

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 1523
Judiciary

(Delegate Carter, *et al.*)

Public Safety - DNA Samples and Records - Collection, Use, Storage, and
Expungement

This bill requires a governmental unit that collects DNA samples or maintains DNA records for law enforcement purposes to comply with the statutory requirements for the collection, use, and expungement of DNA samples and records. The bill also prohibits a DNA sample from being stored unless it is required to be collected or stored under statutory provisions governing the statewide DNA database system.

Fiscal Summary

State Effect: The Department of State Police can fulfill the bill's requirements with existing budgeted resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: DNA samples are collected from individuals convicted of a felony, fourth degree burglary, or breaking and entering a vehicle. A DNA sample must also be collected from an individual who is charged with a "crime of violence" or felony burglary or an attempt to commit those crimes. 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, and various types of assault. DNA samples are collected by a trained designee at (1) a facility specified by the Secretary of State Police for samples collected at the time the individual is charged; (2) the

correctional facility where the individual is confined; (3) a facility designated by the director of the crime laboratory for an individual on probation or not sentenced to imprisonment; or (4) a suitable location in a circuit court at the time of sentencing.

Placement of DNA Sample into Database: 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 and are not admissible at trial unless confirmed by additional testing. A DNA sample collected from an individual charged with a crime of violence, felony burglary, or an attempt to commit those crimes may not be tested or placed in the DNA database system prior to the first scheduled arraignment date unless the individual consents to or requests testing prior to arraignment for the purpose of having the sample checked against a sample that has been processed from the crime scene or the hospital.

Destruction of DNA Sample or Expungement of DNA Record: A DNA sample must be immediately destroyed if all qualifying criminal charges are determined to be unsupported by probable cause, and notice must be sent to the defendant and the defendant's counsel of record that the sample was destroyed. Any DNA samples and records generated as part of a criminal investigation or prosecution must be destroyed or expunged automatically from the State DNA database within 60 days if a criminal action begun against the individual relating to the crime 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 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. A letter documenting the expungement must be sent to the defendant and the defendant's attorney.

An individual from whom a DNA sample is collected as a result of being charged with specified crimes of violence must be given a notice informing the individual of the expungement process for a DNA sample or record at the time of the DNA sample collection. In a criminal case in which all the charges are disposed of by acquittal, dismissal, probation before judgment, *nolle prosequi*, or *stet*, the court is required to advise the defendant of any applicable expungement rights of the DNA sample and record.

Unauthorized Acts: A person may not willfully test a DNA sample for information that does not relate to the authorized identification of an individual. A person is also prohibited from performing a database search for the purpose of the identification of an offender in connection with a crime for which the offender may be a biological relative of the individual from whom the DNA sample was acquired. Violations of these provisions are punishable by up to five years imprisonment and/or a \$5,000 fine.

A person is also prohibited from willfully failing to destroy a DNA sample for which notification has been sent stating that the DNA sample has been destroyed or for which destruction has been ordered. Violators are subject to imprisonment of up to one year or a maximum fine of \$1,000.

Background: In April 2012, the Maryland Court of Appeals struck down the State's DNA collection statute as applied to arrestees when it held in *King v. State*, 425 Md. 550 (2012) that the DNA sample taken from Alonzo Jay King, Jr. was an unconstitutional search as applied to the facts in that case. The court reviewed its previous decision upholding the DNA collection statute as applied to individuals convicted but found that the presumption of innocence for arrestees affords them greater protections.

According to the court, mere arrestees have an expectation of privacy to be free from warrantless searches of their biological material and the vast amount of personal information contained within that material. The court cited the expungement provisions in the DNA collection law as evidence of the superior privacy rights of individuals who have not been convicted. Stopping short of holding the law unconstitutional on its face, the court found that taking the DNA sample from King was an impermissible search as applied to that case but recognized that very limited circumstances may exist in which collection of DNA would be necessary to identify an arrestee who has altered his or her fingerprints or facial features. Police initially suspended DNA collection from arrestees in the wake of the ruling.

The State appealed the *King* decision to the U.S. Supreme Court, and Chief Justice Roberts issued an opinion in July 2012 granting a stay of the decision, saying that there was a "fair prospect" the Supreme Court would grant *certiorari* and overturn the decision. Following the Roberts opinion, police resumed collecting DNA samples from arrestees. On November 9, 2012, the Supreme Court agreed to review the Court of Appeals decision. The Supreme Court heard oral arguments in the case on February 26, 2013.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Harford and Montgomery counties, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, scotusblog, Department of Legislative Services

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