

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 729

(Delegate Jameson, *et al.*)

Judiciary

Public Safety - Statewide DNA Database System - Sexual Offenses and
Kidnapping - Sample Collection on Arrest

This bill requires a DNA sample to be taken from any individual arrested for a sexual offense or kidnapping. The bill requires the sample to be taken at the facility where the arrest is processed. An individual can request to have a DNA profile or record expunged from the database if the arrest that resulted in the sample's inclusion meets specified expungement criteria.

Fiscal Summary

State Effect: Potential 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 and analysis efforts of the DNA database.

State Expenditures: *The State Police did not respond to repeated requests for information about this bill in time for inclusion in this Fiscal and Policy Note.*

However, 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 (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.

Legislative Services and the State Police estimate 3,673 qualifying arrests based on data from the *Uniform Crime Reports*.

The State Police could expect to incur additional costs for development and maintenance of a database capable of tracking arrestee samples. Previous estimates by the State Police did not take into account the conviction rate and assumed that none of the individuals who would have to provide samples under other bills would have eventually been tested under current law. Previous estimates also did 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 for the State Police that would be required under the bill cannot be reliably determined.

The Department of Public Safety and Correctional Services advises it would incur additional expenditures in fiscal 2009 only based on the need to modify their software. These additional costs cannot be reliably determined at this time.

Local Fiscal Effect: 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.

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 575 (Senator Forehand, *et al.*) – Judicial Proceedings.

Information Source(s): City of Bowie, City of Takoma Park, City of Annapolis, Montgomery County, Judiciary (Administrative Office of the Courts), Department of State Police, Baltimore City, Carroll County, Department of Legislative Services

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Analysis by: Jennifer K. Botts

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