

**Department of Legislative Services**  
Maryland General Assembly  
2009 Session

**FISCAL AND POLICY NOTE**

House Bill 1052  
Judiciary

(Delegates Conaway and Kelly)

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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. Under current law, provisions allowing a DNA sample to be taken upon an individual's arrest terminate December 31, 2013. This bill establishes a provision by which DNA samples from undocumented aliens who have been arrested will continue to be required even if the termination provision takes effect.

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**Fiscal Summary**

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

**Local Effect:** Officers within local law enforcement agencies that process their own arrests will need to take DNA samples.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** DNA samples are collected from individuals charged with a crime of violence or a felony burglary or an attempt to commit those crimes and from individuals who are convicted of a felony, fourth degree burglary, or breaking and entering into a vehicle. State law defines a "crime of violence" to include several 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. The requirement to collect DNA samples from individuals who are charged with specified crimes terminates December 13, 2013.

DNA samples are collected at a facility specified by the Secretary of State Police, 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 to ascertain probable cause. Matches are not admissible at trial unless confirmed by additional testing. A DNA sample collected from an individual charged with a crime of violence or felony burglary is not to be tested or placed in the statewide DNA database system prior to the first scheduled arraignment date, unless the individual consents to or requests 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 must purge any DNA record, DNA sample, or other identifiable information covered by the order from the statewide DNA database and the statewide DNA repository.

Automatic expungement of a DNA record and destruction of a DNA sample within 60 days is required if the criminal action does not result in a conviction, is finally reversed or vacated and no new trial is permitted, or results in the granting of an unconditional pardon. 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.

Beginning January 31, 2010, local law enforcement agencies must annually report to the State Police with information needed for the statewide report.

Beginning April 1, 2010, the State Police must annually report to the Governor and the General Assembly on the status of the statewide DNA database system, including expenses, human resource costs, a statistical analysis of the racial demographics of individuals charged with a covered offense, and a detailed analysis of the investigations aided by DNA profiles.

**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 11 states – 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.

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, general and federal fund expenditures will increase. The State Police advise the cost associated to collect and process each DNA sample is \$51.

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 who are undocumented aliens is not available. Consequently, the additional expenditures that are required under this bill cannot be reliably estimated.

The Department of Public Safety and Correctional Services (DPSCS) advises that as long as the State Police continue to be responsible for costs associated with the collection and analysis of DNA samples, there is no fiscal impact. Because DPSCS is responsible for the Baltimore City Central Booking and Intake Facility, there is an operational impact for DPSCS as it is required to collect DNA samples from undocumented aliens who are processed at the facility.

The Department of Natural Resources (DNR) estimates a marginal fiscal impact of approximately \$450 in general fund expenditures annually. DNR advises that they arrest fewer than 10 undocumented immigrants per year. DNR has in the past taken DNA samples from subjects at a cost of \$45 for each sample taken.

The Maryland Department of Transportation advises a minimal fiscal impact only if the Maryland Transportation Authority is responsible for the costs associated with the purchase of DNA testing kits and analysis.

The workload of the Judiciary may increase to the extent that additional expungement requests are filed.

**Additional Comments:** The State Police advise 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 alcohol- and/or drug-related driving offenses.

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### **Additional Information**

**Prior Introductions:** HB 1074 of 2008 received an unfavorable report from the House Judiciary Committee.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General; Department of Natural Resources; Department of Health and Mental Hygiene; Department of Labor, Licensing, and Regulation; Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; State's Attorneys' Association; Maryland Department of Transportation; Harford and Montgomery counties; National Conference of State Legislatures; Pew Hispanic Center; Center for Immigration Studies, U.S. Census Bureau; Department of Legislative Services

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