

**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

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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