

Department of Legislative Services  
Maryland General Assembly  
2024 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 249

(Chair, Judiciary Committee)(By Request - Departmental  
- State Police)

Judiciary

Judicial Proceedings

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Public Safety - Statewide DNA Database System, DNA Collection, and Penalties -  
Alterations

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This departmental bill (1) alters the circumstances in which a DNA sample must be collected and stored in the statewide DNA database system within the Department of State Police (DSP) Crime Laboratory; (2) alters the individuals required to collect DNA samples and the process for collection of DNA samples from registered sex offenders; and (3) clarifies when a DNA sample may be tested, placed in the statewide DNA database system, or destroyed and/or expunged. The bill also requires the releasing entity, before releasing an individual from custody, to ensure that the individual's required DNA sample has been collected in accordance with § 2-504 of the Public Safety Article, as altered by the bill. In addition, the bill (1) prohibits an individual from refusing to provide a DNA sample as required; (2) discharges an employee from the duty to collect a DNA sample when an individual refuses to submit a DNA sample, as specified; and (3) establishes penalties for violations of the prohibition against refusal.

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**Fiscal Summary**

**State Effect:** State finances are not anticipated to be materially affected. The bill's changes are expected to be handled with existing budgeted resources.

**Local Effect:** Local government finances are not anticipated to be materially affected.

**Small Business Effect:** DSP has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

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## Analysis

### Bill Summary:

#### *Collection of DNA Sample*

For each individual convicted of a felony, fourth-degree burglary, or breaking and entering a vehicle and sentenced to imprisonment, each required DNA sample must be collected by an employee of the correctional facility at the time of intake to the correctional facility where the individual is confined.

For an individual required to register as a sex offender under § 11-704 of the Criminal Procedure Article, each required DNA sample must be collected at the time of registration as a sex offender by the supervising authority where the individual is initially required to register, if applicable.

Each required DNA sample must be collected (1) by an individual who is designated by the Director of the DSP Crime Laboratory and trained in the collection procedures that the Crime Laboratory uses and (2) at the time the individual is charged, by an employee of a booking facility or the arresting agency. Collection must also be done in accordance with adopted regulations.

Before releasing an individual from custody, the custodial agency or correctional facility must ensure that the individual's DNA sample has been collected in accordance with § 2-504 of the Public Safety Article, as altered by the bill.

#### *Testing of DNA Sample*

A DNA sample collected from an individual charged with a "crime of violence" or burglary or an attempt to commit those crimes may not be tested or placed in the statewide DNA database system until (1) a determination is made that probable cause exists for a qualifying crime in accordance with the Maryland Rules; (2) the individual has been arrested for a qualifying charge in accordance with an arrest warrant; (3) an information is filed by a State's Attorney for a qualifying crime, as specified; (4) an indictment is returned by a grand jury charging the individual with a qualifying crime; or (5) requested or consented to by the individual, as specified.

An individual may request or consent to have the individual's DNA sample processed prior to a probable cause determination for the sole purpose of having the sample checked against a sample that has been processed from the crime scene or the hospital and is related to the charges against the individual.

### *Destruction or Expungement of DNA Sample*

With specified exceptions, an individual's DNA samples and records collected from an individual charged with a "crime of violence" or burglary or an attempt to commit those crimes must be destroyed *or* expunged automatically from the statewide DNA database system if (1) a criminal action begun against the individual relating to the crime does not result in a conviction of the individual; (2) the conviction is finally reversed or vacated and no new trial is permitted; or (3) the individual is granted an unconditional pardon. In addition, with specified exceptions, a DNA sample collected, but not tested, from an individual charged with a "crime of violence" or burglary or an attempt to commit those crimes must be destroyed *and* expunged if at least two years have passed from the date of collection of the DNA sample, and the DNA sample failed to meet the requirements for testing.

A DNA sample or DNA record may not be destroyed or expunged automatically from the statewide database if (1) the criminal action is put on the *stet* docket; (2) the individual receives probation before judgment; or (3) the trial for a qualifying "crime of violence" or burglary or an attempt to commit those crimes remains pending for any reason.

Written notice documenting expungement of the DNA record and destruction of the DNA sample must, in accordance with regulations adopted by the Director of the DSP Crime Laboratory, be sent to the defendant and the defendant's attorney, as specified.

The Director must adopt regulations to comply with the above provisions.

For any DNA sample collected from an individual who is charged with a "crime of violence" or burglary or an attempt to commit those crimes before October 1, 2024 (the bill's effective date), the Forensic Sciences Division in DSP must, by October 1, 2027, destroy and expunge the record of any DNA sample that has not been tested or placed in the statewide DNA database system by November 1, 2026, because the DNA sample failed to meet the requirements of Title 2, Subtitle 5 of the Public Safety Article, as that subtitle existed before October 1, 2024.

### *Prohibitions*

An individual may not refuse to provide a DNA sample in accordance with § 2-504 of the Public Safety Article, as altered by the bill. A violator is guilty of a misdemeanor, and on conviction is subject to a maximum fine of \$10,000. A refusal to submit a required DNA sample must be referred to the State's Attorney's Office for prosecution.

An employee's duty to collect a DNA sample in accordance with § 2-504 of the Public Safety Article, as altered by the bill, is deemed to be discharged if the employee attempts

to collect the required DNA sample but is unable to collect the sample because the individual who is required to submit the sample refuses to do so.

## **Current Law:**

### *DNA Database*

The statewide DNA database system consists of DNA samples collected from individuals convicted of a felony, fourth-degree burglary, or breaking and entering a vehicle. DNA samples for individuals charged with a “crime of violence” or burglary or an attempt to commit those crimes are also included within the statewide database.

The DSP Crime Laboratory is required to store and maintain each DNA identification record in the statewide DNA database.

Matches between evidence samples and database entries may only be used as probable cause and are not admissible at trial unless confirmed by additional testing.

### *Collection of DNA Sample*

In accordance with adopted regulations, each DNA sample required to be collected must be collected:

- at the time the individual is charged, at a facility specified by the Secretary of State Police;
- at the correctional facility where the individual is confined, as specified;
- at a facility specified by the Director of the DSP Crime Laboratory, if the individual is on probation or is not sentenced to a term of imprisonment; or
- at a suitable location in a circuit court following the imposition of sentence.

A DNA sample must be collected by an individual who is designated by the Director of the DSP Crime Laboratory and trained in the collection procedures that the Crime Laboratory uses.

### *Testing of DNA Sample*

A DNA sample collected from an individual charged with a “crime of violence” or burglary or an attempt to commit those crimes may not be tested or placed in the statewide DNA database system prior to the first scheduled arraignment date unless requested or consented to by the individual, as specified. An individual may request or consent to have the individual’s DNA sample processed prior to arraignment for the sole purpose of having the

sample checked against a sample that has been processed from the crime scene or the hospital and is related to the charges against the individual.

If all qualifying criminal charges are determined to be unsupported by probable cause, the DNA sample must be immediately destroyed, and notice must be sent to the defendant and counsel of record for the defendant that the sample was destroyed. A second DNA sample must be taken if needed to obtain sufficient DNA for the statewide DNA database system or if ordered by the court for good cause shown.

### *Violation of Probation*

Failure of an individual who is not sentenced to a term of imprisonment to provide a DNA sample within 90 days after notice by the Director of the DSP Crime Laboratory is a violation of probation.

### *Prohibitions*

A person is prohibited from performing a search of the statewide DNA database for the purpose of the identification of an offender in connection with a crime for which the offender may be a biological relative of the individual from whom the DNA sample was acquired.

A person may not willfully test a DNA sample for information that does not relate to the authorized identification of an individual, as specified. A violation is punishable by up to five years imprisonment and/or a \$5,000 fine. In addition, a person is prohibited from willfully failing to destroy a DNA sample for which notification has been sent stating that the DNA sample has been destroyed or for which destruction has been ordered. Violators are subject to imprisonment for up to one year or a maximum fine of \$1,000.

### *Definition*

“Crime of violence” has the meaning stated in § 14-101 of the Criminal Law Article; however, for purposes of provisions relating to the statewide DNA Database system, does not include mayhem. Section 14-101(a) of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual

conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

**Background:** According to the [2022 DSP Forensic Sciences Division Statewide DNA Database Annual Report](#), released in April 2023, in 2022, the division collected 8,260 samples from individuals arrested and charged with qualifying crimes. In the same year, a total of 3,380 DNA profiles from arrested and charged individuals were uploaded to the Combined DNA Index System and searched. There were 137 matches to arrested and charged DNA profiles reported to law enforcement in 2022.

DSP advises that currently, the DSP Crime Laboratory has a backlog of more than 13,000 arrestee DNA samples that have not been tested because it is often unclear to the laboratory when an individual's arraignment date occurs. A DNA sample may not be tested until the defendant's first scheduled arraignment date; however, arraignment is not defined in Maryland law and is not recognized by the courts. DSP advises that in many cases, the Office of the Attorney General must be consulted before a sample is allowed to be tested or expunged.

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### **Additional Information**

**Recent Prior Introductions:** Similar legislation has been introduced within the last three years. See SB 967 of 2023.

**Designated Cross File:** None.

**Information Source(s):** Baltimore and Frederick counties; City of Annapolis; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Maryland State Archives; Department of Legislative Services

**Fiscal Note History:** First Reader - February 2, 2024  
km/lgc Third Reader - March 19, 2024  
Revised - Amendment(s) - March 19, 2024

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**ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES**

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

BILL NUMBER: HB 249

PREPARED BY: Lt Michael Brady

**PART A. ECONOMIC IMPACT RATING**

This agency estimates that the proposed bill:

**XX WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS**

**OR**

**WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES**

**PART B. ECONOMIC IMPACT ANALYSIS**

The legislation will not have any impact on small businesses.