

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE
 Revised

Senate Bill 486 (Senator McFadden, *et al.*)(Baltimore City Administration)
 Judicial Proceedings Judiciary and Appropriations

DNA Testing - Felony Convictions - DNA Technology Fund - Preservation of Scientific Identification Evidence

This bill: (1) requires all persons convicted of any felony or specified misdemeanors to submit a DNA sample to the State’s DNA repository; (2) establishes a special grant fund relating to DNA technology equipment; and (3) alters the time period for preserving scientific identification evidence to the length of the convicted person’s sentence. The bill’s provisions are not severable.

The bill is contingent on the State Police being awarded a private or federal grant of at least \$1,500,000 to implement the bill’s provisions. The bill sunsets on September 30, 2003.

Fiscal Summary

State Effect: Federal or special fund revenues could increase by at least \$1.5 million in FY 2003, assuming the State Police receive a grant award. If this occurs, federal fund or special fund (accordingly) expenditures could increase by at least about \$1.5 million in FY 2003, with total expenditures estimated to be \$1.65 million. FY 2004 expenditures reflect the bill’s September 30, 2003 sunset date.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
SF/FF Rev.	\$1,500,000	\$0	\$0	\$0	\$0
GF Expenditure	151,300	320,400	0	0	0
SF/FF Exp.	1,500,000	0	0	0	0
Net Effect	(\$151,300)	(\$320,400)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Potential revenue increase for local law enforcement agencies that are awarded grants from the DNA Technology Fund. Local expenditures would increase accordingly for DNA-related equipment purchases.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill expands the list of persons required to submit a DNA sample to the State's DNA repository from persons convicted of specified "qualifying crimes of violence" to any person convicted of a felony, fourth degree burglary, or breaking and entering motor vehicle crime. The bill is contingent on the Department of State Police (DSP) receiving a binding written award of a private or federal grant of at least \$1,500,000 by September 1, 2002 to implement the bill's provisions from October 1, 2002 through September 30, 2003.

The bill also establishes a DNA Technology Fund to provide grants to local and State law enforcement agencies to assist them in acquiring DNA technology equipment. It requires the Executive Director of the Governor's Office of Crime Control and Prevention to report annually by September 1 to the Governor and General Assembly as to the distribution of aid from the fund.

The bill further changes the time period for preserving scientific identification evidence collected by the State in relation to specified offenses from three years to the length of the sentence. The bill's provisions are not severable.

Current Law: Persons who have been convicted of a "qualifying crime of violence" are required to submit a DNA sample, which is stored with other samples and maintained by the crime laboratory in the statewide DNA repository for analysis. The following are qualifying crimes of violence:

- rape in any degree;
- a sexual offense in the first, second, or third degree;
- murder;
- robbery and robbery with a dangerous or deadly weapon;
- first degree assault; and
- attempts to commit these offenses.

Chapter 490 of 1999 added the non-sexual offenses on this list.

"Scientific identification evidence" that the State has reason to know contains DNA and is collected by the State in relation to an investigation or prosecution that resulted in conviction for manslaughter, murder, rape, or a first or second degree sexual offense must be preserved for:

- three years after imposition of the sentence; or
- a period beyond three years when required by an order issued within three years after the imposition of sentence by the Court of Appeals or Court of Special Appeals that is specific to a single offense and specific scientific identification evidence relating to that offense.

Notwithstanding these prescribed time periods for preserving evidence, the State may dispose of scientific identification evidence it would otherwise be required to store if the State notifies the following persons of its intent to dispose of specific evidence: (1) the person who is incarcerated in connection with the case; (2) the attorney of record for that person; and (3) the Office of the Public Defender for the judicial district in which the judgment of conviction was entered. Unless another law or court order requires preservation of the evidence, if no one files an objection within 120 days of this notice, then the State may dispose of the evidence.

Background: DNA (deoxyribonucleic acid) is genetic material that is present in every cell of the human body, and may often be detectable in common criminal evidence such as hair and body fluids. It is unique and specific to an individual (except for identical twins who share identical genetic material). As technology in genetic and evidentiary testing has evolved, more attention has been given to DNA identification testing as a law enforcement tool, used to establish either the guilt or innocence of suspected or convicted offenders.

According to the National Conference of State Legislatures (NCSL), all states have passed laws requiring DNA collection from certain sexual offenders, and most states also require other serious offenders to provide samples. In the year 2000 alone, at least nine states added crimes for which offenders are required to submit DNA samples. Constitutional challenges to these laws under the Fourth Amendment (prohibiting unreasonable searches and seizures), Eighth Amendment (prohibiting cruel and unusual punishment), and the Ex Post Facto Clause (prohibiting criminalization or punishment of behavior that was not criminal or punishable at the time of its commission) have largely failed.

Additionally, according to NCSL, 24 other states have recently enacted post-conviction DNA testing procedures. Only about half of the states with a post-conviction testing procedure address the issue of evidence preservation. Five other states have a time limit, similar to Maryland's current law, of a few years on retention of evidence. Three states require evidence to be preserved only during the pendency of the petition for DNA testing and four other states require evidence preservation while the convicted individual remains incarcerated. Two states allow a representative sample of evidence to be

preserved, instead of the full evidence gathered in a criminal investigation that may contain DNA material.

Federal legislation pending in both houses of the U.S. Congress, the Innocence Protection Act of 2001, would authorize an individual convicted of any federal crime to petition the court for DNA testing. The cost of testing would be determined by the court and evidence preservation would be required for the period of a convicted individual's incarceration. The federal legislation also establishes capital defense incentive and resource grants and would provide for withholding of federal grant funds from any state that does not comply with federal standards.

NCSL notes that state crime laboratories have had difficulty keeping up with the increasing numbers of offender samples, resulting in a nationwide backlog of approximately half a million unanalyzed samples collected from convicted offenders and an additional one million samples not yet even collected. The federal government has made attempts to address these issues by authorizing \$170 million in federal funding under the DNA Analysis Backlog Elimination Act of 2000 (HR 4640) and awarding over \$7 million in Justice Department grants to help states enter and analyze DNA samples.

The Department of State Police (DSP) advises that it has approximately 5,000 cases outstanding for DNA processing (enactment of Chapter 418 in 2001, which authorized petitions for post conviction DNA testing for defendants convicted of certain violent crimes, added about 9,000 cases to the workload). DSP will collect and process the vast majority of DNA samples required to be collected by this bill.

Various localities, including Baltimore City, Baltimore County, Prince George's County, and Montgomery County, are also operating laboratories for DNA testing and analysis. According to a January 25, 2002 article published in the *Baltimore Sun*, Baltimore City requested a federal grant to finance about 1,000 DNA tests per year. These local DNA laboratories generally operate using a combination of local general funds plus asset forfeiture proceeds and/or various federal grants. Estimates for equipment costs ranged from \$100,000 to \$160,000. Baltimore City estimates that it could use an additional \$500,000 to expand its equipment in order to bolster its use of DNA evidence and to help address a backlog of 5,000 cases.

State Fiscal Effect: If the Department of State Police (DSP) does not receive a private or federal grant award of at least \$1.5 million by September 1, 2002, the bill becomes null and void. Assuming that DSP receives a binding award of at least \$1.5 million on or before September 1, 2002, fiscal 2003 special or federal fund revenues will increase by at least \$1.5 million and will be offset by an estimated \$1,651,292 in expenditures.

Collecting and Analyzing Additional DNA Samples

According to DSP, it currently costs \$54 per sample for DNA analysis. The current total affected inmate population is estimated to be 20,063. Of those, about 11,651 already have DNA collection in process under current law, leaving 8,412 currently incarcerated felons and specified others who would need to have samples collected as a result of this bill. Further, on average, approximately 6,064 individuals convicted of the specified offenses enter the Division of Correction (DOC) annually, 2,500 of whom are required to submit samples under current law. Therefore, approximately 3,564 additional individuals entering DOC annually will need to have samples collected as a result of this bill. Lastly, there are approximately 9,957 convicted felons and specified others annually who receive probation rather than incarceration. Of those, about 500 currently must submit samples; thus, an additional 9,457 convicted individuals receiving probation annually would need to submit samples as a result of this bill.

This means that approximately 21,433 individuals would need to submit DNA samples in fiscal 2003 at a cost of \$1,157,382. DNA kits at \$3.50 per individual would add \$75,016 to the fiscal 2003 expenditures. Approximately 13,021 individuals would need to submit samples annually thereafter if the bill did not sunset; therefore, Legislative Services estimates that 3,255 individuals will be tested in fiscal 2004 on or prior to the bill's September 30, 2003 sunset date. These estimates do not include the number of affected individuals who may be housed in local jails and may add marginally to the total costs. The number of affected individuals in local jails is not readily available.

Expenditures could increase by an additional \$303,335 in fiscal 2003, which accounts for the bill's October 1, 2002 effective date. This estimate reflects the cost of nine contractual positions (three lab technicians to collect, process, and transport the DNA samples and six forensic chemists to review and log the samples). It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Collection of 21,433 DNA Samples	\$1,157,382
21,433 DNA Kits	75,016
Salaries and Fringe Benefits	303,335
Computer and Storage System	10,000
<u>Other Operating Expenses</u>	<u>20,867</u>
Subtotal	\$1,566,600

Altering the Length of the DNA Storage Period

Upon the enactment of Chapter 418 of 2001, DSP identified a secure facility with approximately 7,000 square feet of space and proper climate control to warehouse DNA storage for the periods identified under current law. This facility will hold the potential

increase in the amount of DNA evidence being stored at any one time as a result of this bill's provisions relating to altering the length of the DNA storage period. DSP estimates that it will need to hire an inventory control specialist and a forensic chemist to maintain the inventory of DNA evidence and facilitate review of DNA evidence. However, this cost does not appear to be a direct result of lengthening the period of time that the DNA evidence needs to be stored (the average sentence for a convicted violent felon is estimated to be ten years).

Managing the DNA Technology Fund

Expenditures could also increase by an estimated \$84,692 in fiscal 2003, which accounts for the bill's October 1, 2002 effective date. This estimate reflects the cost of one contractual DNA technology coordinator to manage the DNA Technology Fund and one contractual support staff to process applications, track grant funds, and perform other administrative duties. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It is expected that the mandatory annual report can be completed using existing budgeted resources.

Total Expenditures

Additional DNA Sample Analyses	\$1,566,600
Longer DNA Storage Period	0
Fund Management	<u>84,692</u>
Total FY 2003 State Expenditures	\$1,651,292

The bill sunsets on September 30, 2003. Fiscal 2004 expenditures account for this termination date and reflect: (1) part-year contractual salaries with 2.3% annual increases and 3.8% employee turnover; (2) 1% annual increases in ongoing operating expenses; and (3) DNA sample collection and kits for 3,255 individuals with 1% annual increases.

Additional Information

Prior Introductions: None.

Cross File: HB 1053 (Delegate Doory, *et al.*) – Judiciary and Appropriations.

Information Source(s): Baltimore City, Baltimore County, Montgomery County, Prince George's County, Department of State Police, Department of Legislative Services

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