

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 219

(Senator Kelley, *et al.*)

Judicial Proceedings

Criminal Procedure - DNA Evidence - Preservation of Scientific Identification Evidence

This bill alters the period of time during which the State must preserve DNA evidence that 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. The bill requires the State to preserve such evidence for the time of the sentence including any consecutive sentence imposed in connection with the offense.

Fiscal Summary

State Effect: This bill is not expected to have a direct impact on State finances. The Department of State Police advises that the proposed FY 2003 budget includes \$98,300 for additional personnel to manage DNA evidence and for some related construction costs in anticipation of this or similar legislation.

Local Effect: This bill is not expected to have a direct impact on local finances.

Small Business Effect: Potential minimal.

Analysis

Current Law: “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.

Effective January 1, 2002, the Court of Appeals adopted an amendment to the Maryland Rules to allow a motion for a new trial to be filed at any time, if the motion is based on DNA identification testing or other generally accepted scientific techniques that would show the defendant's innocence. This bill, to require the State to maintain scientific identification evidence accordingly, is in response to that change.

Chapter 418 of 2001 which took effect October 1, 2001, authorizes a person convicted of manslaughter, murder in any degree, or first or second degree rape or sexual offense to file a petition for testing of scientific identification evidence in the possession of the State that is related to the judgment of conviction. The court is required to order DNA testing of evidence if the court makes certain findings relating to the availability of testing at the time of trial, the reliability of the evidence and proposed testing, and whether the test results are relevant to the defendant's assertion of innocence.

Background: According to the National Conference of State Legislatures, 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.

State Fiscal Effect: The Department of State Police estimates that its general fund expenditures will increase by \$308,023 in fiscal 2003. Legislative Services disagrees with this assessment.

Upon the enactment of Chapter 418 of 2001, the Department of State Police (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. DSP states, and Legislative Services agrees, that 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. DSP estimates that it will need to hire an inventory control specialist and a forensic chemist at an estimated \$69,483 to maintain the inventory of DNA evidence and facilitate review of DNA evidence. It also estimates \$195,100 in modifications to the facility in order to place on-site personnel at the facility for inventory control. These modification costs include \$90,000 to construct two entrances into the facility for handicapped accessibility to be in compliance with the federal Americans with Disabilities Act (ADA), \$33,600 for a sprinkler system, \$10,000 for HVAC upgrades, \$10,000 in repairs and maintenance to create an office for the inventory control specialist and a conference room where the DNA evidence could be reviewed by attorneys and investigators, and \$50,000 to upgrade the restroom facility in order to make it ADA compliant. DSP advises that \$98,281 has been included in the Governor's proposed fiscal 2003 budget for two additional personnel and some construction costs in anticipation of this or similar legislation.

None of these costs appear to be a direct result of this bill which merely lengthens 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). Further, although this bill requires the retention of scientific identification evidence containing DNA for a longer period, existing law, unchanged by this bill, allows the State to dispose of scientific identification evidence before the expiration of the prescribed time period by notifying the defendant, the defendant's counsel of record, and the Office of the Public Defender. If no objection to the disposal of evidence is filed within 120 days of this requisite notice, then the State may dispose of the evidence. The Office of the Public Defender does not anticipate filing an objection in many cases. Thus, assuming that State agencies avail themselves of this procedure, the amount of stored DNA evidence may be kept at manageable levels.

Additional Information

Prior Introductions: None.

Cross File: HB 445 (Delegate Rosenberg, *et al.*) – Judiciary.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Department of State Police, Department of Legislative Services

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