

Department of Legislative Services
 Maryland General Assembly
 2008 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 370
 Judiciary

(The Speaker, *et al.*) (By Request – Administration)

Judicial Proceedings

Public Safety - Statewide DNA Data Base System - Crimes of Violence and Burglary - Sample Collections on Charge

This Administration bill requires a DNA sample to be taken from any individual charged for specified crimes of violence or felony burglary. The bill requires the sample to be taken at the facility where the arrest is processed by the arresting agency or the booking facility responsible for processing the arrest or at another facility as specified if the individual is charged but not arrested. The bill sets forth requirements for the collection, testing, use, and disposal of DNA samples taken from an individual and sets forth additional expungement criteria. The bill establishes procedures for the use of DNA evidence in certain court proceedings and requires that certain reports be submitted annually to the Governor and the General Assembly.

The bill takes effect January 1, 2009.

Fiscal Summary

State Effect: Potentially significant general fund expenditures for the State Police, depending on the conviction rate for this population. Additional general fund expenditures of \$120,000 for the Department of Public Safety and Correctional Services. Supplemental Budget No. 2 includes \$1.4 million in general and federal funds for the State Police, contingent on the enactment of this bill or its cross file, to support expanded DNA collection.

(in dollars)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	1,119,000	-	-	-	-
FF Expenditure	401,000	-	-	-	-
Net Effect	(\$1,520,000)	-	-	-	-

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

Local Effect: Officers within local police departments that process their own arrests would need to be trained in the collection of DNA samples.

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

Analysis

Bill Summary: A DNA sample must be taken from any individual charged with specified crimes of violence or felony burglary. The bill specifically excludes mayhem from a crime of violence. The bill requires that notice be given to an individual from whom a DNA sample is collected informing the individual of the expungement process related to a DNA sample and record. The notice is to be given at the time of the DNA sample collection. The bill requires the sample to be taken at the facility where the arrest is processed by the arresting agency or the booking facility responsible for processing the arrest. The sample is to be taken at a facility specified by the Secretary of State Police if the individual is charged but not arrested.

The bill requires the testing, as soon as reasonably possible, of a DNA sample collected from a crime scene or at a hospital as evidence of a sexual assault if law enforcement considers the evidence to be relevant to the identification or exoneration of a suspect.

A DNA sample collected from an individual charged with a crime of violence or felony burglary may not be tested or placed in the DNA database system prior to the first scheduled arraignment date unless the individual consents to or requests testing prior to arraignment for the purpose of having the sample checked against a sample that has been processed from the crime scene or the hospital. The bill requires the immediate return or destruction of a DNA sample if the related criminal charge is determined to be unsupported by probable cause. Notice is to be sent to the defendant and any counsel of record that the sample was destroyed or returned. In a criminal case in which all the charges are disposed of by acquittal, dismissal, probation before judgment, *nolle prosequi*, or *stet*, the court is required to advise the defendant of any applicable expungement rights of the DNA sample and record.

The bill provides for the automatic expungement of a DNA record and destruction of a DNA sample if the criminal action for which the sample is collected and the report is generated does not result in the conviction of the individual, is reversed or vacated, results in the granting of an unconditional pardon, or the individual is released without charge. A DNA sample or DNA record may not be automatically destroyed or expunged if the criminal action is placed on the *stet* docket or the individual receives probation

before judgment. The records are to be expunged from every applicable database. The expungement or destruction must occur within specified time limits. The use of a DNA sample or record that is required to be destroyed or expunged is prohibited from being used in a subsequent civil or criminal proceeding. A letter documenting the expungement must be sent to the defendant and the defendant's attorney.

The bill prohibits the testing of a DNA sample for information that does not relate to the identification of an individual as specified under this bill. The bill specifically prohibits a person from performing a database search 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.

The bill increases the maximum penalties for an individual who violates provisions of law relating to the access, disclosure, or testing of DNA information to five years imprisonment and/or a \$5,000 fine.

The bill authorizes a person, as part of a postconviction proceeding, to petition for a search by a law enforcement agency of a database or log for the purpose of identifying the source of physical evidence used for DNA testing. A petitioner is permitted to move for a new trial on the grounds that the conviction was based on unreliable scientific evidence and a substantial possibility exists that the petitioner would not have been convicted without the evidence. A court must order the search if it finds that a reasonable probability exists that such a search has the potential to produce exculpatory evidence relating to a postconviction claim. The court may order a new trial on a finding that such action is in the interest of justice and, on a finding that a substantial possibility exists that the petitioner would not have been convicted if the DNA testing results had been known or introduced at trial, must order a new trial. If the State is unable to produce scientific evidence as required, the court shall hold a hearing to determine whether the failure to produce evidence was the result of intentional and willful destruction. The court shall order a postconviction hearing to be conducted if specified determinations and findings are made.

The bill requires the State Police to submit an annual report to the Governor and the General Assembly that contains specified information, including the total expenses incurred for the operation and management of the DNA database and a detailed analysis of the investigations aided by DNA profiles. Local law enforcement agencies are required to report information annually to the State Police to assist with its compliance with the reporting requirements. The bill also requires an annual report to be submitted by local law enforcement agencies relating to the collection of DNA samples under this bill to the Office of Legislative Audits. The Office of Legislative Audits is required to compile and evaluate the reported information and submit an annual report to the Governor and the General Assembly.

The bill requires the Secretary of State Police to adopt regulations and procedures to comply with the requirements of this bill. On or before January 15, 2009, the Office of the Public Defender and the Governor's Office of Crime Control and Prevention are to jointly submit a report to the House Judiciary Committee and the Senate Judicial Proceedings Committee on barriers to postconviction review of factual innocence claims, particularly those based on DNA evidence.

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.

The State Police 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. 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.

Section 14-101 of the Criminal Law Article defines a "crime of violence" to include a number of specific crimes, including abduction, arson, kidnapping, manslaughter, murder, rape, carjacking, first or second degree sexual offense, various types of assault, and attempts to commit the above crimes.

Background: According to the National Conference of State Legislatures, all states require certain sex offenders to provide a DNA sample and 44 states require that all convicted felons provide a DNA sample. Laws authorizing DNA sampling of arrestees have been enacted in Alaska, Arizona, California, Kansas, Louisiana, Minnesota, New Mexico, North Dakota, Tennessee, Texas, and Virginia. In 2007, 25 states introduced legislation to expand DNA sampling to arrestees. Such legislation was unsuccessful in all but Alaska, Arizona, North Dakota, and Tennessee.

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.

The proposed fiscal 2009 budget allots \$1.3 million, including \$881,000 in federal funds, for laboratory equipment and five additional positions in the Department of State Police to assist in the expansion and analysis efforts of the DNA database.

State Fiscal Effect: The State Police estimated costs for this bill as introduced (\$1.7 million in fiscal 2009) based on the following assumptions:

- costs associated with hiring additional personnel (two DNA forensic scientists, one latent print examiner, three laboratory technicians, one IT staff member, two data analysts, and one contractual procurement specialist);
- costs of \$4,141 associated with training local law enforcement in collection procedures;
- cost of \$36.75 for outsourced analysis of each sample for fiscal 2009;
- cost of \$27.00 for analysis of each sample for fiscal 2010 and beyond;
- cost of \$4.60 for each sample collection kit;
- cost of \$.58 for postage for mailing samples from local law enforcement to the State Police;
- annual storage costs of \$50,873;
- estimated costs of \$171,000 in fiscal 2009 and \$365,000 in fiscal 2010 associated with the purchase of DNA analysis equipment to allow for the State Crime Laboratory to test samples;
- estimated costs of \$230,000 associated with the development and maintenance of a database capable of tracking new samples; and
- *no reduction in costs for those who would be tested upon conviction as required under current law.*

Information on the number of individuals *charged* with the crimes applicable under this bill is not readily available. *For illustrative purposes only*, the State Police estimate 30,000 qualifying *arrests* based on data from the *Uniform Crime Reports*.

Supplemental Budget No. 2 for fiscal 2009 provides \$1.4 million in general and federal funds for the State Police, contingent upon the enactment of SB 211 or HB 370, for the following:

- general fund expenditures of \$472,393 for personnel costs associated with hiring three forensic scientists, three laboratory collection specialists, one IT staff, two quality assurance specialists, and one research statistician;
- federal fund expenditures of \$119,750 for the purchase of DNA analysis equipment; and
- general and federal fund expenditures of 807,857 for the development and maintenance of a database capable of tracking new samples (including modification of CJIS) and the outsourced analysis of DNA samples (rate based on 15,000 samples at \$38.52 per sample).

The State Police anticipate the need for additional positions in order to comply with the requirements set forth in the bill. Specifically, they advise the need for additional personnel (one data analyst) to track which of the samples included in the database qualify for expungement and when the samples can be tested or placed in the system. They further advise that in order to adequately comply with the requirements, further modifications in the CJIS database (for tracking the convictions) will be necessary in order to guarantee that the State Police are timely notified as to the proper records to expunge. The State Police may experience operational difficulties due to the requirement that DNA records or samples are not tested or included in the database prior to an arraignment date. The State Police could require additional personnel in order to comply with the data collection and reporting requirements mandated by this bill.

However, estimates from the State Police, including the information used to prepare the supplemental budget, do not take into account the conviction rate and assume that none of the individuals who would have to provide samples under this bill would have eventually been tested under current law (*i.e.*, some of the 15,000 DNA samples for which funding for analysis is allotted under Supplemental Budget No. 2 would have been tested anyway under current law and therefore do not represent additional costs that would be incurred under this bill). Consequently, the additional expenditures for the State Police that would be required under the bill cannot be reliably determined.

The workload for the Judiciary could increase to the extent that postconviction proceedings are opened as a result of the provisions under the bill.

The Department of Public Safety and Correctional Services advises it would incur additional expenses of approximately \$120,000 in fiscal 2009 only based on the need to modify their software.

The Department of Natural Resources anticipates a minimal fiscal impact. DNR has in the past taken DNA samples from subjects at a cost of \$36 for each sample taken.

Local Expenditures: Local law enforcement agencies that process their own arrests advise there would be negligible training costs. Local law enforcement agencies that do not process their own arrests advise there would be no fiscal impact. The workload for the circuit courts could increase to the extent that postconviction proceedings are opened as a result of the provisions under the bill.

Additional Information

Prior Introductions: Several similar bills were introduced in the 2007 session. HB 996 would have expanded the DNA database to include all arrests for sexual offenses and kidnapping, but no action was taken after a hearing in the House Judiciary Committee. Three other bills would have required DNA sampling from all arrestees for a felony, fourth degree burglary, or breaking and entering a motor vehicle. HB 1000 received an unfavorable report from Judiciary and its cross file, SB 169, received a hearing in the Senate Judicial Proceedings Committee but no further action was taken. HB 946 was withdrawn.

Cross File: SB 211 (The President, *et al.*) (By Request - Administration) – Judicial Proceedings.

Information Source(s): State’s Attorneys’ Association, Montgomery County, Prince George’s County, Harford County, Judiciary (Administrative Office of the Courts), Department of Natural Resources, Department of State Police, Maryland Department of Transportation, Baltimore City, Department of Public Safety and Correctional Services, Department of Legislative Services

Fiscal Note History: First Reader - February 12, 2008
ncs/jr Revised - House Third Reader - April 2, 2008

Analysis by: Jennifer K. Botts

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