

**Department of Legislative Services**  
Maryland General Assembly  
2008 Session

**FISCAL AND POLICY NOTE**

Senate Bill 51

(Senator Stone, *et al.*)

Judicial Proceedings

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**Public Safety - Statewide DNA Data Base System - Sample Collection on Arrest -  
First and Second Degree Rape**

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This bill requires a DNA sample to be taken from any individual arrested for first or second degree rape. The sample is to be taken at the facility where the arrest is processed.

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**Fiscal Summary**

**State Effect:** Potentially significant increase in general and federal fund expenditures, depending on the conviction rate for this population.

**Local Effect:** Local police departments that process their own arrests would be required to provide officers for DNA collection. Some local police departments could experience operational difficulties.

**Small Business Effect:** None.

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**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.

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.

Disclosures 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 require certain sex offenders to provide a DNA sample, and 44 states require all convicted felons to 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 within the Maryland State Police to assist in the expansion and analysis abilities of the DNA database.

**State Expenditures:** The State Police advise that expenditures could increase by \$449,462 in fiscal 2009. This estimate is based on costs associated with collecting, analyzing, and storing additional samples and hiring additional staff to collect and process the samples. However, the estimate from the State Police does not take into account the conviction rate and assumes that none of the individuals who would have to provide samples under this bill would have eventually been tested under current law. The estimate also does not consider the potential decrease in expenditures for analysis due to

the funding newly allocated in the proposed fiscal 2009 budget to assist with laboratory assessment and accreditation. Consequently, the additional expenditures that would be required under the bill cannot be reliably determined.

The State Police estimate for fiscal 2009 is based on the following assumptions:

- 345 annual qualifying arrests (based on Uniform Crime Reporting statistics);
- cost of \$36.75 for analysis of each sample;
- cost of \$2.50 for each sample collection kit;
- additional storage costs of \$517;
- a one-time expenditure of \$90,000 to purchase drop/collection boxes to be distributed to central booking facilities, police barracks, and local law enforcement departments;
- cost of \$4,141 associated with training local law enforcement in collection procedures;
- costs associated with hiring additional personnel (six laboratory technicians, two forensic scientists, and one IT staff member); and
- no reduction in costs for those who would be tested upon conviction as required under current law.

The Department of Public Safety and Correctional Services advises they would incur additional expenses based on the need to modify their software. These additional costs cannot be reliably determined at this time.

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### **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. 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 the Judiciary Committee and its cross file, SB 169, received a hearing in the Judicial Proceedings Committee but no further action was taken. HB 946 was withdrawn.

**Cross File:** None.

**Information Source(s):** State's Attorneys' Association, Allegany County, Montgomery County, Talbot County, Judiciary (Administrative Office of the Courts), Department of

State Police, Baltimore City, Department of Public Safety and Correctional Services,  
Department of Legislative Services

**Fiscal Note History:** First Reader - January 30, 2008  
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Analysis by: Jennifer K. Botts

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