



State of Maryland
Department of State Police
Government Affairs Unit
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: February 6, 2024

BILL NUMBER: House Bill 249 **POSITION:** Support w/Amendments

BILL TITLE: Public Safety – Statewide DNA Database System, DNA Collection, and Penalties - Alterations

REVIEW AND ANALYSIS:

This legislation seeks to clarify when a DNA sample is required to be collected, and who is responsible for collecting the DNA sample as it relates to collection of arrestee and convicted offender samples for entry into the Statewide DNA Database System. Additionally, this legislation repeals a requirement that a DNA sample cannot be tested and placed into the Statewide DNA Database System until after the first scheduled arraignment date. Furthermore, this legislation allows arrestee DNA Database samples held by the Maryland Department of State Police Forensic Sciences Division, and not tested after a period of time, to be expunged.

Under current law, DNA Database samples must be collected for an arrest of a qualifying crime or a conviction for a qualifying crime. Upon conviction, the sample can immediately be tested and uploaded into the Statewide DNA Database. Alternatively, an arrestee sample taken as authorized under the law, may not be tested until after the first scheduled arraignment date. Arraignment Date does not exist in Maryland law, it is not defined, nor does it appear anywhere in the Maryland Rules. As such, the Forensic Sciences Division (FSD) has relied on the Assistant Attorney General's advice for determining if a sample may be tested and uploaded. There are specific triggers as to when an arrestee DNA Database sample can be tested and when it must be expunged; however, there are at least 13,641 samples, that do not meet either trigger and are therefore deemed to be "in limbo".

House Bill 249 addresses these issues. The bill ensures that moving forward all samples that should be collected are collected and that all collected samples have clear and achievable triggers for testing and expungement. To that end, this bill does the following:

- 1) clarifies accountability for the collection of DNA Database samples,
- 2) imposes a monetary penalty for qualifying individuals who refuse to provide a DNA Database sample, and
- 3) repeals language that uses the term "arraignment" and replaces it with language stating that an arrestee sample may be tested and uploaded when a

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determination of probable cause has been made in accordance with the Maryland rules

Regarding the “in limbo” arrestee DNA database samples, House Bill 249 specifies that the samples collected prior to the enactment of this bill, are to be held for an additional period of time, then expunged if they fail to meet the law in effect prior to the enactment of the legislation. This bill is not retroactive and it does not add or remove any additional crimes requiring a DNA sample to be collected.

In the Section language, the bill provides a lengthy period of time for the DNA samples to be expunged. The reason for this time frame is to allow the FSD to expunge this large number of samples within the existing budget and personnel resources. Any decrease in the time frame incurs a cost. Current law prohibits the use of a match to a sample already meeting the expungement requirements, so the time is not a factor.

The Maryland Statewide DNA Database System has been an incredibly successful tool over the years, assisting investigators to implicate perpetrators, exonerate the falsely accused, and link serial crimes in Maryland and across state lines. Maryland has had over 11,000 hits associated with the Maryland DNA Database since its inception. There is potential for the DNA Database System to be even more productive if the changes proposed in HB 249 are implemented. Moreover, by fixing the language that has led to the “in limbo” samples along with expunging all previous “in limbo” samples, the State will correct an unintended flaw in the existing law.

MDSP consulted with the Maryland Correctional Administrators Association, and some concerns were raised about the impact the language would have on the safety of their officers and the detainees. As a result, the following amendments are submitted for the Committee’s consideration:

On page 6, after line 3, insert:

(H) (1) AN EMPLOYEE WHO ATTEMPTS TO COLLECT A DNA SAMPLE IN ACCORDANCE WITH THIS SECTION, BUT IS UNABLE TO COLLECT THE SAMPLE BECAUSE THE INDIVIDUAL WHO IS REQUIRED TO SUBMIT THE SAMPLE REFUSES TO DO SO, SHALL BE DEEMED TO HAVE DISCHARGED THE EMPLOYEE’S DUTY UNDER THIS SECTION.

(2) AN INDIVIDUAL WHO REFUSES TO SUBMIT A DNA SAMPLE AS REQUIRED UNDER THIS SECTION SHALL BE REFERRED TO THE STATE’S ATTORNEY’S OFFICE FOR PROSECUTION UNDER SUBSECTION (G) OF THIS SECTION.

For these reasons, the Maryland Department of State Police urges the Committee to give House Bill 249 a favorable report as amended.