

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 333

(Senator Kramer, *et al.*)

Judicial Proceedings

Public Safety - DNA Data Base System - Sample Collection on Arrest

This bill requires a DNA sample to be taken from any individual arrested for a felony, fourth degree burglary, or breaking and entering a motor vehicle. The bill requires the sample to be taken at the facility where the arrest is processed.

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.

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.

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 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 Maryland State Police to assist in the expansion of the DNA database.

State Fiscal Effect: The State Police advise that expenditures could increase by \$3.7 million in fiscal 2009 and by \$5.0 million in fiscal 2010. This estimate is based on costs associated with collecting, analyzing, and storing additional samples, hiring additional staff to collect and process the samples, and the enhancement of software to track and maintain the database. However, this estimate 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. Consequently, the additional expenditures that would be required under this bill cannot be reliably determined.

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

- 119,752 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 \$134,073;
- 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; and
- no reduction in costs for those who would be tested upon conviction as required under current law.

Future year expenditures would reflect annualization and inflation.

This figure does not reflect additional costs which the State Police expect to incur. Additional costs include development and maintenance of a database capable of tracking arrestee samples and materials to be used in training officers/troopers to collect DNA samples. The Maryland State Police advise that additional personnel will need to be hired in order to implement this bill, including forensic scientists, laboratory Technicians, transport technicians, and IT staff.

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

Additional Information

Prior Introductions: Several identical bills were introduced in the 2007 session, including HB 946 which was withdrawn. Another identical bill, HB 1000, received an unfavorable report from the House Judiciary Committee. Its cross filed bill, SB 169, received a hearing in the Senate Judicial Proceedings Committee but no further action was taken. No action was taken after a hearing on a similar bill, HB 996, which would have expanded the DNA database to include all arrests for sexual offenses and kidnapping.

Cross File: HB 107 (Delegate Kramer, *et al.*) – Judiciary.

Information Source(s): City of Bowie; Town of Thurmont; City of Takoma Park; Montgomery County; Judiciary (Administrative Office of the Courts); Department of General Services; Department of State Police; University System of Maryland; Maryland Department of Transportation; Department of Labor, Licensing, and Regulation; Baltimore City; Department of Public Safety and Correctional Services; Department of Legislative Services

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