

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 823
Judiciary

(Delegate Petzold, *et al.*)

Public Safety - Statewide DNA Data Base System

The bill provides that a finding that a DNA record or profile was included in the statewide DNA database by mistake does not invalidate: (1) a database match; or (2) the detention, arrest, or conviction of a person based on a DNA database match. Information in the statewide DNA database system is not invalidated because a sample was obtained or placed in the database by mistake.

Fiscal Summary

State Effect: None. The change would not directly affect State finances.

Local Effect: None. The change would not directly affect local finances.

Small Business Effect: None.

Analysis

Current Law: DNA samples are collected from individuals convicted of a felony, fourth degree burglary, or breaking and entering into a vehicle. DNA samples are collected at the correctional facility where the person is confined, at a facility designated by the Director of the Crime Laboratory for individuals on probation or not sentenced to imprisonment, or at a suitable location in a circuit court at the time of sentencing.

Each DNA identification record must be stored and maintained by the State Police Crime Laboratory in the statewide DNA database. Matches between evidence samples and database entries may only be used as probable cause. Matches are not admissible at trial unless confirmed by additional testing.

An individual may request to have a DNA record or profile expunged from the statewide database if the conviction that resulted in the record or profile's inclusion in the database meets specified expungement criteria. On receipt of a court order of expungement, the Director of the Crime Laboratory shall purge any DNA record, DNA sample, or other identifiable information covered by the order from the statewide DNA database and the statewide DNA repository.

Disclosure of DNA information to unauthorized persons or obtaining DNA information without authorization are misdemeanor offenses, punishable by maximum penalties of three years incarceration and/or a \$1,000 fine.

Background: According to the National Conference of State Legislatures, all states have passed laws requiring DNA collection from certain sexual offenders, and most states also require other serious offenders to provide samples. In 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.

Arkansas, California, South Dakota, and Washington have statutes specifically providing that the detention, arrest, or conviction of a person based on a DNA database match or DNA database information is not invalidated if the sample was obtained or placed in the database by mistake.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of State Police; National Conference of State Legislatures; American Society of Law, Medicine & Ethics; Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2006
nas/jr

Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510