

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 967 (Senator Muse)
 Judicial Proceedings

Public Safety - Statewide DNA Database System, DNA Collection, and Penalties - Alterations

This bill (1) alters the circumstances in which a DNA sample must be collected and stored in the statewide DNA database system within the Department of State Police (DSP) Crime Laboratory; (2) alters the individuals required to collect DNA samples; and (3) clarifies when a DNA sample may be tested or placed in the statewide DNA database system. The bill also requires the releasing entity, before releasing an individual from custody, to ensure that the individual’s required DNA sample has been collected in accordance with § 2-504 of the Public Safety Article, as altered by the bill. In addition, the bill prohibits an individual from refusing to provide a DNA sample as required and establishes penalties for violations of that prohibition.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$129,700 in FY 2024. Future years reflect annualization, inflation, and ongoing costs. Revenues are not anticipated to be materially affected.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	129,700	139,600	145,900	152,200	160,200
Net Effect	(\$129,700)	(\$139,600)	(\$145,900)	(\$152,200)	(\$160,200)

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

Local Effect: Local government finances are not anticipated to be materially affected.

Small Business Effect: None.

Analysis

Bill Summary:

Collection of DNA Sample

For each individual charged with a “crime of violence” or burglary or an attempt to commit those crimes, each DNA sample required to be collected must be collected:

- for an individual who is released after booking, by a law enforcement officer or an employee of the District Court before the individual is released; or
- for an individual who is detained after booking, by an employee of a booking facility, detention center, or correctional facility at the time of intake.

For each individual convicted of felony, fourth-degree burglary, or breaking and entering a vehicle, each DNA sample required to be collected must be collected:

- for an individual who is sentenced to imprisonment, by an employee of the correctional facility at the time of intake to the correctional facility where the individual is confined;
- for an individual who is placed on supervised probation, by a probation officer at the time the individual initially meets with the probation officer; or
- for an individual who is placed on unsupervised probation or whose sentence requires the individual to register as a sex offender under § 11-704 of the Criminal Procedure Article, by a bailiff at the time of sentencing and at a suitable location in the District Court or circuit court.

The above provisions require that the sample is collected by an individual who is designated by the Director of the DSP Crime Laboratory and trained in the collection procedures that the Crime Laboratory uses. Collection must also be done in accordance with adopted regulations.

Testing of DNA Sample

A DNA sample collected from an individual charged with a “crime of violence” or burglary or an attempt to commit those crimes may not be tested or placed in the statewide DNA database system until (1) a District Court commissioner or a judge of the District Court or circuit court has determined that the charge is supported by probable cause; (2) an indictment is returned by a grand jury charging the individual with a “crime of violence” or burglary or an attempt to commit those crimes; or (3) requested or consented to by the individual, as specified.

Violation of Probation

Failure of an individual to provide a DNA sample within 90 days after being convicted and sentenced to probation is a violation of probation.

Prohibitions

An individual may not refuse to provide a DNA sample in accordance with § 2-504 of the Public Safety Article, as altered by the bill. A violator is guilty of a misdemeanor, and on conviction is subject to maximum penalties of (1) for a first offense, 90 days imprisonment and/or a \$1,000 fine and (2) for a second or subsequent offense, one year imprisonment and/or a \$2,500 fine.

Current Law:

DNA Database

The statewide DNA database system consists of DNA samples collected from individuals convicted of a felony, fourth-degree burglary, or breaking and entering a vehicle. DNA samples for individuals charged with a “crime of violence” or burglary or an attempt to commit those crimes are also included within the statewide database.

The DSP 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.

Collection of Sample

In accordance with adopted regulations, each DNA sample required to be collected must be collected:

- at the time the individual is charged, at a facility specified by the Secretary of State Police;
- at the correctional facility where the individual is confined, as specified;
- at a facility specified by the Director of the DSP Crime Laboratory, if the individual is on probation or is not sentenced to a term of imprisonment; or
- at a suitable location in a circuit court following the imposition of sentence.

A DNA sample must be collected by an individual who is designated by the Director of the DSP Crime Laboratory and trained in the collection procedures that the Crime Laboratory uses.

Testing of Sample

A DNA sample collected from an individual charged with a “crime of violence” or burglary or an attempt to commit those crimes may not be tested or placed in the statewide DNA database system prior to the first scheduled arraignment date unless requested or consented to by the individual, as specified. An individual may request or consent to have the individual’s DNA sample processed prior to arraignment for the sole purpose of having the sample checked against a sample that has been processed from the crime scene or the hospital and is related to the charges against the individual.

If all qualifying criminal charges are determined to be unsupported by probable cause, the DNA sample must be immediately destroyed and notice must be sent to the defendant and counsel of record for the defendant that the sample was destroyed. A second DNA sample must be taken if needed to obtain sufficient DNA for the statewide DNA database system or if ordered by the court for good cause shown.

Violation of Probation

Failure of an individual who is not sentenced to a term of imprisonment to provide a DNA sample within 90 days after notice by the Director of the DSP Crime Laboratory is a violation of probation.

Prohibitions

A person is prohibited from performing a search of the statewide DNA database 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.

A person may not willfully test a DNA sample for information that does not relate to the authorized identification of an individual, as specified. A violation is punishable by up to five years imprisonment and/or a \$5,000 fine. In addition, a person is 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 for up to one year or a maximum fine of \$1,000.

Definition

“Crime of Violence” has the meaning stated in § 14-101 of the Criminal Law Article; however, for purposes of provisions relating to the statewide DNA Database system, does not include mayhem. Section 14-101(a) of the Criminal Law Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking (including armed carjacking); (11) first- and second-degree sexual offenses; (12) use of a firearm in the commission of a felony or other crime of violence, except possession with intent to distribute a controlled dangerous substance; (13) child abuse in the first degree; (14) sexual abuse of a minor younger than age 13 under specified circumstances; (15) home invasion; (16) felony sex trafficking and forced marriage; (17) an attempt to commit crimes (1) through (16); (18) continuing course of certain sexual conduct with a child; (19) assault in the first degree; and (20) assault with intent to murder, rape, rob, or commit a sexual offense in the first or second degree.

State Expenditures:

Judiciary

General fund expenditures for the Judiciary increase by at least \$129,661 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. This estimate reflects the cost of hiring one security manager to implement the bill’s changes in the District Court. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses. It also includes supplies to process fingerprints in each courthouse to ensure that DNA samples are taken from the appropriate individuals.

Position	1.0
Salary and Fringe Benefits	\$107,052
Fingerprint Supplies	15,200
Other Operating Expenses	<u>7,409</u>
Minimum FY 2024 Judiciary Expenditures	\$129,661

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

This estimate does not include costs for any additional training needed by court employees, any additional supplies needed for the designation of a space in courthouses for the processing of fingerprints or the collection of DNA samples, or restocking of necessary fingerprinting supplies. Accordingly, costs are likely higher.

In addition to the increase in expenditures noted above, the bill has a significant operational impact on the Judiciary. The Judiciary is currently experiencing a shortage of bailiffs for courtrooms. The primary responsibility for bailiffs is the physical security of the courthouse, judges, judiciary staff, and all visitors. In many courthouses, there is only one bailiff per courtroom. The Administrative Office of the Courts advises that the new responsibilities created under the bill will take bailiffs away from their primary role of security and could impact overall security in courthouses.

The Judiciary reports that in fiscal 2022, the District Court received a total of approximately 30,373 filings for violations applicable to the bill. Of those filings, 260 resulted in guilty dispositions. In the same fiscal year, in the circuit courts, there were approximately 24,174 filings and 4,641 guilty dispositions.

Department of State Police

According to the [2021 DSP Forensic Sciences Division Statewide DNA Database Annual Report](#), released in April 2022, in 2021, the division collected 6,865 samples from individuals arrested and charged with qualifying crimes. In the same year, a total of 3,374 DNA profiles from arrested and charged individuals were uploaded to the Combined DNA Index System and searched. There were 141 matches to arrested and charged DNA profiles reported to law enforcement in 2021.

DSP advises that, under current law, it is often unclear to the Crime Laboratory when an individual's arraignment date occurs; however, under the bill, the Crime Laboratory is able to clearly determine when a DNA sample may be tested or placed in the statewide DNA database system. The bill likely improves efficiency of operations for the Crime Laboratory but also likely increases the number of samples required to be tested and placed into the statewide DNA database system; thus, general fund expenditures for the Crime Laboratory likely increase. However, without actual experience under the bill, it is not possible to determine any such increase in expenditures.

Other Agencies

The Department of Public Safety and Correctional Services, the Maryland State Commission on Criminal Sentencing Policy, and the Office of the Public Defender can handle the bill's changes with existing resources.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Frederick and Montgomery counties; cities of Frederick and Havre de Grace; Maryland Municipal League; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - March 17, 2023
rh/lgc

Analysis by: Shirleen M. E. Pilgrim

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