



## State of New Jersey

OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF CRIMINAL JUSTICE

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### ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2024-03

**TO:** All Law Enforcement Chief Executives and County Prosecutors

**FROM:** Matthew J. Platkin, Attorney General

**DATE:** June 20, 2024

**SUBJECT: Investigatory Use of Documentary Records and Physical Blood Samples Maintained by the Newborn Screening Program**

#### **I. Introduction and Overview**

The Newborn Screening Program is an important public-health program designed to detect unseen illnesses and connect newborn infants with comprehensive healthcare and services. See N.J.S.A. 26:2-110, -111; N.J.A.C. 8:18-1.12. New Jersey law requires that every baby born in the State must have a bloodspot screen taken within 48 hours of birth to test for various conditions that can cause serious health problems or even death, unless a parent or guardian objects on religious grounds. See N.J.S.A. 26:2-110, -111; N.J.A.C. 8:18-1.12. The Program is critical to helping medical professionals, parents, and guardians quickly detect a variety of congenital disorders, and to helping prevent future problems related to those conditions through early diagnosis and treatment. It also provides universal access to screening for all babies, including those who otherwise might not have sufficient access to care. See N.J.S.A. 26:2-110.

Crucial to the success of the Program is that information gathered through it is kept private. N.J.S.A. 26:2-111; N.J.A.C. 8:18-1.13. And given the sensitivity inherent in this Program, law enforcement has almost never sought to use this material as part of an investigation—indeed, the Department of Health in 2022 revealed that only five grand jury subpoenas had been received (from four law enforcement agencies) over the preceding five years, an average of one per year. But even the infrequent use of information gathered via a public-health program can impact the public's trust in such programs, which can in turn jeopardize public safety and public health. Therefore, in the interests of bolstering public confidence in this medical-screening program, this Directive adds new and important limits to ensure that law enforcement agencies will only seek such information in genuinely exceptional circumstances. It does this by imposing new approval requirements for the rare cases in which law enforcement seeks to obtain newborn "bloodspot" information, and designates the legal process this Office will require all law enforcement agencies to follow going forward.

Therefore, pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law-enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the directives outlined below:

## **II. Process and Approval Requirements**

### **A. Requirements**

Before seeking release of documentary records or physical bloodspots maintained by the Newborn Screening Program, a law enforcement agency shall first seek approval from the Director of the Division of Criminal Justice. Requests for approval must be made in writing and must explain why this is an exceptional circumstance that necessitates seeking information from the Program and why less intrusive means will not suffice. In keeping with past practice, a request for such information regarding an individual who is not the victim in the case should be exceedingly rare.

### **B. Appropriate Legal Process**

To bolster public confidence in the newborn screening program, any documentary records and/or physical bloodspots maintained by the Newborn Screening Program shall be obtained only by one of the following forms of appropriate legal process based on the facts presented:

1. a court-issued Dyal subpoena rather than grand-jury subpoena, see State v. Dyal, 97 N.J. 229, 232 (1984) (“[T]o obtain the results of a blood test protected by the patient-physician privilege, the police should apply to a municipal court judge for a subpoena duces tecum.”), abrogated on other grounds by State v. Adkins, 221 N.J. 300, 316 (2015); or
2. a search warrant based on probable cause, see U.S. Const. amend. IV.; N.J.S.A. Const. art. 1, ¶ 7; or
3. an administrative subpoena (or appropriate court process) issued in a missing-persons or unidentified-body case under N.J.S.A. 52:17B-9.7 to -9.8d.

## **III. Other Provisions**

**A. Non-enforceability by third parties.** This Directive is issued pursuant to the Attorney General’s authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.

**B. Severability.** The provisions of this Directive shall be severable. If any phrase, clause, sentence, or provision of this Directive is declared by a court of competent

jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.

- C. Questions.** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the Director of the Division of Criminal Justice, or their designee.
- D. Effective date.** This Directive shall take effect immediately, and shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General. All law-enforcement agencies are encouraged to take any action they deem necessary related to training on this Directive.



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Matthew J. Platkin  
Attorney General

ATTEST:



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Lyndsay V. Ruotolo  
First Assistant Attorney General

Dated: June 20, 2024