

Department of Legislative Services

Maryland General Assembly

2020 Session

FISCAL AND POLICY NOTE

First Reader

House Bill 1209

(Delegate Shetty)

Judiciary

Public Safety - DNA Collection, Records, Analysis, and Reporting

This bill (1) establishes prohibitions relating to the collection of DNA samples and searches of the statewide DNA repository and direct-to-consumer genetic genealogy services; (2) expands the circumstances under which specified DNA samples and records must be destroyed or automatically expunged; and (3) expands the information that the Department of State Police (DSP) must include in the annual report relating to DNA samples.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances.

Local Effect: The bill is not anticipated to materially affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary:

Prohibitions: With specified exceptions under current law, the bill prohibits the collection of a DNA sample from an individual without the knowledge and consent of the individual who is to provide the DNA sample. A person is also prohibited from performing a search of the statewide DNA repository for the purpose of 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 perform a search of the statewide DNA database, statewide DNA repository, DNA or genealogical data from a direct-to-consumer genetic genealogy service, or other genealogical repository or database to aid in the investigation of a law enforcement agency if:

- the individual has consented to the search, as specified; and
- the search is intended to identify an individual who has committed a crime of violence, burglary, or attempted burglary.

However, if the individual does not consent to the search by a law enforcement agency, a warrant, subpoena, or court order may not be issued to compel access to specified DNA-related data from the direct-to-consumer genetic genealogy service. In addition, a person may not continue a genetic genealogy investigation through a direct-to-consumer genetic genealogy service if a search of specified DNA-related data does not return a match that is within a third degree of relatedness. A person must provide a full report of the person's genetic genealogy investigation, as specified, to the investigating law enforcement agency.

Release of Results: Requests for the specified release of typing results and personal identification information from the statewide DNA database system must be accompanied by a warrant, subpoena, or court order.

Destroy or Expunge: The requirement to destroy or automatically expunge specified DNA samples and records from the State database is expanded to include circumstances in which the DNA samples or records do not match an evidence sample from a crime scene.

Annual Report: The annual report produced by DSP that relates to DNA samples must include, for the preceding calendar year, an explanation of all DNA testing procedures used by the State and a list of all DNA databases used by the State.

Current Law: 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 felony burglary or an attempt to commit those crimes are also included within the statewide database. State law defines a "crime of violence" to include several specific crimes, including abduction, arson, kidnapping, manslaughter, murder, rape, carjacking, first- or second-degree sexual offense, and various types of assault.

The State Police 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.

A person is prohibited from performing a search of the statewide 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 of up to one year or a maximum fine of \$1,000.

DSP is required to submit an annual report to the Governor and the General Assembly on the status of the statewide DNA database system. Local law enforcement agencies are required to annually report related information to DSP. Statute outlines the required contents of the annual report.

Background: Genealogy databases such as GEDmatch, Ancestry.com, and 23andme allow users to research information about their ancestry and genetic background by matching their DNA against publicly available DNA profiles. However, recently, due to the cutting edge combination of DNA and genetic genealogy, the public genealogy databases have also been used to help solve criminal cases. Through genetic genealogy, detectives can cast a wide net, searching distant relatives of an unknown suspect by analyzing the DNA submitted voluntarily to a genetic genealogy database. This allows police to create a much larger family tree than using law enforcement databases such as the Combined DNA Index System, in which an exact match is needed in most states. This practice by law enforcement has raised questions about the use of such databases; some databases have limited access as a result.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 848 (Senator Sydnor) - Judicial Proceedings.

Information Source(s): Baltimore City; Howard, Montgomery, and Prince George's counties; Maryland Association of Counties; City of Bowie; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

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