25 MRSA §1574**, as amended by PL 2003, c. 393, §3, is further amended
17 to read:

18 **§1574. Biological sample required for DNA analysis**

19 **1. Conviction subsequent to effective date.** A person convicted, on or after
20 January 1, 1996 and before October 1, 2001, of a crime listed in subsection 4 or a person
21 convicted on or after October 1, 2001, of a crime listed in subsection 5 shall submit to
22 having a DNA sample taken and at the time of sentencing the court shall enter an order
23 directing that the DNA sample be taken. If the convicted person's sentence includes a
24 straight term of imprisonment or a split term of imprisonment, the DNA sample may be
25 taken at any time following the commencement of the straight term or initial unsuspended
26 portion of the term of imprisonment. If the convicted person's sentence includes a period
27 of probation but no immediate imprisonment, the DNA sample may be taken at any time
28 following commencement of the probation period as directed by the probation officer. If
29 the convicted person's sentence includes a period of probation, the court may attach the
30 duty to submit to having a DNA sample taken as a condition of probation.

31 **2. Conviction prior to effective date.** A person convicted and incarcerated prior to
32 January 1, 1996, as a result of a conviction for a crime listed in subsection 4, must have a
33 DNA sample taken before release from the corrections system.

34 **3-A. Juveniles.** A juvenile adjudicated on or after October 1, 2003 of a juvenile
35 crime that, if committed by an adult, would constitute an offense listed in subsection 6 is
36 subject to the requirements of this section.

37 **4. Applicable offenses for persons convicted after January 1, 1996 and before**
38 **October 1, 2001.** This section applies to a person convicted after January 1, 1996 and

1 before October 1, 2001 of one or more of the following offenses or an attempt of one or
2 more of the following offenses:

- 3 A. Murder or criminal homicide in the first or 2nd degree;
- 4 B. Felony murder;
- 5 C. Manslaughter;
- 6 D. Aggravated assault;
- 7 D-1. Elevated aggravated assault;
- 8 E. Gross sexual assault, including that formerly denominated as gross sexual
9 misconduct;
- 10 E-1. Rape;
- 11 F. Sexual abuse of a minor;
- 12 G. Unlawful sexual contact;
- 13 G-1. Visual sexual aggression against a child;
- 14 G-2. Sexual misconduct with a child under 14 years of age;
- 15 H. Kidnapping;
- 16 I. Criminal restraint;
- 17 J. Burglary;
- 18 K. Robbery;
- 19 L. Arson;
- 20 M. Aggravated criminal mischief; or
- 21 N. Any lesser included offense of any crime identified in paragraphs A to M if the
22 greater offense is initially charged. "Lesser included offense" has the same meaning
23 as in Title 17-A, section 13-A.

24 **5. Applicable offenses for persons convicted on or after October 1, 2001.** This
25 section applies to a person convicted on or after October 1, 2001 of one or more of the
26 following offenses or an attempt of one or more of the following offenses:

- 27 A. Murder;
- 28 B. A Class A, B or C crime;
- 29 C. Sexual abuse of a minor;
- 30 D. Unlawful sexual contact;
- 31 E. Visual sexual aggression against a child;
- 32 F. Sexual ~~contact~~ misconduct with a child under 14 years of age;
- 33 G. ~~Solicitation of~~ Soliciting a child by a computer to commit a prohibited act; or

1 H. Any lesser included offense of any crime identified in paragraphs A to G if the
2 greater offense is initially charged. "Lesser included offense" has the same meaning
3 as in Title 17-A, section 13-A.

4 **6. Applicable offenses for juveniles adjudicated on or after October 1, 2003.**

5 This section applies to a juvenile adjudicated on or after October 1, 2003 of committing a
6 juvenile crime that, if committed by an adult, would constitute one or more of the
7 following offenses or an attempt of one or more of the following offenses:

- 8 A. Murder;
- 9 B. Felony murder;
- 10 C. Manslaughter;
- 11 D. Aggravated assault;
- 12 E. Elevated aggravated assault;
- 13 F. Gross sexual assault;
- 14 G. Unlawful sexual contact;
- 15 H. Kidnapping;
- 16 I. Criminal restraint;
- 17 J. Burglary;
- 18 K. Robbery;
- 19 L. Arson;
- 20 M. Aggravated criminal mischief; or
- 21 N. Causing a catastrophe.

22 **7. Applicable offenses for persons arrested on or after January 1, 2012. A**

23 person arrested on or after January 1, 2012 for an offense listed in this subsection shall
24 submit to having a DNA sample taken by a law enforcement agency as part of the
25 booking process. For a person who is charged with an offense listed in this subsection by
26 an indictment, information or complaint on a Class A, B or C crime on or after January 1,
27 2012 and who is not arrested for the offense on or after January 1, 2012 because the
28 person's arrest occurred prior to that date or the person's appearance is procured by
29 summons or other means rather than arrest, if the booking process occurs on or after
30 January 1, 2012, the law enforcement agency conducting the booking process shall
31 collect the DNA sample from the person as part of the booking process. For a person
32 who is charged with an offense listed in this subsection by an indictment, information or
33 complaint on a Class A, B or C crime on or after January 1, 2012 and who is not arrested
34 for the offense on or after January 1, 2012 because the person's arrest occurred prior to
35 that date or the person's appearance is procured by summons or other means rather than
36 arrest and is not subject to a booking process on or after January 1, 2012, the court shall
37 order the person to submit to having a DNA sample collected by the investigating agency
38 of the State responsible for fingerprinting. If the collection of a DNA sample pursuant to
39 this subsection is impractical at the time specified by this subsection, an appropriate

1 agency may collect the sample at any other time during the person's detention or during
2 pendency of the charges. This subsection applies to the following offenses:

3 A. Murder;

4 B. A Class A, B or C crime;

5 C. Sexual abuse of a minor;

6 D. Unlawful sexual contact;

7 E. Visual sexual aggression against a child;

8 F. Sexual misconduct with a child under 14 years of age; and

9 G. Soliciting of a child by a computer to commit a prohibited act.

10 **Sec. 4. 25 MRSA §1577, sub-§4**, as amended by PL 2003, c. 393, §7, is further
11 amended to read:

12 **4. Expungement of profiles of convicted offenders and adjudicated juveniles.** A
13 person whose DNA record has been stored in the state DNA data base pursuant to section
14 1574, subsection 1, 2, 3-A, 4, 5 or 6 may petition the Superior Court for expungement on
15 the ground that the conviction or adjudication justifying the inclusion of the DNA record
16 in the state DNA data base has been reversed or dismissed. Upon receipt of an
17 expungement order and a certified copy of the order reversing and dismissing the
18 conviction or adjudication, the Chief of the State Police shall purge from the state DNA
19 data base the DNA record and all identifiable information resulting exclusively from the
20 reversed conviction or adjudication.

21 **Sec. 5. 25 MRSA §1577, sub-§5** is enacted to read:

22 **5. Expungement of profiles of persons arrested.** A person whose DNA record has
23 been stored in the state DNA data base pursuant to section 1574, subsection 7 may
24 request the Chief of the State Police for expungement of the person's DNA record from
25 the data base on the ground that the underlying charge that led to the arrest justifying the
26 inclusion of the DNA record in the data base has been resolved by dismissal, nolle
27 prosequi, successful completion of a pretrial diversion program or a conditional discharge
28 or acquittal. The Chief of the State Police shall expunge the DNA record of a person
29 under this subsection when the person provides a written request for expungement and:

30 A. A certified copy of the dismissal, nolle prosequi, proof of successful completion
31 of a pretrial diversion program or a conditional discharge or acquittal; or

32 B. A sworn affidavit that no charges listed in section 1574, subsection 7 arising from
33 the arrest have been filed within one year.

34 **Sec. 6. 25 MRSA §1579** is enacted to read:

35 **§1579. State DNA Data Base Fund**

36 **1. Fund established.** The State DNA Data Base Fund, referred to in this section as
37 "the fund," is established.

1 The bill provides funds to pay for the collection of DNA samples for the state DNA
2 data base by requiring an additional assessment on all criminal and motor vehicle
3 violation fines equal to 7% of the amount of the fines, to be deposited into the State DNA
4 Data Base Fund established by this bill and administered by the Department of Public
5 Safety.