

Department of Legislative Services
 Maryland General Assembly
 2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 369 (Senator West, *et al.*)
 Judicial Proceedings

Evidence - Chain of Custody of DNA

This bill specifies requirements under which a report signed by a specified deoxyribonucleic acid (DNA) analyst is *prima facie* evidence that the substance was properly tested and was of the nature described in the report for the purpose of establishing a DNA profile in a criminal or civil proceeding. If the requirements are met, a DNA profile may be established without the necessity for the analyst to personally appear in court. In a criminal proceeding, on written demand of the defendant that is filed in the proceedings at least 10 days prior to trial, the prosecution must require the presence of the analyst or any person in the chain of custody as a prosecution witness.

Fiscal Summary

State Effect: General fund expenditures increase by \$31,700 in FY 2020 and by \$8,400 in FY 2021. Revenues are not affected.

(in dollars)	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	31,700	8,400	0	0	0
Net Effect	(\$31,700)	(\$8,400)	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: None. The change does not materially affect local governmental finances.

Small Business Effect: None.

Analysis

Bill Summary: In a civil or criminal proceeding, a report signed by the DNA analyst who performed the test or tests as to its nature is, if the report meets specified criteria, *prima facie* evidence that the material delivered to the DNA analyst was consistent with or properly tested under approved specified procedures, that those procedures are legally reliable, that the material was delivered to the DNA analyst by the officer or person stated in the report, and that the material was or contained the substance stated in the report. For this provision to apply, the report must:

- identify the DNA analyst as an individual qualified under standards approved by the Maryland Department of Health (MDH);
- state that the DNA analyst made an analysis of the material under specified procedures; and
- state that the substance, in the opinion of the DNA analyst, is or contains the particular DNA profile specified.

A statement signed by each successive person in the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine a DNA profile, that the person delivered it to the other person indicated on or about the date stated, is *prima facie* evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement. The statement must (1) contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and (2) state that the material was delivered in essentially the same condition as received. The statement may be included in the report signed by the DNA analyst.

A copy of the report or statement must be mailed, delivered, or made available to the defendant or the defendant's counsel at least 30 days prior to the introduction of the report or statement at trial.

The bill's provisions do not (1) preclude the right of any party to introduce any evidence supporting or contradicting the evidence contained in or the presumptions raised by the report or (2) prevent the defendant from summoning a witness as a witness for the defense, as specified.

Current Law: A DNA profile is admissible as evidence in a criminal proceeding to prove or disprove the identity of any person if it is accompanied by a statement from the testing laboratory setting forth that the analysis of genetic loci has been validated according to the standards specified for a DNA profile.

“Chain of custody” means the seizing officer; the packaging officer, if the packaging officer is not also the seizing officer; and the chemist or other person who actually touched the substance and not merely the outer sealed package in which the substance was placed by the law enforcement agency before or during the analysis of the substance. “Chain of custody” does not include a person who handled the substance in any form after analysis of the substance.

“Deoxyribonucleic acid” means the molecules in all cellular forms that contain genetic information in a chemical structure of each individual.

“DNA profile” means an analysis of genetic loci that have been validated according to standards established by:

- the Technical Working Group on DNA Analysis Methods;
- the DNA Advisory Board of the Federal Bureau of Investigation (FBI);
- the FBI’s Quality Assurance Standards for Forensic DNA Testing Laboratories; or
- the FBI’s Quality Assurance Standards for DNA Databasing Laboratories.

State Expenditures: General fund expenditures for MDH increase by \$31,739 in fiscal 2020, which accounts for the bill’s October 1, 2019 effective date. Existing regulations govern the certification and approval of laboratory procedures for chemists and law enforcement laboratories. MDH advises that, as a result of the bill, the regulations and other standards need to be updated to cover DNA analysts. Accordingly, this estimate reflects the cost of hiring a contractual administrative officer for one year to provide administrative support for the approval of standards for DNA analysts. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position	1
Salary and Fringe Benefits	\$26,380
Operating Expenses	<u>5,359</u>
Total FY 2020 State Expenditures	\$31,739

Fiscal 2021 expenditures reflect an additional three months of salary for the contractual administrative officer and ongoing operating expenses. This estimate does not include any health insurance costs that could be incurred for specified contractual employees under the State’s implementation of the federal Patient Protection and Affordable Care Act.

The Department of State Police (DSP) advises that allowing for a DNA profile to be established without the necessity for the DNA analyst to personally appear in court may have a positive operational impact on the DSP crime lab as analyst time can be spent in the laboratory instead of in court.

Additional Information

Prior Introductions: HB 1125 of 2018 passed the House with amendments, received a hearing in the Senate Judicial Proceedings Committee, and then received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: HB 372 (Delegate W. Fisher, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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