

MCPA-MSA_ SB 967-Statewide DNA Database-Collection

Uploaded by: Andrea Mansfield

Position: FAV



Maryland Chiefs of Police Association

Maryland Sheriffs' Association



MEMORANDUM

TO: The Honorable William Smith, Jr., Chair and
Members of the Judicial Proceedings Committee

FROM: Darren Popkin, Executive Director, MCPA-MSA Joint Legislative Committee
Andrea Mansfield, Representative, MCPA-MSA Joint Legislative Committee
Natasha Mehu, Representative, MCPA-MSA Joint Legislative Committee

DATE: March 21, 2023

RE: **SB 967** – Public Safety – Statewide DNA Database System, DNA Collection,
Expungement, and Penalties - Alterations

POSITION: SUPPORT

The Maryland Chiefs of Police Association (MCPA) and the Maryland Sheriffs' Association (MSA) **SUPPORT SB 967**. This bill addresses issues associated with the DNA database statute.

The Maryland Department of State Police's Forensic Sciences Division oversees the statewide DNA database. This database has been an incredibly successful tool over the years, assisting investigators to implicate perpetrators, exonerate the falsely accused, and link serial crimes in Maryland and across state lines. MCPA and MSA believe this bill will close loopholes in the statute making the database an even more valuable tool in solving crimes.

SB 967 will ensure all samples are collected and that all collected samples have clear and achievable triggers for testing and expungement. This bill does the following:

- 1) clarifies accountability for the collection of DNA database samples;
- 2) imposes a penalty for qualifying individuals who refuse to provide a DNA database sample; and,
- 3) clarifies language that currently uses the term "arrestment" as a trigger for the analysis of DNA database samples collected from individuals who have been arrested and charged with qualifying crimes.

According to MSP, a major milestone was reached in October 2022 when the 10,000th hit associated with the Maryland DNA database was reported. For the past 3 years, there has been an average of 1,135 Maryland DNA database hits per year. These hits have led to several investigations, some of which have resulted in convictions.

MCPA and MSA support all efforts for operational improvements to make the DNA database more effective. Therefore, MCPA and MSA **SUPPORT SB 967** and request a **FAVORABLE** Committee report.

SB 967 Public Safety - Statewide DNA Database Syst

Uploaded by: Scott Shellenberger

Position: FAV

Bill Number: SB 967

**Scott D. Shellenberger, State's Attorney for Baltimore County
Support**

WRITTEN TESTIMONY OF SCOTT D. SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY,
IN SUPPORT OF SENATE BILL 967
PUBLIC SAFETY – STATEWIDE DNA DATABASE SYSTEM, DNA COLLECTION
AND EXPUNGMENT AND PENALTIES - ALTERATIONS

I write in support of Senate Bill 967 that brings up to date our current DNA Collection/Database Statute.

The first redaction in this Bill is being done because it is no longer necessary. Subsection (a)(2) was needed when the DNA Collection System was first enacted to provide for the ability to collect the DNA sample of those who were sentenced to the Division of Corrections before DNA collection was routinely done. This section is no longer necessary as we have been collecting DNA for a long time and those in jail before the statute went into effect have submitted DNA.

The second set of Amendments is to update the statute to more current practices of when known DNA samples are collected. It adopts the current practice of collecting the sample for any individual about to be released prior to their release date. For individuals detained the sample is collected at the location of detention. The Bill goes onto adopt the practice of collection of samples at correctional facilities, or if only given probation by Probation Agents; or if unsupervised probation by the bailiff at the courthouse. All of these methods are practices currently being done. We need to bring the statute up to current practices.

The Bill reaffirms that samples collected will not be tested or placed into the statewide database system until a District Court Commissioner or judge in District or Circuit Court has determined there is probable cause. The sample can also be tested if a Grand Jury has returned an indictment.

All of the above safeguards are put in place to make sure independent findings have been made by impartial third parties.

Section (g) makes it a crime punishable by 90 days for failure to provide a DNA sample. This is a much needed incentive to obtain a sample as failure to provide a sample was rarely followed by a contempt finding.

Finally, an Amendment has been offered that the DNA sample be destroyed if:

1. At least 1 year has passed from the date of collection of the DNA sample;
2. There is an associated charged in the District Court, the disposition of which is guilty, probation before judgment or placement on the STET docket; or
3. No other qualifying charge for which collection of a DNA sample is authorized under the subtitle has been referred to the Circuit Court.

I urge a favorable report.

SB 967 - Amendment.pdf

Uploaded by: C. Athony Muse

Position: FWA



SB0967/973222/1

AMENDMENTS
PREPARED
BY THE
DEPT. OF LEGISLATIVE
SERVICES

16 MAR 23
18:07:50

BY: Senator Muse
(To be offered in the Judicial Proceedings Committee)

AMENDMENTS TO SENATE BILL 967
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, after “**Collection**” insert “**and Expungement**”; in line 10, after “system;” insert “requiring that a DNA sample or DNA record be destroyed or expunged under certain circumstances; altering the method by which an individual is provided written notice of the destruction and expungement of a DNA sample and DNA record;”; and in line 14, after “2-504” insert “and 2-511”.

AMENDMENT NO. 2

On page 4, after line 31, insert:

“2-511.

(a) (1) Except as provided in paragraph (2) of this subsection, any DNA samples and records generated as part of a criminal investigation or prosecution shall be destroyed or expunged automatically from the State DNA database if:

(i) a criminal action begun against the individual relating to the crime does not result in a conviction of the individual;

(ii) the conviction is finally reversed or vacated and no new trial is permitted; or

(iii) the individual is granted an unconditional pardon.

(2) [A] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A DNA sample or DNA record may not be destroyed or expunged

automatically from the State DNA database if the criminal action is put on the stet docket or the individual receives probation before judgment.

(3) A DNA SAMPLE OR DNA RECORD GENERATED FROM COLLECTION FROM AN INDIVIDUAL CHARGED WITH A CRIME DESCRIBED UNDER § 2-504(A)(2) OF THIS SUBTITLE ON OR BEFORE NOVEMBER 30, 2023, SHALL BE DESTROYED AND EXPUNGED IF:

(I) AT LEAST 1 YEAR HAS PASSED FROM THE DATE OF COLLECTION OF THE DNA SAMPLE;

(II) THERE IS AN ASSOCIATED CHARGE IN THE DISTRICT COURT, THE DISPOSITION OF WHICH IS GUILTY, PROBATION BEFORE JUDGMENT, OR PLACEMENT ON THE STET DOCKET; OR

(III) NO OTHER QUALIFYING CHARGE FOR WHICH COLLECTION OF A DNA SAMPLE IS AUTHORIZED UNDER THIS SUBTITLE HAS BEEN REFERRED TO THE CIRCUIT COURT.

(b) If the DNA sample or DNA record was obtained or generated only in connection with a case in which eligibility for expungement has been established, the DNA sample shall be destroyed and the DNA record shall be expunged.

(c) Any DNA record expunged in accordance with this section shall be expunged from every database into which it has been entered, including local, State, and federal databases.

(d) An expungement or destruction of sample under this section shall occur within 60 days of an event listed in subsection (a) of this section.

(e) [A letter] WRITTEN NOTICE documenting expungement of the DNA record and destruction of the DNA sample shall be [sent by the Director] PROVIDED to the defendant [and the defendant's attorney at the address specified by the court in the order of expungement] IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE DEPARTMENT.

(f) A record or sample that qualifies for expungement or destruction under this section and is matched concurrent with or subsequent to the date of qualification for expungement:

(1) may not be utilized for a determination of probable cause regardless of whether it is expunged or destroyed timely; and

(2) is not admissible in any proceeding for any purpose.

(g) The Director shall adopt procedures AND REGULATIONS to comply with this section."

SB 967 - Testimony.pdf

Uploaded by: C. Athony Muse

Position: FWA



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Testimony

SB 967: Public Safety - Statewide DNA Database System, DNA Collection, and Penalties - Alterations

Good afternoon, Chairman Smith, Vice Chair Waldstreicher and members of the Senate Judicial Proceedings Committee.

Senate Bill 967 would:

- 1) change the circumstances in which DNA samples are collected and stored,
- 2) change the individuals required to collect DNA samples; and it would
- 3) clarify when a DNA sample may be tested or placed in the statewide DNA database system.

SB 967 would also prohibit a person from refusing to provide a DNA sample and if they violate this requirement, they could be guilty of a misdemeanor and if convicted they would be subject to imprisonment not exceeding 90 days or a fine not exceeding \$1,000 or both for the first offense. For the second offense, the individual could face up to a year in prison and a fine up to \$2,500 or both.

In closing, the power of the DNA database is a tool that can be used not only to implicate persons who are guilty of a crime, but it can EXONERATE the innocent. For example, if an innocent person is either being held awaiting trial or has been falsely convicted without being connected to the crime with DNA, a DNA database "hit" to an actual perpetrator in the case can be the basis for the innocent person to be immediately released. Therefore, the stronger that we make the DNA database, the more potential there is to help exonerate the innocent. In addition, MSP will expunge all of the "in limbo" samples even though some of them could be eligible to be tested after fixing the "arraignment."

Therefore, it is for these reasons that I urge this committee for a FAVORABLE report on SB 967.

SB 967 MSP testimony in Support.pdf

Uploaded by: Kathy Anderson

Position: FWA



State of Maryland
Department of State Police
Government Affairs Section
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: March 21, 2023

BILL NUMBER: Senate Bill 967 **POSITION:** Support with Amendments

BILL TITLE: Public Safety – Statewide DNA Database System, DNA Collection, and Penalties - Alterations

REVIEW AND ANALYSIS:

This legislation is being put forth at the request of the Maryland Department of State Police Forensic Sciences Division (MDSP-FSD) due to a number of problems created by existing law on the collection and testing of arrestee DNA. Since 2009 when the law was passed, the MDSP-FSD has worked diligently to ensure that all DNA Database samples that are submitted for testing are done so in compliance with the law. However, there are several issues with the DNA Database outside the control of MDSP-FSD that need to be addressed. Specifically, samples that should be collected for submission are being missed, individuals are refusing to provide a sample because there is no penalty when they do so, the language triggering when arrestee samples can be analyzed has a loophole and this loophole has resulted in thousands of “in limbo” samples that can neither be tested nor expunged.

Senate Bill 967 addresses all of these issues. The bill ensures that moving forward all samples that should be collected are collected and that all collected samples have clear and achievable triggers for testing and expungement. To that end, this bill does the following:

- 1) clarify accountability for the collection of DNA Database samples,
- 2) impose a penalty for qualifying individuals who refuse to provide a DNA Database sample, and
- 3) clarify language that currently uses the term “arraignment” as a trigger for the analysis of DNA Database samples collected from individuals who have been arrested and charged with qualifying crimes.

Regarding the “in limbo” samples, the sponsor has put forth an amendment that requires the expungement of these samples. The samples are in limbo because, by law, they do not meet the vague requirements for either analysis or expungement. While many of these “in limbo” samples would be eligible for analysis upon passage of this legislation, Senate Bill 967 specifies that the samples collected prior to the enactment of this bill, are to be expunged.

State of Maryland
Department of State Police
Government Affairs Section
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

The Maryland DNA Database has been an incredibly successful tool over the years, assisting investigators to implicate perpetrators, exonerate the falsely accused, and link serial crimes in Maryland and across state lines. In October 2022, a major milestone was reached when the 10,000th hit associated with the Maryland DNA Database was reported. For the past 3 years, there has been an average of 1,135 Maryland DNA Database hits per year. These are impressive numbers, but there is potential for the DNA Database to be even more productive if the changes proposed in SB 967 are implemented. Moreover, by fixing the language that has led to the “in limbo” samples along with expunging all previous “in limbo” samples, the State will correct an unintended flaw in the existing law.

For these reasons, the Maryland Department of State Police urges the Committee to give Senate Bill 967 as amended, a favorable report.

sb967.pdf

Uploaded by: Matthew Pipkin

Position: UNF

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 967
Public Safety – Statewide DNA Database System, DNA
Collection, and Penalties - Alterations
DATE: March 8, 2023
(3/21)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 967. This bill modifies Public Safety § 2-504 which sets certain requirements for collection of DNA samples from defendants in criminal cases. Currently, the law requires that DNA samples be collected from people convicted of felonies or of burglary or rogue and vagabond. In addition, samples must be collected from people arrested for a crime of violence or burglary. For arrestees, the DNA samples may not be tested or placed in the State DNA database prior to the first arraignment unless consented to by the arrestee, and if the qualifying charges are not supported by probable cause then the samples must be destroyed. The statute specifies when and where DNA samples be collected, including at the time an individual is charged or at the correctional facility where a person is confined. Samples must be collected by an individual who is designated by the Secretary of State Police and who is trained in collection procedures.

This bill changes the statute in several ways that are relevant to the Judiciary. First, it changes the requirements for how samples must be collected. For persons charged with a crime of violence or burglary and who are released after booking, it requires that samples be collected by “a law enforcement officer or an employee of the District Court” before release. For a defendant who is convicted of a qualifying crime and sentenced to unsupervised probation or who must register as a sex offender, the sample must be collected “by a bailiff at the time of sentencing and at a suitable location in the District Court or circuit court.” Further, the bill states that a DNA sample from a person charged with a qualifying crime cannot be tested or placed in the State database until a commissioner or Judge has determined that the charge is supported by probable cause or a grand jury indictment for a qualifying offense is returned. Finally, the bill makes refusal to provide a DNA sample a misdemeanor.

Currently, § 2-504 does not require Judiciary personnel to collect DNA samples. The bill

inappropriately changes that in the circumstances described above. Collection of DNA samples from defendants is an Executive Branch or local government function rather than a Judicial Branch one. The Maryland Constitution “prohibits the courts from performing non-Judicial functions” *Shell Oil Co. v. Supervisor of Assessments of Prince George’s County*, 276 Md. 36, 46-47 (1975). Booking of defendants and their detention, and release from detention, are non-Judicial functions; they are performed by Executive Branch agencies and local governments. DNA collection as part of these processes therefore cannot be performed by Judiciary employees including District Court staff and bailiffs. In addition, the samples collected could be used for future arrests if the samples match database DNA that is related to other crimes. This could create a conflict of interest for the Judiciary by forcing it to act in a way that aids law enforcement.

The bill also does not address how samples are to be obtained, collected, or transported, nor does it discuss training or responsibility for training. Bailiffs and sheriffs are not set up or trained for this responsibility. If enacted, the bill would require the Judiciary to bear the cost to send employees and bailiffs to DNA training with MSP which has not been budgeted for in the Judiciary’s budget. Bailiff’s primary role is the physical security of the courthouse, judges, judiciary staff, and all visitors. DNA will add another responsibility to the bailiffs taking away from their primary role of security. Due to the limited number of bailiffs in many of the courthouses, there is only one bailiff per courtroom. DNA collection would have an impact on the District Court of Maryland (DCM) security operation. In addition, the courthouses have no designated area for processing fingerprints or anterooms to collect the DNA samples.

Further, at subsection (d)(1) the bill states that DNA samples may not be tested or placed in the DNA database until one of three conditions is met, one of which is a commissioner or judge determining that the charge is supported by probable cause. This suggests that courts would be required to perform separate probable cause hearings for purposes of the DNA handling.

The CODIS procedures are strict in obtaining and uploading DNA data. This bill as drafted is contrary to those procedures.

cc. Hon. C. Anthony Muse
Judicial Council
Legislative Committee
Kelley O’Connor