

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 54 (Senator Forehand)
Judicial Proceedings

Genetic Privacy - Individual's Genetic Information - Personal Property Rights

This bill prohibits a person from knowingly collecting a DNA sample from an individual, performing a DNA analysis on a sample, retaining a DNA sample or the results of a DNA analysis, or disclosing the results of a DNA analysis unless prior written informed consent of the individual or the individual's legal guardian or authorized representative is obtained.

This bill does not apply to DNA samples obtained for law enforcement purposes, the statewide DNA database system, paternity tests, emergency medical treatment, and mandatory newborn health screenings.

Fiscal Summary

State Effect: Potential increase in general fund revenues and expenditures due to the bill's penalty provisions. The District Court can handle any increase in civil cases as a result of this bill with existing budgeted resources. The Department of Health and Mental Hygiene (DHMH) and the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) can handle the bill's requirements with existing budgeted resources.

Local Effect: Potential increase in expenditures due to the bill's penalty provisions. Local revenues are not affected. Circuit courts can handle any increase in civil cases as a result of this bill with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: Routine physical measurements, tests for drugs, alcohol, cholesterol, or the human immunodeficiency virus, analyses meeting specified criteria, and information derived from a genetic test obtained for diagnostic and therapeutic purposes are excluded from the bill's provisions. A general authorization for the release of medical records or information does not constitute written informed consent. However, DHMH is authorized to adopt regulations to establish an appropriate form. A person using a uniform written informed consent form established by the department is exempt from civil or criminal liability for actions taken under the consent form.

A person who violates the provisions of this bill is guilty of a misdemeanor and is subject to imprisonment up to one year and/or a fine of \$10,000.

The bill also grants the individual from whom a DNA sample is taken a personal property right in the sample and the results of any DNA analysis performed on the sample. An individual whose personal property rights are violated under the provisions of this bill may sue for actual damages suffered. If the individual prevails in the civil action, the individual is also entitled to reasonable attorney fees and additional damages of \$5,000. If the violation resulted in profit or monetary gain to the violator, however, the individual is entitled to damages equivalent to the actual profit or monetary gain or \$100,000, whichever is greater.

Current Law: Insurers, nonprofit health service plans, and health maintenance organizations (carriers) are prohibited from releasing identifiable genetic information or the results of a genetic test to any person who is not an employee of the carrier or a participating health care provider who provides medical services to insureds or enrollees without the prior written authorization of the individual from whom the test results or genetic information was obtained. The written authorization is required for each disclosure and must contain the information being released, the individuals who are releasing the information, and to whom the information is being released. Even then, the genetic information may only be released for the purposes of providing medical care or conducting approved medical research. (*See Insurance Article, §27-909.*)

The federal Health Insurance Portability and Accountability Act (HIPAA) established guidelines on the disclosure and electronic transmission of medical records. Federal regulations implementing HIPAA include the "Privacy Rule," which requires health care providers, health plans, and health care clearinghouses to implement certain standards to protect against misuse of individually identifiable health information. Genetic information that is individually identifiable and maintained by an applicable entity is covered by the Privacy Rule. Among other things, the Privacy Rule requires entities to: (1) inform individuals of their privacy rights and how their personal health information is

used; and (2) implement internal policies and procedures to maintain privacy of personal health information.

Background: As of June 2008, Alaska was the only state to extend personal property rights to DNA samples. Five states (Alaska, Colorado, Florida, Georgia, and Louisiana) define genetic information as personal property. In 2001, Oregon repealed a law passed in 1995 extending personal property rights to genetic information and DNA samples. Nineteen states have enacted civil and/or criminal penalties for the violation of genetic privacy laws.

State Revenues: General fund revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the District Court.

State Expenditures: The District Court has exclusive jurisdiction over cases involving less than \$5,000 and misdemeanors. For cases involving between \$5,000 and \$30,000, plaintiffs have the option of filing in the District Court or circuit courts. Any party to a case involving more than \$10,000 may request a jury trial, which must be heard in circuit court. Therefore, the District Court would hear all of the criminal prosecutions and some of the civil cases resulting from the provisions of this bill. The number of civil cases covered under this bill is expected to be minimal and can be handled with existing budgeted resources.

General fund expenditures increase minimally as a result of the bill's incarceration penalty due to increased payments to counties for reimbursement of inmate costs and more people being committed to Division of Correction (DOC) facilities. The number of people convicted of this proposed crime is expected to be minimal. The District Court can handle any resulting increase in civil cases with existing resources.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2010 are estimated to range from \$23 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in a DOC facility. Currently, the DOC average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

Since the bill creates a new criminal offense and penalty, MSCCSP will have to adopt regulations pertaining to the new offense. This is within the routine activities completed by MSCCSP on an annual basis.

Local Expenditures: Expenditures increase as a result of the bill's incarceration penalty. Counties pay the full cost of incarceration for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$46 to \$141 per inmate in fiscal 2010.

Since the number of civil cases covered by this bill is expected to be minimal, circuit courts can handle any resulting increase in civil cases with existing resources.

Additional Information

Prior Introductions: None.

Cross File: HB 12 (Delegate Manno) - Health and Government Operations.

Information Source(s): Commission on Criminal Sentencing Policy, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of State Police, National Conference of State Legislatures, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Department of Legislative Services

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