

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 427

(Senator Lee, *et al.*)

Judicial Proceedings

Judiciary

Criminal Procedure - Victims of Crime - Notification Regarding DNA Profile

This bill requires an investigating law enforcement agency, upon written request, to give the victim of the crime, or the victim's representative, timely notice as to (1) whether an evidentiary DNA profile was obtained from evidence in the case; (2) when any evidentiary DNA profile was entered into the DNA database system; and (3) when any confirmed match of the DNA profile, official DNA case report, or DNA hit report is received. That requirement does not apply when to do so would impede or compromise an ongoing investigation or when the victim's representative is a suspect or a person of interest in the criminal investigation of the crime involving the victim. The bill also requires the State Board of Victim Services to develop pamphlets to notify victims and their representatives about how to request information regarding an unsolved case.

Fiscal Summary

State Effect: Any additional requirements for the Governor's Office of Crime Control and Prevention (GOCCP) and the State Victims of Crime Fund to provide information to victims or victims' representatives can be handled with existing budgeted resources. Any impact on State law enforcement agencies, including the Department of State Police, can be handled with existing budgeted resources.

Local Effect: Minimal. Any additional requirements for local law enforcement agencies can be handled with existing budgeted resources.

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 statewide 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.

Victim Rights: Under Maryland law, a victim of a crime or delinquent act (or a representative in the event the victim is deceased, disabled, or a minor) has a broad range of specific rights during the criminal justice process. The State Board of Victim Services within GOCCP, among other things, develops pamphlets to notify victims and their representatives of the rights, services, and procedures, provided under the Maryland Declaration of Rights or State law.

Additional Information

Prior Introductions: None.

Cross File: HB 501 (Delegate Valentino-Smith, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts), Governor's Office of Crime Control and Prevention, Department of State Police; State's Attorneys' Association, cities of Bowie and Takoma Park; Howard and Montgomery counties; Department of Legislative Services

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