

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE

House Bill 1117
Judiciary

(Delegates Sydnor and Vallario)

Criminal Procedure - Statewide DNA Data Base System - Admissibility of DNA
Match Evidence

This bill alters statutory provisions pertaining to the admissibility of deoxyribonucleic acid (DNA) match evidence by establishing that a match obtained between a DNA evidence sample and a DNA database entry may be used as probable cause and is not admissible at a criminal trial to prove the guilt of the defendant who is the subject of the prosecution unless confirmed by additional testing.

Fiscal Summary

State Effect: The bill is procedural and is not expected to materially affect State finances.

Local Effect: The bill is procedural and is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Current Law/Background: In *Allen v. State*, No. 16, and *Diggs v. State*, No. 17 (Sept. Term 2014) (Opinions filed November 26, 2014), the Maryland Court of Appeals held that under § 2-510 of the Public Safety Article, before evidence of a DNA database “match” may be admitted at trial, the party seeking its admission bears the burden of ensuring that additional testing of the DNA samples is completed to confirm the validity of the match. This testing requirement applies equally to a criminal defendant offering evidence of a DNA match to another individual.

State law requires a DNA sample to be taken from any individual charged with specified crimes of violence or felony burglary, with the exception of mayhem. In addition, DNA

samples are collected from individuals convicted of a felony, fourth degree burglary, or breaking and entering a vehicle. The State Police Crime Laboratory stores and maintains each DNA identification record in the statewide DNA database. Section 2-510 of the Public Safety Article specifies that “[a] match obtained between an evidence sample and a database entry may be used only as probable cause and is not admissible at trial unless confirmed by additional testing.”

Petitioners and co-defendants, Traimne Martinez Allen (“Allen”) and Howard Bay Diggs (“Diggs”), were convicted in the Circuit Court for Montgomery County of attempted first-degree murder, first-degree burglary, robbery with a deadly weapon, attempted robbery with a deadly weapon, conspiracy to commit robbery, two counts of first-degree assault, and two counts of using a handgun in the commission of a crime of violence, stemming from an alleged home invasion and robbery at the residence. During their investigation, police officers took DNA samples from two black bandanas, a baseball hat, a black t-shirt, and an orange juice bottle recovered from the scene of the incident. Although the Montgomery County Crime Laboratory determined that Allen was the major contributor of DNA to the baseball hat, a DNA sample taken from the bloodied black bandana produced a “match” to a DNA profile of an individual named Richard Debreau, which had been previously uploaded to the Federal Bureau of Investigation’s Combined DNA Index System (CODIS) by the crime laboratory, and a sample taken from the orange juice bottle produced a “match” to a DNA profile of an individual named Mohamed Bangora, which had been previously uploaded to the CODIS by the Department of State Police (DSP).

At the conclusion of its case-in-chief during the April 2010 trial, the State moved to prevent the defense from questioning a forensic specialist employed by the Montgomery County Crime Laboratory about the DNA profile matches to Debreau and Bangora. The State argued, in part, that § 2-510 of the Public Safety Article prohibits the admission of DNA matches at trial without additional confirmatory testing, which the defense had failed to request. The trial court granted the State’s motion. After their conviction, the defendants appealed to the Court of Special Appeals, which affirmed the trial court’s decision.

The Court of Appeals granted the defendants’ petitions for a *writ of certiorari* and affirmed the decision. The court observed that the statute is “rife with undefined terms,” as the statute does not provide definitions for “match” or “additional testing” and is unclear whether the statute applies at any trial. Nevertheless, the court held the plain language of the statute requires that before evidence of a DNA database “match” may be admitted at trial, the party seeking its admission bears the burden of ensuring that additional testing of the DNA samples is completed to confirm the validity of the match. This requirement applies equally to a criminal defendant offering evidence of a DNA match to another individual. The defendants failed to obtain this additional confirmatory testing, absent the apparent inability to do so, and therefore the DNA match evidence was inadmissible at

trial. Moreover, the court concluded that this restriction on the admissibility of evidence does not violate the accused's constitutional right to present a fair defense. The court found that the statute imposes a reasonable restriction on the admission of DNA evidence, because it ensures the reliability of that evidence and does not preclude a defendant from admitting DNA evidence.

State Fiscal Effect: The bill is procedural and is not expected to materially affect State finances. The Judiciary advises that it does not anticipate a significant fiscal or operational impact from the bill and that the bill may have a positive impact on case time standards by reducing the time needed at a probable cause hearing or a criminal trial.

The Office of the Public Defender (OPD) advises that the bill does not have a fiscal impact on OPD. DSP advises that the bill's impact is procedural in nature.

Local Fiscal Effect: The bill is procedural and is not expected to materially affect local finances. The State's Attorneys' Association advises that the bill's impact on prosecutors cannot be determined at this time.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, State's Attorneys' Association, Department of Legislative Services

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mar/kdm

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