

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RH/CL

P.L.2017, CHAPTER 248, *approved January 8, 2018*
Senate, No. 1032 (*First Reprint*)

1 **AN ACT** concerning the preservation of biological evidence and
2 supplementing chapter 84A of Title 2A of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

- 7
8 1. The Legislature finds and declares that:
9 a. The value of properly preserved biological evidence has
10 been enhanced by the discovery of modern DNA testing methods,
11 which, coupled with a comprehensive system of DNA databases
12 that store crime scene and offender profiles, allow law enforcement
13 to improve its crime-solving potential;
14 b. Tapping the potential of preserved biological evidence
15 requires that this evidence be properly identified, collected,
16 preserved, stored, catalogued, and organized;
17 c. Law enforcement agencies indicate that “cold” case
18 investigations are hindered by an inability to access biological
19 evidence that was collected during criminal investigations;
20 d. Innocent people mistakenly convicted of serious crimes for
21 which biological evidence is probative cannot prove their innocence
22 if the evidence is not accessible for testing under appropriate
23 circumstances;
24 e. It is established that the failure to update policies regarding
25 the preservation of evidence squanders valuable law enforcement
26 resources, manpower hours, and storage space; and
27 f. Simple but crucial enhancements to protocols for properly
28 preserving biological evidence can solve old crimes, enhance public
29 safety, and settle claims of innocence.

30
31 2. For the purposes of this act:
32 “Biological evidence” means any item that contains blood, semen,
33 hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids^{1,1} or
34 other identifiable biological material that was collected as part of the
35 criminal investigation or may reasonably be used to incriminate or
36 exculpate any person for the offense, whether this material is
37 catalogued separately, such as on a slide or swab or in a test tube, or is

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLP committee amendments adopted June 20, 2016.

1 present on other evidence, including, but not limited to, clothing,
2 ligatures, bedding^{1,1} or other household material, drinking cups, and
3 cigarettes; the term also shall include the contents of a sexual assault
4 examination kit.

5 “Custody” means ¹【persons】 when a person¹ currently ¹is¹
6 incarcerated, civilly committed, on parole or probation, or subject to
7 sex offender registration.

8 “Director” means the Director of the Division of Criminal Justice
9 in the Department of Law and Public Safety.

10 “DNA” means deoxyribonucleic acid.

11 “Law enforcement or prosecuting agency” or “agency” means any
12 governmental, public or private person or entity within this State
13 charged with the collection, storage, or retrieval of biological
14 evidence, including, but not limited to^{1,1} law enforcement agencies,
15 prosecutors’ offices, courts, public hospitals, and crime laboratories.

16 “Profile” means a unique identifier of a person which is derived
17 from that person’s DNA.

18

19 3. a. Every law enforcement or prosecuting agency shall
20 preserve any biological evidence secured in relation to an
21 investigation or prosecution of a crime while:

22 (1) The crime remains unsolved; or

23 (2) The person convicted of that crime remains in custody.

24 b. The provisions of this section shall apply to biological
25 evidence that:

26 (1) Was in the possession of the agency during the investigation
27 and prosecution of the case; and

28 (2) At the time of conviction was likely to contain biological
29 material.

30 c. The agency shall not destroy biological evidence if an
31 additional co-defendant, convicted of the same crime, remains in
32 custody and shall preserve this evidence while all co-defendants
33 remain in custody.

34 d. The agency shall retain evidence in the amount and in a
35 manner sufficient to develop a DNA profile from the biological
36 material contained in or included on the evidence.

37 e. Upon written request of a defendant, the agency shall
38 prepare an inventory of biological evidence that has been preserved
39 in connection with the defendant’s criminal case.

40 f. The agency may destroy evidence that includes biological
41 material before the expiration of the time period specified in
42 subsection a. of this section if:

43 (1) No other provision of federal or State law requires the
44 agency to preserve the evidence;

45 (2) The agency sends certified delivery of notice of intent to
46 destroy the evidence to:

1 (a) all persons who remain in custody as a result of the criminal
2 conviction, delinquency adjudication, or commitment related to the
3 evidence in question;

4 (b) the attorney of record for each person in custody;

5 (c) the public defender;

6 (d) the county prosecutor where the person was convicted; and

7 (e) the Attorney General; and

8 (3) A person notified pursuant to paragraph (2) of subsection f.
9 of this section, within 180 days after the date of receipt of the
10 notice, does not:

11 (a) file a motion for performance of forensic DNA testing under
12 section 1 of P.L.2001 c.377 (C.2A:84A-32a); or

13 (b) submit a written request for retention of evidence to the
14 agency which provided notice of its intent to destroy evidence
15 under paragraph (2) of subsection f. of this section.

16 g. If the agency receives a written request for retention of
17 biological evidence after providing notice under paragraph (2) of
18 subsection f. of this section of its intent to destroy that evidence, the
19 agency shall retain the evidence while the person remains in
20 custody.

21 h. The agency shall not be required to preserve physical
22 evidence that is of such a size, bulk, or physical character as to
23 render retention impracticable. When such retention is
24 impracticable, the agency shall remove and preserve portions of the
25 material evidence likely to contain biological evidence related to
26 the offense, in a quantity sufficient to permit future DNA testing
27 before returning or disposing of the physical evidence.

28 i. If the agency is unable to locate biological evidence that it is
29 required to preserve under this act, the chief evidence custodian
30 assigned to the entity charged with the preservation of the evidence
31 shall provide an affidavit stipulating under penalty or perjury that
32 describes the efforts taken to locate that evidence and that the
33 evidence could not be located.

34

35 4. The director shall:

36 (1) Devise standards regarding the proper collection, retention
37 and cataloguing of biological evidence for ongoing investigations
38 and prosecutions;

39 (2) Recommend practices, protocols, models, and resources for
40 cataloguing and accessing preserved biological evidence currently
41 in the possession of the State; and

42 (3) Administer and conduct training programs for law
43 enforcement officers and other employees charged with preserving
44 and cataloguing biological evidence regarding the methods and
45 procedures outlined in this act.

46

47 5. Any person who by virtue of employment, or official
48 position, has possession of, or access to, biological evidence and

1 destroys that evidence in violation of the provisions of this act is
2 guilty of a disorderly person's offense.

3

4 6. The Attorney General shall promulgate guidelines and
5 procedures governing the preservation of biological evidence as
6 required by this act.

7

8 7. This act shall take effect on the first day of the seventh
9 month after enactment and shall apply to biological evidence in the
10 custody of any law enforcement or prosecuting agency on the
11 effective date of this act.

12

13

14

STATEMENT

15

16 This bill would require every law enforcement or prosecuting
17 agency to preserve any biological evidence secured in relation to an
18 investigation or prosecution of a crime while that crime remains
19 unsolved or while the person convicted of that crime remains in
20 custody. The bill also requires the preservation of biological
21 evidence as long as additional co-defendants convicted of the same
22 crime remain in custody. A person is considered in custody if he or
23 she is incarcerated, civilly committed, on parole or probation, or
24 subject to sex offender registration.

25 The bill's provisions apply to biological evidence that was in the
26 possession of the law enforcement or prosecuting agency during the
27 investigation and prosecution of the case and, at the time of
28 conviction, was likely to contain biological material. The bill
29 defines "biological evidence" as any item that contains blood,
30 semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily
31 fluids or other identifiable biological material that was collected as
32 part of the criminal investigation or may reasonably be used to
33 incriminate or exculpate any person for the offense, whether this
34 material is catalogued separately, such as on a slide or swab or in a
35 test tube, or is present on other evidence, including, but not limited
36 to, clothing, ligatures, bedding or other household material,
37 drinking cups, and cigarettes. The contents of a sexual assault
38 examination kit also constitutes biological evidence.

39 Law enforcement or prosecuting agencies are required to retain
40 sufficient evidence to develop a DNA profile from the biological
41 material contained in the evidence. But they are not required to
42 preserve physical evidence that is of such a size, bulk, or physical
43 character as to render retention impracticable. Under these
44 circumstances, the agency must remove and preserve portions of the
45 material evidence likely to contain biological evidence related to
46 the offense, in a quantity sufficient to permit future DNA testing
47 before returning or disposing of the physical evidence.

1 Defendants may submit written requests for an inventory of
2 biological evidence that has been preserved in connection with their
3 cases, as well as a request in writing for a copy of that inventory.

4 If the agency is unable to locate biological evidence that was to
5 be preserved, the chief evidence custodian must provide an affidavit
6 stipulating under penalty or perjury the efforts taken to locate that
7 evidence and that the evidence could not be located.

8 Biological evidence may be destroyed before the crime is solved
9 or the person is released from custody under certain limited
10 conditions if proper notice is given to the appropriate parties.

11 Under the bill, the Director of the Division of Criminal Justice is
12 required to develop standards for collecting, retaining and
13 cataloguing biological evidence; recommend practices, protocols,
14 models, and resources for cataloguing and accessing this evidence;
15 and conduct training programs for law enforcement officers and
16 other employees charged with preserving and cataloguing the
17 evidence.

18 According to the sponsor, it is crucial that biological evidence be
19 appropriately preserved so that it can be used to solve old crimes,
20 enhance public safety, and settle claims of innocence.

21

22

23

24

25 _____
Requires preservation of certain biological evidence.

SENATE, No. 1032

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 8, 2016

Sponsored by:
Senator LORETTA WEINBERG
District 37 (Bergen)

SYNOPSIS

Requires preservation of certain biological evidence.

CURRENT VERSION OF TEXT

As introduced.



S1032 WEINBERG

2

1 AN ACT concerning the preservation of biological evidence and
2 supplementing chapter 84A of Title 2A of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. The Legislature finds and declares that:

9 a. The value of properly preserved biological evidence has
10 been enhanced by the discovery of modern DNA testing methods,
11 which, coupled with a comprehensive system of DNA databases
12 that store crime scene and offender profiles, allow law enforcement
13 to improve its crime-solving potential;

14 b. Tapping the potential of preserved biological evidence
15 requires that this evidence be properly identified, collected,
16 preserved, stored, catalogued, and organized;

17 c. Law enforcement agencies indicate that “cold” case
18 investigations are hindered by an inability to access biological
19 evidence that was collected during criminal investigations;

20 d. Innocent people mistakenly convicted of serious crimes for
21 which biological evidence is probative cannot prove their innocence
22 if the evidence is not accessible for testing under appropriate
23 circumstances;

24 e. It is established that the failure to update policies regarding
25 the preservation of evidence squanders valuable law enforcement
26 resources, manpower hours, and storage space; and

27 f. Simple but crucial enhancements to protocols for properly
28 preserving biological evidence can solve old crimes, enhance public
29 safety, and settle claims of innocence.

30
31 2. For the purposes of this act:

32 “Biological evidence” means any item that contains blood,
33 semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily
34 fluids or other identifiable biological material that was collected as
35 part of the criminal investigation or may reasonably be used to
36 incriminate or exculpate any person for the offense, whether this
37 material is catalogued separately, such as on a slide or swab or in a
38 test tube, or is present on other evidence, including, but not limited
39 to, clothing, ligatures, bedding or other household material,
40 drinking cups, and cigarettes; the term also shall include the
41 contents of a sexual assault examination kit.

42 “Custody” means persons currently incarcerated, civilly
43 committed, on parole or probation, or subject to sex offender
44 registration.

45 “Director” means the Director of the Division of Criminal Justice
46 in the Department of Law and Public Safety.

47 “DNA” means deoxyribonucleic acid.

48 “Law enforcement or prosecuting agency” or “agency” means
49 any governmental, public or private person or entity within this

S1032 WEINBERG

1 State charged with the collection, storage, or retrieval of biological
2 evidence, including, but not limited to law enforcement agencies,
3 prosecutors' offices, courts, public hospitals, and crime
4 laboratories.

5 "Profile" means a unique identifier of a person which is derived
6 from that person's DNA.

7

8 3. a. Every law enforcement or prosecuting agency shall
9 preserve any biological evidence secured in relation to an
10 investigation or prosecution of a crime while:

11 (1) The crime remains unsolved; or

12 (2) The person convicted of that crime remains in custody.

13 b. The provisions of this section shall apply to biological
14 evidence that:

15 (1) Was in the possession of the agency during the investigation
16 and prosecution of the case; and

17 (2) At the time of conviction was likely to contain biological
18 material.

19 c. The agency shall not destroy biological evidence if an
20 additional co-defendant, convicted of the same crime, remains in
21 custody and shall preserve this evidence while all co-defendants
22 remain in custody.

23 d. The agency shall retain evidence in the amount and in a
24 manner sufficient to develop a DNA profile from the biological
25 material contained in or included on the evidence.

26 e. Upon written request of a defendant, the agency shall
27 prepare an inventory of biological evidence that has been preserved
28 in connection with the defendant's criminal case.

29 f. The agency may destroy evidence that includes biological
30 material before the expiration of the time period specified in
31 subsection a. of this section if:

32 (1) No other provision of federal or State law requires the
33 agency to preserve the evidence;

34 (2) The agency sends certified delivery of notice of intent to
35 destroy the evidence to:

36 (a) all persons who remain in custody as a result of the criminal
37 conviction, delinquency adjudication, or commitment related to the
38 evidence in question;

39 (b) the attorney of record for each person in custody;

40 (c) the public defender;

41 (d) the county prosecutor where the person was convicted; and

42 (e) the Attorney General; and

43 (3) A person notified pursuant to paragraph (2) of subsection f.
44 of this section, within 180 days after the date of receipt of the
45 notice, does not:

46 (a) file a motion for performance of forensic DNA testing under
47 section 1 of P.L.2001 c.377 (C.2A:84A-32a); or

S1032 WEINBERG

1 (b) submit a written request for retention of evidence to the
2 agency which provided notice of its intent to destroy evidence
3 under paragraph (2) of subsection f. of this section.

4 g. If the agency receives a written request for retention of
5 biological evidence after providing notice under paragraph (2) of
6 subsection f. of this section of its intent to destroy that evidence, the
7 agency shall retain the evidence while the person remains in
8 custody.

9 h. The agency shall not be required to preserve physical
10 evidence that is of such a size, bulk, or physical character as to
11 render retention impracticable. When such retention is
12 impracticable, the agency shall remove and preserve portions of the
13 material evidence likely to contain biological evidence related to
14 the offense, in a quantity sufficient to permit future DNA testing
15 before returning or disposing of the physical evidence.

16 i. If the agency is unable to locate biological evidence that it is
17 required to preserve under this act, the chief evidence custodian
18 assigned to the entity charged with the preservation of the evidence
19 shall provide an affidavit stipulating under penalty or perjury that
20 describes the efforts taken to locate that evidence and that the
21 evidence could not be located.

22

23 4. The director shall:

24 (1) Devise standards regarding the proper collection, retention
25 and cataloguing of biological evidence for ongoing investigations
26 and prosecutions;

27 (2) Recommend practices, protocols, models, and resources for
28 cataloguing and accessing preserved biological evidence currently
29 in the possession of the State; and

30 (3) Administer and conduct training programs for law
31 enforcement officers and other employees charged with preserving
32 and cataloguing biological evidence regarding the methods and
33 procedures outlined in this act.

34

35 5. Any person who by virtue of employment, or official
36 position, has possession of, or access to, biological evidence and
37 destroys that evidence in violation of the provisions of this act is
38 guilty of a disorderly person's offense.

39

40 6. The Attorney General shall promulgate guidelines and
41 procedures governing the preservation of biological evidence as
42 required by this act.

43

44 7. This act shall take effect on the first day of the seventh
45 month after enactment and shall apply to biological evidence in the
46 custody of any law enforcement or prosecuting agency on the
47 effective date of this act.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49

This bill would require every law enforcement or prosecuting agency to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or while the person convicted of that crime remains in custody. The bill also requires the preservation of biological evidence as long as additional co-defendants convicted of the same crime remain in custody. A person is considered in custody if he or she is incarcerated, civilly committed, on parole or probation, or subject to sex offender registration.

The bill's provisions apply to biological evidence that was in the possession of the law enforcement or prosecuting agency during the investigation and prosecution of the case and, at the time of conviction, was likely to contain biological material. The bill defines "biological evidence" as any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense, whether this material is catalogued separately, such as on a slide or swab or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, and cigarettes. The contents of a sexual assault examination kit also constitutes biological evidence.

Law enforcement or prosecuting agencies are required to retain sufficient evidence to develop a DNA profile from the biological material contained in the evidence. But they are not required to preserve physical evidence that is of such a size, bulk, or physical character as to render retention impracticable. Under these circumstances, the agency must remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.

Defendants may submit written requests for an inventory of biological evidence that has been preserved in connection with their cases, as well as a request in writing for a copy of that inventory.

If the agency is unable to locate biological evidence that was to be preserved, the chief evidence custodian must provide an affidavit stipulating under penalty or perjury the efforts taken to locate that evidence and that the evidence could not be located.

Biological evidence may be destroyed before the crime is solved or the person is released from custody under certain limited conditions if proper notice is given to the appropriate parties.

Under the bill, the Director of the Division of Criminal Justice is required to develop standards for collecting, retaining and cataloguing biological evidence; recommend practices, protocols, models, and resources for cataloguing and accessing this evidence; and conduct training programs for law enforcement officers and

S1032 WEINBERG

6

1 other employees charged with preserving and cataloguing the
2 evidence.

3 According to the sponsor, it is crucial that biological evidence be
4 appropriately preserved so that it can be used to solve old crimes,
5 enhance public safety, and settle claims of innocence.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 1032

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 20, 2016

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 1032.

As amended and reported by the committee, Senate Bill No. 1032 requires every law enforcement or prosecuting agency in this State to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or while the person convicted of that crime remains in custody. The bill also requires the preservation of biological evidence as long as additional co-defendants convicted of the same crime remain in custody. A person is considered to be in custody if he or she is incarcerated, civilly committed, on parole or probation, or subject to sex offender registration.

The bill's provisions apply to biological evidence that was in the possession of the law enforcement or prosecuting agency during the investigation and prosecution of the case and, at the time of conviction, was likely to contain biological material. The bill defines "biological evidence" as any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense. The material is considered biological evidence whether it is catalogued separately, such as on a slide or swab or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, and cigarettes. The contents of a sexual assault examination kit also constitute biological evidence.

Law enforcement or prosecuting agencies are required to retain sufficient evidence to develop a DNA profile from the biological material contained in the evidence. But they are not required to preserve physical evidence whose size, bulk, or physical character renders retention impracticable. Under these circumstances, the agency is required to remove and preserve portions of the material evidence likely to contain biological evidence related to the offense,

in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.

Defendants may submit written requests for an inventory of biological evidence that has been preserved in connection with their cases, as well as a request in writing for a copy of that inventory.

If the agency is unable to locate biological evidence that was to be preserved, the chief evidence custodian is to provide an affidavit stipulating under penalty or perjury the efforts taken to locate that evidence and that the evidence could not be located.

Biological evidence may be destroyed before the crime is solved or the person is released from custody under certain limited conditions if proper notice is given to the appropriate parties.

Under the bill, the Director of the Division of Criminal Justice is required to develop standards for collecting, retaining, and cataloguing biological evidence; recommend practices, protocols, models, and resources for cataloguing and accessing this evidence; and conduct training programs for law enforcement officers and other employees charged with preserving and cataloguing the evidence.

According to the sponsor, it is crucial that biological evidence be appropriately preserved so that it can be used to solve old crimes, enhance public safety, and settle claims of innocence.

COMMITTEE AMENDMENTS:

The committee made technical and clarifying amendments to the bill.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1032

STATE OF NEW JERSEY

DATED: NOVEMBER 3, 2016

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1032 (1R).

This bill requires all law enforcement or prosecuting agencies in this State to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or while the person convicted of that crime remains in custody. The bill also requires the preservation of biological evidence as long as additional co-defendants convicted of the same crime remain in custody. A person is considered to be in custody if he or she is incarcerated, civilly committed, on parole or probation, or subject to sex offender registration.

The bill's provisions apply to biological evidence that was in the possession of the law enforcement or prosecuting agency during the investigation and prosecution of the case and, at the time of conviction, was likely to contain biological material. The bill defines "biological evidence" as any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense. The material is considered biological evidence whether it is catalogued separately, such as on a slide or swab or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, and cigarettes. The contents of a sexual assault examination kit also constitute biological evidence.

Law enforcement or prosecuting agencies are required to retain sufficient evidence to develop a DNA profile from the biological material contained in the evidence. But they are not required to preserve physical evidence whose size, bulk, or physical character renders retention impracticable. Under these circumstances, the agency is required to remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.

Defendants may submit written requests for an inventory of biological evidence that has been preserved in connection with their cases, as well as a request in writing for a copy of that inventory.

If the agency is unable to locate biological evidence that was to be preserved, the chief evidence custodian is to provide an affidavit stipulating under penalty or perjury the efforts taken to locate that evidence and that the evidence could not be located.

Biological evidence may be destroyed before the crime is solved or the person is released from custody under certain limited conditions if proper notice is given to the appropriate parties.

Under the bill, the Director of the Division of Criminal Justice is required to develop standards for collecting, retaining, and cataloguing biological evidence; recommend practices, protocols, models, and resources for cataloguing and accessing this evidence; and conduct training programs for law enforcement officers and other employees charged with preserving and cataloguing the evidence.

FISCAL IMPACT:

The Office of Legislative Services (OLS) projects that the bill will result in an indeterminate annual expenditure increase to State, county, and local governments from requiring law enforcement and prosecuting agencies to securely retain and store biological evidence for a substantial period of time.

In addition, the OLS estimates that municipal governments may incur an indeterminate recurring expenditure increase related to the bill's establishment of a new disorderly persons offense for any person who by virtue of employment, or official position, has access to biological evidence and destroys that evidence in violation of the provisions of the bill. Any violation would add to the workload of municipal prosecutors and municipal courts. Given that the OLS anticipates only a limited number of violations per year, if any, municipal prosecutors and municipal courts may be able to absorb the additional workload within their existing resources.

Furthermore, the OLS notes that in establishing the new disorderly persons offense, the bill creates the potential for recurring State and local government revenue gains. Any conviction of a disorderly persons offense results in: 1) a fine of up to \$1,000 that would be retained by the municipal government in whose court the case was tried; 2) the payment of up to \$33 in court costs to be retained by the municipality in whose court the case was tried; 3) the payment of a \$100 assessment to the New Jersey Victims of Crime Compensation Office; and 4) the payment of a \$75 assessment to the State for deposit in the Safe Neighborhoods Services Fund. The OLS cannot determine the number of convictions of the disorderly persons offense that the bill newly creates, and hence the magnitude of any resultant fine, fee, and assessment collections. The office notes, however, that it expects only a limited number of convictions per year, if any.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1032 STATE OF NEW JERSEY 217th LEGISLATURE

DATED: NOVEMBER 10, 2016

SUMMARY

- Synopsis:** Requires preservation of certain biological evidence.
- Type of Impact:** Annual cost increases to State, county, and municipal governments.
Recurring revenue gain to the State and municipal governments.
- Agencies Affected:** Department of Law and Public Safety; Juvenile Justice Commission; Department of Corrections; State Parole Board; Administrative Office of the Courts; and County and Local Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State and Local Cost Increase	Indeterminate – See comments below.
State and Local Revenue Gain	Indeterminate – See comments below.

- The Office of Legislative Services (OLS) projects that the bill will result in an indeterminate annual expenditure increase to State, county, and municipal governments that will outweigh a recurring revenue gain to the State and municipal governments.
- The bill will cause an indeterminate annual cost increase to State, county, and municipal governments from requiring all law enforcement and prosecuting agencies to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or any person convicted thereof remains in custody.
- The Department of Law and Public Safety will incur an indeterminate annual cost increase from the mandated development of standards and practices for collecting, retaining, cataloguing, and accessing biological evidence and the conducting of related training sessions.
- Municipal governments will incur an indeterminate recurring cost increase, as municipal prosecutors will prosecute and municipal courts will adjudicate cases involving the bill's newly created disorderly persons offense for any person who by virtue of employment, or

official position, has access to and destroys biological evidence in violation of bill requirements.

- State and municipal governments will accrue recurring revenue gains from fees, fines, and assessments collected from persons convicted of the new disorderly persons offense.

BILL DESCRIPTION

Senate Bill No. 1032 (1R) of 2016 requires every law enforcement and prosecuting agency to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or any person convicted thereof remains in custody. A person is considered to be in custody if he or she is incarcerated, civilly committed, on parole or probation, or subject to sex offender registration.

Law enforcement and prosecuting agencies must retain sufficient biological evidence to develop a DNA profile therefrom. But they are not required to preserve physical evidence whose size, bulk, or physical character renders retention impracticable. Under these circumstances, the agency is only required to remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.

Biological evidence may be destroyed before the crime is solved or all implicated persons are released from custody if, upon notification, no objection is filed by appropriate parties.

Moreover, the bill directs the Division of Criminal Justice in the Department of Law and Public Safety to develop standards for collecting, retaining, and cataloguing biological evidence; recommend practices, protocols, models, and resources for cataloguing and accessing this evidence; and conduct training programs for law enforcement officers and other employees charged with preserving and cataloguing the evidence.

In addition, the bill establishes a disorderly persons offense for any person who by virtue of employment, or official position, has access to and destroys biological evidence in violation of bill requirements. Disorderly persons offenses are punishable by a fine of up to \$1,000 and up to six months in county jail with a presumption of non-incarceration applicable to first-time offenders.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill will result in an indeterminate annual expenditure increase to State, county, and municipal governments that will outweigh a recurring revenue gain to the State and municipal governments.

Expenditure Increases: The OLS estimates that three bill provisions will produce indeterminate annual expenditure increases to State, county, and municipal governments.

A) *Biological Evidence Retention:* The bill requires all law enforcement and prosecuting agencies, as the term is defined in the bill, to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or any person convicted thereof remains in custody. In so doing, this bill establishes the need for expanded secure facility storage space. The OLS, however, cannot quantify the annual expenses State, county, and municipal law enforcement and prosecuting agencies will incur in complying with the bill's storage requirement.

The OLS is uncertain to what extent the bill may change the current handling of biological evidence. In 2014, the New Jersey State Police published an *Evidence Field Manual*, which provided best practices for the collection and storage of biological evidence. Moreover, on July 10, 2014, the New Jersey Department of Law and Public Safety issued a directive requiring that sexual assault medical examination evidence be retained for a minimum of five years before destruction, allowing victims time to decide whether to release the evidence to law enforcement.

B) *Standards Development and Training:* The OLS concludes that the Department of Law and Public Safety will incur an indeterminate annual cost increase from the bill requirement to develop standards and practices for collecting, retaining, cataloguing, and accessing biological evidence and conducting related training sessions.

C) *Prosecution and Adjudication of New Disorderly Persons Offense:* The OLS estimates that municipal governments may incur an indeterminate recurring expenditure increase related to the bill's establishment of a new disorderly persons offense for any person who by virtue of employment, or official position, has access to and destroys biological evidence in violation of bill requirements. Disorderly persons offenses are prosecuted by municipal prosecutors and adjudicated in municipal court. Violations of the bill will therefore add to the workload of municipal prosecutors and courts. Given that the OLS anticipates only a limited number of violations per year, if any, municipal prosecutors and courts may be able to absorb the additional workload within their existing resources.

Revenue Gains: In establishing the new disorderly persons offense, the bill creates the potential for recurring State and municipal government revenue gains. Any conviction of a disorderly persons offense results in: 1) a fine of up to \$1,000 to be retained by the municipal government in whose court the case was tried; 2) the payment of up to \$33 in court costs to be retained by the municipality in whose court the case was tried; 3) the payment of a \$100 assessment to the New Jersey Victims of Crime Compensation Office; and 4) the payment of a \$75 assessment to the State for deposit in the Safe Neighborhoods Services Fund. The OLS, however, cannot determine the number of convictions of the bill's newly created disorderly persons offense, and by extension the total of any resultant fine, fee, and assessment collections. The office, however, expects only a limited number of convictions per year, if any.

Section: Law and Public Safety

Analyst: Kristin Brunner Santos
Senior Fiscal Analyst

Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1032

STATE OF NEW JERSEY

DATED: MAY 11, 2017

The Assembly Law and Public Safety Committee reports favorably Senate Bill No.1032 (1R).

As reported by the committee, Senate Bill No. 1032 (1R) requires every law enforcement or prosecuting agency in this State to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or while the person convicted of that crime remains in custody. This bill also requires the preservation of biological evidence as long as additional co-defendants convicted of the same crime remain in custody. Under the bill, a person is considered to be in custody if he or she is incarcerated, civilly committed, on parole or probation, or subject to sex offender registration.

The bill's provisions apply to biological evidence that was in the possession of the law enforcement or prosecuting agency during the investigation and prosecution of the case and, at the time of conviction, was likely to contain biological material. The bill defines "biological evidence" as any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense. The material is considered biological evidence whether it is catalogued separately, such as on a slide or swab or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, and cigarettes. The contents of a sexual assault examination kit also constitute biological evidence.

The provisions of the bill require law enforcement or prosecuting agencies to retain sufficient evidence to develop a DNA profile from the biological material contained in the evidence. But they are not required to preserve physical evidence whose size, bulk, or physical character renders retention impracticable. Under these circumstances, the agency is required to remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.

Defendants may submit written requests for an inventory of biological evidence that has been preserved in connection with their cases, as well as a request in writing for a copy of that inventory.

If the agency is unable to locate biological evidence that was to be preserved, the chief evidence custodian is to provide an affidavit stipulating under penalty or perjury the efforts taken to locate that evidence and that the evidence could not be located.

Biological evidence may be destroyed before the crime is solved or the person is released from custody under certain limited conditions if proper notice is given to the appropriate parties.

Under the bill, the Director of the Division of Criminal Justice is required to develop standards for collecting, retaining, and cataloguing biological evidence; recommend practices, protocols, models, and resources for cataloguing and accessing this evidence; and conduct training programs for law enforcement officers and other employees charged with preserving and cataloguing the evidence.

According to the sponsor, it is crucial that biological evidence be appropriately preserved so that it can be used to solve old crimes, enhance public safety, and settle claims of innocence.

As reported by the committee, Senate Bill No. 1032 (1R) is identical to Assembly Bill No. 1400 which also was reported and amended by the committee on this date.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1032

STATE OF NEW JERSEY

DATED: JUNE 19, 2017

The Assembly Appropriations Committee reports favorably Senate Bill No. 1032 (1R).

This bill requires all law enforcement or prosecuting agencies in this State to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or while the person convicted of that crime remains in custody. The bill also requires the preservation of biological evidence as long as additional co-defendants convicted of the same crime remain in custody. A person is considered to be in custody if he or she is incarcerated, civilly committed, on parole or probation, or subject to sex offender registration.

The bill's provisions apply to biological evidence that was in the possession of the law enforcement or prosecuting agency during the investigation and prosecution of the case and, at the time of conviction, was likely to contain biological material. The bill defines "biological evidence" as any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense. The material is considered biological evidence whether it is catalogued separately, such as on a slide or swab or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, and cigarettes. The contents of a sexual assault examination kit also constitute biological evidence.

Law enforcement or prosecuting agencies are required to retain sufficient evidence to develop a DNA profile from the biological material contained in the evidence. But they are not required to preserve physical evidence whose size, bulk, or physical character renders retention impracticable. Under these circumstances, the agency is required to remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.

Defendants may submit written requests for an inventory of biological evidence that has been preserved in connection with their cases, as well as a request in writing for a copy of that inventory.

If the agency is unable to locate biological evidence that was to be preserved, the chief evidence custodian is to provide an affidavit stipulating under penalty or perjury the efforts taken to locate that evidence and that the evidence could not be located.

Biological evidence may be destroyed before the crime is solved or the person is released from custody under certain limited conditions if proper notice is given to the appropriate parties.

Under the bill, a person who by virtue of employment, or official position, has possession of, or access to, biological evidence and destroys that evidence is guilty of a disorderly person's offense.

Under the bill, the Director of the Division of Criminal Justice is required to develop standards for collecting, retaining, and cataloguing biological evidence; recommend practices, protocols, models, and resources for cataloguing and accessing this evidence; and conduct training programs for law enforcement officers and other employees charged with preserving and cataloguing the evidence.

As reported, this bill is identical to Assembly Bill No. 1400 (1R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) projects that the bill will result in an indeterminate annual expenditure increase to State, county, and local governments from requiring law enforcement and prosecuting agencies to securely retain and store biological evidence for a substantial period of time.

In addition, the OLS estimates that municipal governments may incur an indeterminate recurring expenditure increase related to the bill's establishment of a new disorderly persons offense for any person who by virtue of employment, or official position, has access to biological evidence and destroys that evidence in violation of the provisions of the bill. Any violation would add to the workload of municipal prosecutors and municipal courts. Given that the OLS anticipates only a limited number of violations per year, if any, municipal prosecutors and municipal courts may be able to absorb the additional workload within their existing resources.

Furthermore, the OLS notes that in establishing the new disorderly persons offense, the bill creates the potential for recurring State and local government revenue gains. Any conviction of a disorderly persons offense results in: 1) a fine of up to \$1,000 that would be retained by the municipal government in whose court the case was tried; 2) the payment of up to \$33 in court costs to be retained by the municipality in whose court the case was tried; 3) the payment of a \$100 assessment to the New Jersey Victims of Crime Compensation Office; and 4) the payment of a \$75 assessment to the State for deposit

in the Safe Neighborhoods Services Fund. The OLS cannot determine the number of convictions of the disorderly persons offense that the bill newly creates, and hence the magnitude of any resultant fine, fee, and assessment collections. The office notes, however, that it expects only a limited number of convictions per year, if any.

ASSEMBLY, No. 1400

STATE OF NEW JERSEY
217th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

SYNOPSIS

Requires preservation of certain biological evidence.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning the preservation of biological evidence and
2 supplementing chapter 84A of Title 2A of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. The Legislature finds and declares that:

9 a. The value of properly preserved biological evidence has
10 been enhanced by the discovery of modern DNA testing methods,
11 which, coupled with a comprehensive system of DNA databases
12 that store crime scene and offender profiles, allow law enforcement
13 to improve its crime-solving potential;

14 b. Tapping the potential of preserved biological evidence
15 requires that this evidence be properly identified, collected,
16 preserved, stored, catalogued, and organized;

17 c. Law enforcement agencies indicate that “cold” case
18 investigations are hindered by an inability to access biological
19 evidence that was collected during criminal investigations;

20 d. Innocent people mistakenly convicted of serious crimes for
21 which biological evidence is probative cannot prove their innocence
22 if the evidence is not accessible for testing under appropriate
23 circumstances;

24 e. It is established that the failure to update policies regarding
25 the preservation of evidence squanders valuable law enforcement
26 resources, manpower hours, and storage space; and

27 f. Simple but crucial enhancements to protocols for properly
28 preserving biological evidence can solve old crimes, enhance public
29 safety, and settle claims of innocence.

30
31 2. For the purposes of this act:

32 “Biological evidence” means any item that contains blood,
33 semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily
34 fluids or other identifiable biological material that was collected as
35 part of the criminal investigation or may reasonably be used to
36 incriminate or exculpate any person for the offense, whether this
37 material is catalogued separately, such as on a slide or swab or in a
38 test tube, or is present on other evidence, including, but not limited
39 to, clothing, ligatures, bedding or other household material,
40 drinking cups, and cigarettes; the term also shall include the
41 contents of a sexual assault examination kit.

42 “Custody” means persons currently incarcerated, civilly
43 committed, on parole or probation, or subject to sex offender
44 registration.

45 “Director” means the Director of the Division of Criminal Justice
46 in the Department of Law and Public Safety.

47 “DNA” means deoxyribonucleic acid.

1 “Law enforcement or prosecuting agency” or “agency” means
2 any governmental, public or private person or entity within this
3 State charged with the collection, storage, or retrieval of biological
4 evidence, including, but not limited to law enforcement agencies,
5 prosecutors’ offices, courts, public hospitals, and crime
6 laboratories.

7 “Profile” means a unique identifier of a person which is derived
8 from that person’s DNA.

9

10 3. a. Every law enforcement or prosecuting agency shall
11 preserve any biological evidence secured in relation to an
12 investigation or prosecution of a crime while:

13 (1) The crime remains unsolved; or

14 (2) The person convicted of that crime remains in custody.

15 b. The provisions of this section shall apply to biological
16 evidence that:

17 (1) Was in the possession of the agency during the investigation
18 and prosecution of the case; and

19 (2) At the time of conviction was likely to contain biological
20 material.

21 c. The agency shall not destroy biological evidence if an
22 additional co-defendant, convicted of the same crime, remains in
23 custody and shall preserve this evidence while all co-defendants
24 remain in custody.

25 d. The agency shall retain evidence in the amount and in a
26 manner sufficient to develop a DNA profile from the biological
27 material contained in or included on the evidence.

28 e. Upon written request of a defendant, the agency shall
29 prepare an inventory of biological evidence that has been preserved
30 in connection with the defendant’s criminal case.

31 f. The agency may destroy evidence that includes biological
32 material before the expiration of the time period specified in
33 subsection a. of this section if:

34 (1) No other provision of federal or State law requires the
35 agency to preserve the evidence;

36 (2) The agency sends certified delivery of notice of intent to
37 destroy the evidence to:

38 (a) all persons who remain in custody as a result of the criminal
39 conviction, delinquency adjudication, or commitment related to the
40 evidence in question;

41 (b) the attorney of record for each person in custody;

42 (c) the public defender;

43 (d) the county prosecutor where the person was convicted; and

44 (e) the Attorney General; and

45 (3) A person notified pursuant to paragraph (2) of subsection f.
46 of this section, within 180 days after the date of receipt of the
47 notice, does not:

A1400 JOHNSON

- 1 (a) file a motion for performance of forensic DNA testing under
2 section 1 of P.L.2001 c.377 (C.2A:84A-32a); or
- 3 (b) submit a written request for retention of evidence to the
4 agency which provided notice of its intent to destroy evidence
5 under paragraph (2) of subsection f. of this section.
- 6 g. If the agency receives a written request for retention of
7 biological evidence after providing notice under paragraph (2) of
8 subsection f. of this section of its intent to destroy that evidence, the
9 agency shall retain the evidence while the person remains in
10 custody.
- 11 h. The agency shall not be required to preserve physical
12 evidence that is of such a size, bulk, or physical character as to
13 render retention impracticable. When such retention is
14 impracticable, the agency shall remove and preserve portions of the
15 material evidence likely to contain biological evidence related to
16 the offense, in a quantity sufficient to permit future DNA testing
17 before returning or disposing of the physical evidence.
- 18 i. If the agency is unable to locate biological evidence that it is
19 required to preserve under this act, the chief evidence custodian
20 assigned to the entity charged with the preservation of the evidence
21 shall provide an affidavit stipulating under penalty or perjury that
22 describes the efforts taken to locate that evidence and that the
23 evidence could not be located.
- 24
- 25 4. The director shall:
- 26 (1) Devise standards regarding the proper collection, retention
27 and cataloguing of biological evidence for ongoing investigations
28 and prosecutions;
- 29 (2) Recommend practices, protocols, models, and resources for
30 cataloguing and accessing preserved biological evidence currently
31 in the possession of the State; and
- 32 (3) Administer and conduct training programs for law
33 enforcement officers and other employees charged with preserving
34 and cataloguing biological evidence regarding the methods and
35 procedures outlined in this act.
- 36
- 37 5. Any person who by virtue of employment, or official
38 position, has possession of, or access to, biological evidence and
39 destroys that evidence in violation of the provisions of this act is
40 guilty of a disorderly person's offense.
- 41
- 42 6. The Attorney General shall promulgate guidelines and
43 procedures governing the preservation of biological evidence as
44 required by this act.
- 45
- 46 7. This act shall take effect on the first day of the seventh
47 month after enactment and shall apply to biological evidence in the

1 custody of any law enforcement or prosecuting agency on the
2 effective date of this act.

3

4

5

STATEMENT

6

7 This bill would require every law enforcement or prosecuting
8 agency to preserve any biological evidence secured in relation to an
9 investigation or prosecution of a crime while that crime remains
10 unsolved or while the person convicted of that crime remains in
11 custody. The bill also requires the preservation of biological
12 evidence as long as additional co-defendants convicted of the same
13 crime remain in custody. A person is considered in custody if he or
14 she is incarcerated, civilly committed, on parole or probation, or
15 subject to sex offender registration.

16 The bill's provisions apply to biological evidence that was in the
17 possession of the law enforcement or prosecuting agency during the
18 investigation and prosecution of the case and, at the time of
19 conviction, was likely to contain biological material. The bill
20 defines "biological evidence" as any item that contains blood,
21 semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily
22 fluids or other identifiable biological material that was collected as
23 part of the criminal investigation or may reasonably be used to
24 incriminate or exculpate any person for the offense, whether this
25 material is catalogued separately, such as on a slide or swab or in a
26 test tube, or is present on other evidence, including, but not limited
27 to, clothing, ligatures, bedding or other household material,
28 drinking cups, and cigarettes. The contents of a sexual assault
29 examination kit also constitutes biological evidence.

30 Law enforcement or prosecuting agencies are required to retain
31 sufficient evidence to develop a DNA profile from the biological
32 material contained in the evidence. But they are not required to
33 preserve physical evidence that is of such a size, bulk, or physical
34 character as to render retention impracticable. Under these
35 circumstances, the agency must remove and preserve portions of the
36 material evidence likely to contain biological evidence related to
37 the offense, in a quantity sufficient to permit future DNA testing
38 before returning or disposing of the physical evidence.

39 Defendants may submit written requests for an inventory of
40 biological evidence that has been preserved in connection with their
41 cases, as well as a request in writing for a copy of that inventory.

42 If the agency is unable to locate biological evidence that was to
43 be preserved, the chief evidence custodian must provide an affidavit
44 stipulating under penalty or perjury the efforts taken to locate that
45 evidence and that the evidence could not be located.

46 Biological evidence may be destroyed before the crime is solved
47 or the person is released from custody under certain limited
48 conditions if proper notice is given to the appropriate parties.

A1400 JOHNSON

1 Under the bill, the Director of the Division of Criminal Justice is
2 required to develop standards for collecting, retaining and
3 cataloguing biological evidence; recommend practices, protocols,
4 models, and resources for cataloguing and accessing this evidence;
5 and conduct training programs for law enforcement officers and
6 other employees charged with preserving and cataloguing the
7 evidence.

8 According to the sponsor, it is crucial that biological evidence be
9 appropriately preserved so that it can be used to solve old crimes,
10 enhance public safety, and settle claims of innocence.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1400

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 11, 2017

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No.1400.

As amended and reported by the committee, Assembly Bill No. 1400 requires every law enforcement or prosecuting agency in this State to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or while the person convicted of that crime remains in custody. This amended bill also requires the preservation of biological evidence as long as additional co-defendants convicted of the same crime remain in custody. Under the amended bill, a person is considered to be in custody if he or she is incarcerated, civilly committed, on parole or probation, or subject to sex offender registration.

The amended bill's provisions apply to biological evidence that was in the possession of the law enforcement or prosecuting agency during the investigation and prosecution of the case and, at the time of conviction, was likely to contain biological material. The amended bill defines "biological evidence" as any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense. The material is considered biological evidence whether it is catalogued separately, such as on a slide or swab or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, and cigarettes. The contents of a sexual assault examination kit also constitute biological evidence.

The amended bill requires law enforcement or prosecuting agencies to retain sufficient evidence to develop a DNA profile from the biological material contained in the evidence. But they are not required to preserve physical evidence whose size, bulk, or physical character renders retention impracticable. Under these circumstances, the agency is required to remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.

Defendants may submit written requests for an inventory of biological evidence that has been preserved in connection with their cases, as well as a request in writing for a copy of that inventory.

If the agency is unable to locate biological evidence that was to be preserved, the chief evidence custodian is to provide an affidavit stipulating under penalty or perjury the efforts taken to locate that evidence and that the evidence could not be located.

Biological evidence may be destroyed before the crime is solved or the person is released from custody under certain limited conditions if proper notice is given to the appropriate parties.

Under the amended bill, the Director of the Division of Criminal Justice is required to develop standards for collecting, retaining, and cataloguing biological evidence; recommend practices, protocols, models, and resources for cataloguing and accessing this evidence; and conduct training programs for law enforcement officers and other employees charged with preserving and cataloguing the evidence.

According to the sponsor, it is crucial that biological evidence be appropriately preserved so that it can be used to solve old crimes, enhance public safety, and settle claims of innocence.

This bill was pre-filed for introduction in the 2016-2017 session pending technical review. As amended and reported, the amended bill includes the changes required by technical review, which has been performed.

As amended and reported by the committee, Assembly Bill No. 1400 is identical to Senate Bill No. 1032 (1R) which also was reported by the committee on this date.

COMMITTEE AMENDMENTS

The committee made technical and clarifying amendments to the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1400

STATE OF NEW JERSEY

DATED: JUNE 19, 2017

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1400 (1R).

This bill requires all law enforcement or prosecuting agencies in this State to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or while the person convicted of that crime remains in custody. The bill also requires the preservation of biological evidence as long as additional co-defendants convicted of the same crime remain in custody. A person is considered to be in custody if he or she is incarcerated, civilly committed, on parole or probation, or subject to sex offender registration.

The bill's provisions apply to biological evidence that was in the possession of the law enforcement or prosecuting agency during the investigation and prosecution of the case and, at the time of conviction, was likely to contain biological material. The bill defines "biological evidence" as any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable biological material that was collected as part of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense. The material is considered biological evidence whether it is catalogued separately, such as on a slide or swab or in a test tube, or is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, and cigarettes. The contents of a sexual assault examination kit also constitute biological evidence.

Law enforcement or prosecuting agencies are required to retain sufficient evidence to develop a DNA profile from the biological material contained in the evidence. But they are not required to preserve physical evidence whose size, bulk, or physical character renders retention impracticable. Under these circumstances, the agency is required to remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.

Defendants may submit written requests for an inventory of biological evidence that has been preserved in connection with their cases, as well as a request in writing for a copy of that inventory.

If the agency is unable to locate biological evidence that was to be preserved, the chief evidence custodian is to provide an affidavit stipulating under penalty or perjury the efforts taken to locate that evidence and that the evidence could not be located.

Biological evidence may be destroyed before the crime is solved or the person is released from custody under certain limited conditions if proper notice is given to the appropriate parties.

Under the bill, a person who by virtue of employment, or official position, has possession of, or access to, biological evidence and destroys that evidence is guilty of a disorderly person's offense.

Under the bill, the Director of the Division of Criminal Justice is required to develop standards for collecting, retaining, and cataloguing biological evidence; recommend practices, protocols, models, and resources for cataloguing and accessing this evidence; and conduct training programs for law enforcement officers and other employees charged with preserving and cataloguing the evidence.

As reported, this bill is identical to Senate Bill No. 1032 (1R), as also reported by the committee.

FISCAL IMPACT:

The Office of Legislative Services (OLS) projects that the bill will result in an indeterminate annual expenditure increase to State, county, and local governments from requiring law enforcement and prosecuting agencies to securely retain and store biological evidence for a substantial period of time.

In addition, the OLS estimates that municipal governments may incur an indeterminate recurring expenditure increase related to the bill's establishment of a new disorderly persons offense for any person who by virtue of employment, or official position, has access to biological evidence and destroys that evidence in violation of the provisions of the bill. Any violation would add to the workload of municipal prosecutors and municipal courts. Given that the OLS anticipates only a limited number of violations per year, if any, municipal prosecutors and municipal courts may be able to absorb the additional workload within their existing resources.

Furthermore, the OLS notes that in establishing the new disorderly persons offense, the bill creates the potential for recurring State and local government revenue gains. Any conviction of a disorderly persons offense results in: 1) a fine of up to \$1,000 that would be retained by the municipal government in whose court the case was tried; 2) the payment of up to \$33 in court costs to be retained by the municipality in whose court the case was tried; 3) the payment of a \$100 assessment to the New Jersey Victims of Crime Compensation Office; and 4) the payment of a \$75 assessment to the State for deposit

in the Safe Neighborhoods Services Fund. The OLS cannot determine the number of convictions of the disorderly persons offense that the bill newly creates, and hence the magnitude of any resultant fine, fee, and assessment collections. The office notes, however, that it expects only a limited number of convictions per year, if any.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 1400

STATE OF NEW JERSEY 217th LEGISLATURE

DATED: JUNE 20, 2017

SUMMARY

- Synopsis:** Requires preservation of certain biological evidence.
- Type of Impact:** Annual cost increases to State, county, and municipal governments.
Recurring revenue gain to the State and municipal governments.
- Agencies Affected:** Department of Law and Public Safety; Juvenile Justice Commission; Department of Corrections; State Parole Board; Administrative Office of the Courts; and County and Local Governments.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State and Local Cost Increase	Indeterminate – See comments below.
State and Local Revenue Gain	Indeterminate – See comments below.

- The Office of Legislative Services (OLS) projects that the bill will result in an indeterminate annual expenditure increase to State, county, and municipal governments that will outweigh a recurring revenue gain to the State and municipal governments.
- The bill will cause an indeterminate annual cost increase to State, county, and municipal governments from requiring all law enforcement and prosecuting agencies to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or any person convicted thereof remains in custody.
- The Department of Law and Public Safety will incur an indeterminate annual cost increase from the mandated development of standards and practices for collecting, retaining, cataloguing, and accessing biological evidence and the conducting of related training sessions.
- Municipal governments will incur an indeterminate recurring cost increase, as municipal prosecutors will prosecute and municipal courts will adjudicate cases involving the bill's newly created disorderly persons offense for any person who by virtue of employment, or

official position, has access to and destroys biological evidence in violation of bill requirements.

- State and municipal governments will accrue recurring revenue gains from fees, fines, and assessments collected from persons convicted of the new disorderly persons offense.

BILL DESCRIPTION

Assembly Bill No. 1400 (1R) of 2016 requires every law enforcement and prosecuting agency to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or any person convicted thereof remains in custody. A person is considered to be in custody if he or she is incarcerated, civilly committed, on parole or probation, or subject to sex offender registration.

Law enforcement and prosecuting agencies must retain sufficient biological evidence to develop a DNA profile therefrom. But they are not required to preserve physical evidence whose size, bulk, or physical character renders retention impracticable. Under these circumstances, the agency is only required to remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence.

Biological evidence may be destroyed before the crime is solved or all implicated persons are released from custody if, upon notification, no objection is filed by appropriate parties.

Moreover, the bill directs the Division of Criminal Justice in the Department of Law and Public Safety to develop standards for collecting, retaining, and cataloguing biological evidence; recommend practices, protocols, models, and resources for cataloguing and accessing this evidence; and conduct training programs for law enforcement officers and other employees charged with preserving and cataloguing the evidence.

In addition, the bill establishes a disorderly persons offense for any person who by virtue of employment, or official position, has access to and destroys biological evidence in violation of bill requirements. Disorderly persons offenses are punishable by a fine of up to \$1,000 and up to six months in county jail with a presumption of non-incarceration applicable to first-time offenders.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that the bill will result in an indeterminate annual expenditure increase to State, county, and municipal governments that will outweigh a recurring revenue gain to the State and municipal governments.

Expenditure Increases: The OLS estimates that three bill provisions will produce indeterminate annual expenditure increases to State, county, and municipal governments.

A) Biological Evidence Retention: The bill requires all law enforcement and prosecuting agencies, as the term is defined in the bill, to preserve any biological evidence secured in relation to an investigation or prosecution of a crime while that crime remains unsolved or any person convicted thereof remains in custody. In so doing, this bill establishes the need for expanded secure facility storage space. The OLS, however, cannot quantify the annual expenses State, county, and municipal law enforcement and prosecuting agencies will incur in complying with the bill's storage requirement.

The OLS is uncertain to what extent the bill may change the current handling of biological evidence. In 2014, the New Jersey State Police published an *Evidence Field Manual*, which provided best practices for the collection and storage of biological evidence. Moreover, on July 10, 2014, the New Jersey Department of Law and Public Safety issued a directive requiring that sexual assault medical examination evidence be retained for a minimum of five years before destruction, allowing victims time to decide whether to release the evidence to law enforcement.

B) Standards Development and Training: The OLS concludes that the Department of Law and Public Safety will incur an indeterminate annual cost increase from the bill requirement to develop standards and practices for collecting, retaining, cataloguing, and accessing biological evidence and conducting related training sessions.

C) Prosecution and Adjudication of New Disorderly Persons Offense: The OLS estimates that municipal governments may incur an indeterminate recurring expenditure increase related to the bill's establishment of a new disorderly persons offense for any person who by virtue of employment, or official position, has access to and destroys biological evidence in violation of bill requirements. Disorderly persons offenses are prosecuted by municipal prosecutors and adjudicated in municipal court. Violations of the bill will therefore add to the workload of municipal prosecutors and courts. Given that the OLS anticipates only a limited number of violations per year, if any, municipal prosecutors and courts may be able to absorb the additional workload within their existing resources.

Revenue Gains: In establishing the new disorderly persons offense, the bill creates the potential for recurring State and municipal government revenue gains. Any conviction of a disorderly persons offense results in: 1) a fine of up to \$1,000 to be retained by the municipal government in whose court the case was tried; 2) the payment of up to \$33 in court costs to be retained by the municipality in whose court the case was tried; 3) the payment of a \$100 assessment to the New Jersey Victims of Crime Compensation Office; and 4) the payment of a \$75 assessment to the State for deposit in the Safe Neighborhoods Services Fund. The OLS, however, cannot determine the number of convictions of the bill's newly created disorderly persons offense, and by extension the total of any resultant fine, fee, and assessment collections. The office, however, expects only a limited number of convictions per year, if any.

Section: Law and Public Safety

Analyst: Kristin Brunner Santos
Senior Fiscal Analyst

Approved: Frank W. Haines III
Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).