

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

**FISCAL AND POLICY NOTE**

House Bill 1074

(Delegate Conaway)

Judiciary

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**Public Safety - DNA Sample Collection on Arrest - Undocumented Aliens**

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This bill requires a DNA sample to be taken from any individual who has been arrested and determined to be an undocumented alien. The bill requires the sample to be taken at the facility where the arrest is processed.

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**Fiscal Summary**

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

**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:** 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.

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 Department of State Police to assist in the expansion and analysis efforts of the DNA database.

Foreign residents who live in the United States without obtaining proper authorization from the federal government are considered undocumented immigrants or aliens. These individuals can be categorized into two primary groups: those who enter the country without approval from national immigration authorities; or those who violate the terms of a temporary admission without obtaining either permanent resident status or temporary protection from removal. Other terms used to reference this group include unauthorized aliens, illegal immigrants, and unauthorized immigrants.

Maryland continues to be a major destination for immigrants. A significant portion of Maryland's immigrants are undocumented, according to estimates made by private research organizations. The Pew Hispanic Center, which does not take positions on policy issues, estimated that there were between 225,000 and 275,000 undocumented immigrants in Maryland in 2005. Maryland had the eleventh highest number of undocumented immigrants among the states that year, according to the center. The Center for Immigration Studies, which advocates reducing immigration, estimated that there were 268,000 undocumented immigrants in Maryland in 2007. This estimate was based on an analysis of data from the U.S. Census Bureau's *2007 Current Population Survey*.

Federal law does not mandate that state and local law enforcement agencies become involved in immigration efforts. The extent to which local law enforcement and the State Police question the immigration status of individuals varies among jurisdictions.

**State Fiscal Effect:** To the extent that additional DNA samples are taken upon arrest for eligible offenses, general and federal fund expenditures would increase. Previous State Police estimates on other DNA bills this session were based on the following assumptions:

- 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; and
- no reduction in costs for those who would be tested upon conviction.

The State Police could also expect to incur costs for development and maintenance of a database capable of tracking eligible arrestee samples. However, due to the varying policies within local law enforcement and the State Police as to the interaction with and documentation of this specific population, information as to the number of individuals arrested or convicted who are undocumented aliens is not available. Consequently, the additional expenditures that would be required under this bill cannot be reliably estimated.

The State Police advises that a fundamental part of the DNA database is the indexing of collected DNA against an individual's State Identification (SID) number. The Criminal Justice Information System (CJIS) is not able to issue or confirm the SID number of an individual without the submission of fingerprints. CJIS does not allow the submission of fingerprints for certain violations, such as DUI offenses. Accordingly, the State Police advise it is not possible to fully implement the proposed bill.

The Department of Public Safety and Correctional Services advises it 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.

The Department of Natural Resources estimates a marginal fiscal impact of approximately \$360 in general fund expenditures. DNR advises they arrest less than 10 undocumented aliens per year. DNR has in the past taken DNA samples from subjects at a cost of \$36 for each sample taken.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State's Attorneys' Association; Department of Natural Resources; Department of State Police; Maryland Department of Transportation; Department of Labor, Licensing, and Regulations; Department of Public Safety and Correctional Services; Department of Legislative Services

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