

SENATE BILL 211

E4

(8lr0220)

ENROLLED BILL

—Judicial Proceedings/Judiciary—

Introduced by **The President (By Request - Administration) and Senators Astle, Brinkley, Brochin, Colburn, DeGrange, Della, Edwards, Garagiola, Jones, Kasemeyer, King, Lenett, Madaleno, McFadden, Miller, ~~Mooney~~, Munson, Robey, ~~and Stone~~ Stone, Forehand, Jacobs, and Simonaire**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Public Safety – Statewide DNA Data Base System – Crimes of Violence, and**
3 **~~Burglary, and Breaking and Entering a Motor Vehicle~~ – Sample Collections**
4 **on ~~Arrest~~ Charge – Postconviction DNA Testing**

5 FOR the purpose of adding DNA samples and DNA records to a provision of law
6 requiring a court to advise a certain defendant that the defendant may be
7 entitled to expunge certain records under certain circumstances; authorizing a
8 certain person to file a petition for a search by a law enforcement agency of a
9 law enforcement data base or log for the purpose of identifying the source of
10 certain physical evidence; authorizing a certain petitioner to move for a new
11 trial on a certain ground; requiring a court to order a DNA data base search

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber / conference committee amendments.



1 under certain circumstances; requiring a court to order a new trial under
2 certain circumstances; authorizing the court to order a new trial under certain
3 circumstances; authorizing the court to release a petitioner on bond or certain
4 conditions in certain circumstances; requiring the court to hold a certain
5 hearing to determine a certain issue in certain circumstances; requiring the
6 court to enter a certain order *and infer certain results* under certain
7 circumstances; authorizing a certain appeal; requiring the collection of a DNA
8 sample from a certain individual ~~arrested for or~~ charged with certain criminal
9 offenses in accordance with certain regulations; requiring that a certain
10 individual from whom a DNA sample is collected be given a certain notice;
11 providing that a DNA sample collected from a crime scene or collected as sexual
12 assault evidence at a hospital that a law enforcement investigator considers
13 relevant to the identification or exoneration of a suspect shall be tested as soon
14 as reasonably possible following collection of the sample; requiring a certain
15 DNA sample to be collected ~~by a certain person at the facility where a certain~~
16 ~~arrest certain charging is processed or~~ at a facility specified by the ~~Director of~~
17 ~~the Crime Laboratory Division of the Department of Public Safety and~~
18 ~~Correctional Services~~ *Secretary of State Police* under certain circumstances;
19 providing that a certain DNA sample may not be tested or placed in the
20 statewide DNA data base system prior to a certain arraignment date; providing
21 that a certain DNA sample shall be immediately destroyed and a certain notice
22 shall be sent to a certain defendant and counsel under certain circumstances;
23 authorizing an individual to request or consent to have a DNA sample processed
24 prior to arraignment for a certain purpose; altering a provision of law to provide
25 that a certain DNA record and sample shall be stored and maintained only by a
26 certain crime laboratory, with a certain exception; prohibiting a person from
27 performing a certain search for a certain purpose; altering certain requirements
28 for expungement of certain DNA samples in the statewide DNA data base
29 system; requiring a certain ~~documentation~~ notice to be sent to certain persons;
30 requiring the Director of the Crime Laboratory to adopt certain procedures;
31 requiring DNA samples and records generated as part of a criminal
32 investigation or prosecution to be destroyed or expunged automatically from
33 every local, State, and federal data base within a certain time period under
34 certain circumstances; providing that a DNA record or sample that qualifies for
35 expungement and is matched at a certain time may not be utilized for a
36 determination of probable cause and is not admissible in any proceeding for any
37 reason; prohibiting a person from willfully testing DNA for information that
38 does not relate to the identification of individuals in accordance with a certain
39 provision of law; altering a certain penalty and applying the penalty to a certain
40 violation of this Act; requiring the Department of State Police, on or before a
41 certain date and annually thereafter, to make a certain report to the General
42 Assembly; requiring local law enforcement agencies to report to the Department
43 of State Police annually on or before a certain date with certain information;
44 requiring a certain report to be posted on a certain website on or before a
45 certain date each year; requiring ~~the police department of each county and~~
46 ~~Baltimore City~~ *local law enforcement units* and the Department of State Police,
47 on or before a certain date and annually thereafter, to make a certain report to

1 the Office of Legislative Audits; requiring the Office of Legislative Audits to
 2 compile and evaluate certain information and submit an annual report to the
 3 Governor and General Assembly; altering certain definitions; defining certain
 4 terms; requiring the Secretary of State Police to adopt certain regulations and
 5 procedures; ~~providing for the effective date of certain provisions of this Act~~
 6 requiring the Office of the Public Defender and the Governor's Office of Crime
 7 Control and Prevention to jointly submit a certain report to certain committees;
 8 providing for the termination of ~~certain provisions of this Act~~; providing for a
 9 delayed effective date; and generally relating to the statewide DNA data base
 10 system.

11 BY repealing and reenacting, with amendments,
 12 Article – Criminal Procedure
 13 Section 6–232 and 8–201
 14 Annotated Code of Maryland
 15 (2001 Volume and 2007 Supplement)

16 BY repealing and reenacting, with amendments,
 17 Article – Public Safety
 18 Section 2–501, 2–504, ~~and 2–506~~, 2–511, and 2–512
 19 Annotated Code of Maryland
 20 (2003 Volume and 2007 Supplement)

21 BY adding to
 22 Article – Public Safety
 23 Section 2–513 and 2–514
 24 Annotated Code of Maryland
 25 (2003 Volume and 2007 Supplement)

26 ~~BY repealing and reenacting, without amendments,~~
 27 ~~Article – Criminal Procedure~~
 28 ~~Section 6–232 and 8–201~~
 29 ~~Annotated Code of Maryland~~
 30 ~~(2001 Volume and 2007 Supplement)~~
 31 ~~(As enacted by Section 1 of this Act)~~

32 ~~BY repealing and reenacting, with amendments,~~
 33 ~~Article – Public Safety~~
 34 ~~Section 2–501 and 2–504~~
 35 ~~Annotated Code of Maryland~~
 36 ~~(2003 Volume and 2007 Supplement)~~
 37 ~~(As enacted by Section 1 of this Act)~~

38 ~~BY repealing and reenacting, without amendments,~~
 39 ~~Article – Public Safety~~
 40 ~~Section 2–506, 2–511, 2–512, 2–513, and 2–514~~
 41 ~~Annotated Code of Maryland~~

~~(2003 Volume and 2007 Supplement)~~

~~(As enacted by Section 1 of this Act)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Criminal Procedure

6-232.

(a) In a criminal case, when all of the charges against the defendant are disposed of by acquittal, dismissal, probation before judgment, nolle prosequi, or stet, the court shall advise the defendant that the defendant may be entitled to expunge the records AND ANY DNA SAMPLE AND DNA RECORD relating to the charge or charges against the defendant in accordance with Title 10, Subtitle 1 of this article AND TITLE 2, SUBTITLE 5 OF THE PUBLIC SAFETY ARTICLE.

(b) The failure of a court to comply with subsection (a) of this section does not affect the legality or efficacy of the sentence or disposition of the case.

8-201.

(a) (1) In this section the following words have the meanings indicated.

(2) “Biological evidence” includes, but is not limited to, any blood, hair, saliva, semen, epithelial cells, buccal cells, or other bodily substances from which genetic marker groupings may be obtained.

(3) “DNA” means deoxyribonucleic acid.

(4) “Law enforcement agency” means any of the following:

(i) a municipal or county police department;

(ii) sheriff’s office;

(iii) the Maryland State Police;

(iv) any prosecuting authority;

(v) any state, university, county, or municipal police unit or police force; and

(vi) any hospital, medical facility, or private entity that is conducting forensic examinations and securing biological evidence related to criminal investigations.

1 (5) “Scientific identification evidence” means evidence that:

2 (i) is related to an investigation or prosecution that resulted in
3 a judgment of conviction;

4 (ii) is in the actual or constructive possession of a law
5 enforcement agency or agent of a law enforcement agency; and

6 (iii) contains biological evidence from which DNA may be
7 recovered that may produce exculpatory or mitigating evidence relevant to a claim of a
8 convicted person of wrongful conviction or sentencing if subject to DNA testing.

9 (b) Notwithstanding any other law governing postconviction relief, a person
10 who is convicted of a violation of § 2–201, § 2–204, § 2–207, or §§ 3–303 through 3–306
11 of the Criminal Law Article may file a petition:

12 (1) for DNA testing of scientific identification evidence that the State
13 possesses as provided in [subsection (i)] SUBSECTION (J) of this section and that is
14 related to the judgment of conviction; OR

15 (2) FOR A SEARCH BY A LAW ENFORCEMENT AGENCY OF A LAW
16 ENFORCEMENT DATA BASE OR LOG FOR THE PURPOSE OF IDENTIFYING THE
17 SOURCE OF PHYSICAL EVIDENCE USED FOR DNA TESTING.

18 (c) A PETITIONER MAY MOVE FOR A NEW TRIAL UNDER THIS SECTION
19 ON THE GROUNDS THAT THE CONVICTION WAS BASED ON UNRELIABLE
20 SCIENTIFIC IDENTIFICATION EVIDENCE AND A SUBSTANTIAL POSSIBILITY
21 EXISTS THAT THE PETITIONER WOULD NOT HAVE BEEN CONVICTED WITHOUT
22 THE EVIDENCE.

23 [(c)] (D) (1) Subject to [subsection (d)] SUBSECTION (E) of this section,
24 a court shall order DNA testing if the court finds that:

25 [(1)] (I) a reasonable probability exists that the DNA testing has the
26 scientific potential to produce exculpatory or mitigating evidence relevant to a claim of
27 wrongful conviction or sentencing; and

28 [(2)] (II) the requested DNA test employs a method of testing
29 generally accepted within the relevant scientific community.

30 (2) A COURT SHALL ORDER A DATA BASE SEARCH BY A LAW
31 ENFORCEMENT AGENCY IF THE COURT FINDS THAT A REASONABLE
32 PROBABILITY EXISTS THAT THE DATA BASE SEARCH WILL PRODUCE
33 EXCULPATORY OR MITIGATING EVIDENCE RELEVANT TO A CLAIM OF WRONGFUL
34 CONVICTION OR SENTENCING.

1 [(d)] (E) (1) A petitioner shall notify the State in writing of the filing of a
2 petition under this section.

3 (2) The State may file a response to the petition within 15 days after
4 notice of the filing or within the time that the court orders.

5 [(e)] (F) If the court orders DNA testing under [subsection (c)]
6 SUBSECTION (D) of this section, the court in its order may issue orders the court
7 considers appropriate, including designation of any of the following:

8 (1) the specific evidence to be tested;

9 (2) the method of testing to be used;

10 (3) the preservation of some of the sample for replicate testing and
11 analysis;

12 (4) the laboratory where the testing is to be performed, provided that
13 if the parties cannot agree on a laboratory, the court may approve testing at any
14 laboratory accredited by the American Society of Crime Laboratory Directors
15 (ASCLAD), the Laboratory Accreditation Board (LAB), or the National Forensic
16 Science Technology Center; and

17 (5) release of biological evidence by a third party.

18 [(f)] (G) (1) Except as provided in paragraph (2) of this subsection, DNA
19 testing ordered under [subsection (c)] SUBSECTION (D) of this section shall be
20 conducted as soon as practicable.

21 (2) Based on a finding of necessity, the court may order the DNA
22 testing to be completed by a date that the court provides.

23 [(g)] (H) (1) Except as provided in paragraph (2) of this subsection, the
24 petitioner shall pay the cost of DNA testing ordered under [subsection (c)]
25 SUBSECTION (D) of this section.

26 (2) If the results of the DNA testing that the court orders under this
27 section are favorable to the petitioner, the court shall order the State to pay the costs
28 of the testing.

29 [(h)] (I) (1) If the results of the postconviction DNA testing are
30 unfavorable to the petitioner, the court shall dismiss the petition.

31 (2) If the results of the postconviction DNA testing are favorable to the
32 petitioner, the court shall:

1 (i) if no postconviction proceeding has been previously initiated
2 by the petitioner under § 7-102 of this article, open a postconviction proceeding under
3 § 7-102 of this article; [or]

4 (ii) if a postconviction proceeding has been previously initiated
5 by the petitioner under § 7-102 of this article, reopen a postconviction proceeding
6 under § 7-104 of this article; OR

7 **(III) ON A FINDING THAT A SUBSTANTIAL POSSIBILITY**
8 **EXISTS THAT THE PETITIONER WOULD NOT HAVE BEEN CONVICTED IF THE DNA**
9 **TESTING RESULTS HAD BEEN KNOWN OR INTRODUCED AT TRIAL, ORDER A NEW**
10 **TRIAL.**

11 **(3) IF THE COURT FINDS THAT A SUBSTANTIAL POSSIBILITY DOES**
12 **NOT EXIST UNDER PARAGRAPH (2)(III) OF THIS SUBSECTION, THE COURT MAY**
13 **ORDER A NEW TRIAL IF THE COURT DETERMINES THAT THE ACTION IS IN THE**
14 **INTEREST OF JUSTICE.**

15 **(4) IF A NEW TRIAL IS GRANTED, THE COURT MAY ORDER THE**
16 **RELEASE OF THE PETITIONER ON BOND OR ON CONDITIONS THAT THE COURT**
17 **FINDS WILL REASONABLY ASSURE THE PRESENCE OF THE PETITIONER AT**
18 **TRIAL.**

19 [(i)] (J) (1) The State shall preserve scientific identification evidence
20 that:

21 (i) the State has reason to know contains DNA material; and

22 (ii) is secured in connection with an offense described in
23 subsection (b) of this section.

24 (2) The State shall preserve scientific identification evidence described
25 in paragraph (1) of this subsection for the time of the sentence, including any
26 consecutive sentence imposed in connection with the offense.

27 **(3) (I) IF THE STATE IS UNABLE TO PRODUCE SCIENTIFIC**
28 **IDENTIFICATION EVIDENCE DESCRIBED IN PARAGRAPH (1) OF THIS**
29 **SUBSECTION, THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER**
30 **THE FAILURE TO PRODUCE EVIDENCE WAS THE RESULT OF INTENTIONAL AND**
31 **WILLFUL DESTRUCTION.**

32 ~~**(II) THE COURT SHALL ORDER A POSTCONVICTION**~~
33 ~~**HEARING TO BE CONDUCTED IN ACCORDANCE WITH SUBPARAGRAPH (III) OF**~~
34 ~~**THIS PARAGRAPH IF:**~~

~~1. THE COURT DETERMINES AT A HEARING UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH THAT THE FAILURE TO PRODUCE EVIDENCE WAS THE RESULT OF INTENTIONAL AND WILLFUL DESTRUCTION; AND~~

~~2. THE COURT MAKES A FINDING THAT:~~

~~A. THERE IS AN INFERENCE THAT THE RESULTS OF THE POSTCONVICTION DNA TESTING WOULD HAVE BEEN FAVORABLE TO THE PETITIONER; AND~~

~~B. A SUBSTANTIAL POSSIBILITY EXISTS THAT THE PETITIONER WOULD NOT HAVE BEEN CONVICTED IF THE DNA TESTING HAD BEEN KNOWN OR INTRODUCED AT TRIAL.~~

(II) IF THE COURT DETERMINES AT A HEARING UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH THAT THE FAILURE TO PRODUCE EVIDENCE WAS THE RESULT OF INTENTIONAL AND WILLFUL DESTRUCTION, THE COURT SHALL:

1. ORDER A POSTCONVICTION HEARING TO BE CONDUCTED IN ACCORDANCE WITH SUBPARAGRAPH (III) OF THIS PARAGRAPH; AND

2. AT THE POSTCONVICTION HEARING INFER THAT THE RESULTS OF THE POSTCONVICTION DNA TESTING WOULD HAVE BEEN FAVORABLE TO THE PETITIONER.

(III) 1. A COURT ORDERING A POSTCONVICTION HEARING UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL OPEN THE POSTCONVICTION HEARING UNDER § 7-102 OF THIS ARTICLE, IF NO POSTCONVICTION HEARING HAS BEEN PREVIOUSLY INITIATED BY THE PETITIONER UNDER § 7-102 OF THIS ARTICLE.

2. A COURT ORDERING A POSTCONVICTION HEARING UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL REOPEN THE POSTCONVICTION HEARING UNDER § 7-104 OF THIS ARTICLE, IF ~~NO~~ A POSTCONVICTION HEARING HAS BEEN PREVIOUSLY INITIATED BY THE PETITIONER UNDER § 7-102 OF THIS ARTICLE.

[3] (4) The State shall make the scientific identification evidence available to parties in the case under terms that are mutually agreed on between them.

1 [(4)] (5) If an agreement cannot be reached, the party requesting the
2 testing may file an application in the circuit court that entered the judgment for an
3 order setting the terms under which the evidence will be made available for testing.

4 [(j)] (K) (1) The State may dispose of scientific identification evidence
5 before the expiration of the time period described in [subsection (i)] SUBSECTION (J)
6 of this section if the State notifies the following persons:

7 (i) the person who is incarcerated in connection with the case;

8 (ii) any attorney of record for the person incarcerated; and

9 (iii) the Office of Public Defender for the judicial district in which
10 the judgment of conviction was entered.

11 (2) The notification required in paragraph (1) of this subsection shall
12 include:

13 (i) a description of the scientific identification evidence;

14 (ii) a statement that the State intends to dispose of the
15 evidence;

16 (iii) a statement that the State will dispose of the evidence
17 unless a party files an objection in writing within 120 days from the date of service in
18 the circuit court that entered the judgment; and

19 (iv) the name and mailing address of the circuit court where an
20 objection may be filed.

21 (3) Unless another law or court order requires the preservation of the
22 scientific identification evidence, if no objection to the disposition of the evidence is
23 filed within 120 days of the notice required under this subsection, the State may
24 dispose of the evidence.

25 (4) If a person files written objections to the State's notice that it
26 intends to dispose of scientific identification evidence, the court shall hold a hearing on
27 the proposed disposition of the evidence and at the conclusion of the hearing, if the
28 court determines by a preponderance of the evidence that:

29 (i) the evidence has no significant value for forensic science
30 analysis, the court may order the return of the evidence to its rightful owner, the
31 destruction of the evidence, or other disposition as provided by law; or

32 (ii) the evidence is of such size, bulk, or physical character that
33 it cannot practicably be retained by a law enforcement agency, on a showing of need,
34 the court shall order that the evidence be made available to the party objecting to the

1 disposition of the evidence for the purpose of obtaining representative samples from
2 the evidence in the form of cuttings, swabs, or other means, prior to the release or
3 destruction of the evidence.

4 (5) If the court orders that representative samples be made available
5 under paragraph (4)(ii) of this subsection, the court shall further order that the
6 samples be obtained by a qualified crime scene technician acting on behalf of the party
7 seeking to obtain the samples or by the law enforcement agency in possession of the
8 evidence, which also shall preserve and store the representative samples until the
9 representative samples are released to the custody of a DNA testing facility.

10 (6) An appeal to the court of appeals may be taken from an order
11 entered under [subsection (c), (h)(2), or (j)(4) of] this section.

12 Article – Public Safety

13 2–501.

14 (a) In this subtitle the following words have the meanings indicated.

15 (B) **“BURGLARY” INCLUDES THE CRIMES ENUMERATED IN §§ 6–202,**
16 **6–203, ~~6–204, AND 6–205~~ AND 6–204 OF THE CRIMINAL LAW ARTICLE.**

17 [(b)] (C) (1) “CODIS” means the Federal Bureau of Investigation’s
18 “Combined DNA Index System” that allows the storage and exchange of DNA records
19 submitted by federal, state and local forensic DNA laboratories.

20 (2) “CODIS” includes the national DNA index administered and
21 operated by the Federal Bureau of Investigation.

22 [(c)] (D) “Crime Laboratory” means the [Crime Laboratory] **FORENSIC**
23 **SCIENCES** Division of the Department.

24 ~~(E)~~ **“CRIME**

25 **(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
26 **SUBSECTION, “CRIME OF VIOLENCE” HAS THE MEANING STATED IN § 14–101 OF**
27 **THE CRIMINAL LAW ARTICLE.**

28 **(2) “CRIME OF VIOLENCE” DOES NOT INCLUDE MAYHEM.**

29 [(d)] (F) “Director” means the Director of the Crime Laboratory or the
30 Director’s designee.

31 [(e)] (G) “DNA” means deoxyribonucleic acid.

1 [(f)] (H) (1) “DNA record” means DNA information stored in CODIS or
2 the statewide DNA data base system.

3 (2) “DNA record” includes the information commonly referred to as a
4 DNA profile.

5 [(g)] (I) “DNA sample” means a body fluid or tissue sample that is:

6 (1) provided by an individual who is convicted of a felony or a violation
7 of § 6–205 or § 6–206 of the Criminal Law Article; [or]

8 (2) **PROVIDED BY AN INDIVIDUAL WHO IS ~~ARRESTED FOR OR~~**
9 **CHARGED WITH:**

10 (I) **A CRIME OF VIOLENCE OR AN ATTEMPT TO COMMIT A**
11 **CRIME OF VIOLENCE; OR**

12 (II) **BURGLARY OR AN ATTEMPT TO COMMIT BURGLARY; OR**

13 ~~(III) A VIOLATION OF § 6-206 OF THE CRIMINAL LAW~~
14 ~~ARTICLE; OR~~

15 [(2)] (3) submitted to the statewide DNA data base system for
16 ~~analysis~~ **TESTING** as part of a criminal investigation.

17 [(h)] (J) “Statewide DNA data base system” means the DNA record system
18 administered by the Department for identification purposes.

19 [(i)] (K) “Statewide DNA repository” means the State repository of DNA
20 samples collected under this subtitle.

21 2–504.

22 (a) (1) In accordance with regulations adopted under this subtitle, an
23 individual who is convicted of a felony or a violation of § 6–205 or § 6–206 of the
24 Criminal Law Article shall:

25 (i) have a DNA sample collected either at the time of sentence
26 or on intake to a correctional facility, if the individual is sentenced to a term of
27 imprisonment; or

28 (ii) provide a DNA sample as a condition of sentence or
29 probation, if the individual is not sentenced to a term of imprisonment.

30 (2) An individual who was convicted of a felony or a violation of §
31 6–205 or § 6–206 of the Criminal Law Article on or before October 1, 2003 and who

1 remains confined in a correctional facility on or after October 1, 1999, shall submit a
2 DNA sample to the Department.

3 **(3) (I) IN ACCORDANCE WITH REGULATIONS ADOPTED UNDER**
4 **THIS SUBTITLE, A DNA SAMPLE SHALL BE COLLECTED FROM AN INDIVIDUAL**
5 **WHO IS ~~ARRESTED FOR OR~~ CHARGED WITH:**

6 ~~(I)~~ **1. A CRIME OF VIOLENCE OR AN ATTEMPT TO**
7 **COMMIT A CRIME OF VIOLENCE; OR**

8 ~~(II)~~ **2. BURGLARY OR AN ATTEMPT TO COMMIT**
9 **BURGLARY; OR**

10 ~~(III)~~ **~~A VIOLATION OF § 6-206 OF THE CRIMINAL LAW~~**
11 **~~ARTICLE.~~**

12 **(II) AT THE TIME OF COLLECTION OF THE DNA SAMPLE**
13 **UNDER THIS PARAGRAPH, THE INDIVIDUAL FROM WHOM A SAMPLE IS**
14 **COLLECTED SHALL BE GIVEN NOTICE THAT THE DNA RECORD MAY BE**
15 **EXPUNGED AND THE DNA SAMPLE DESTROYED IN ACCORDANCE WITH § 2-511**
16 **OF THIS SUBTITLE.**

17 **(III) ~~A DNA SAMPLE~~ DNA EVIDENCE COLLECTED FROM A**
18 **CRIME SCENE OR COLLECTED AS EVIDENCE OF SEXUAL ASSAULT AT A HOSPITAL**
19 **THAT A LAW ENFORCEMENT INVESTIGATOR CONSIDERS RELEVANT TO THE**
20 **IDENTIFICATION OR EXONERATION OF A SUSPECT SHALL BE TESTED AS SOON AS**
21 **REASONABLY POSSIBLE FOLLOWING COLLECTION OF THE SAMPLE.**

22 (b) In accordance with regulations adopted under this subtitle, each DNA
23 sample required to be collected under this section shall be collected:

24 **(1) AT THE ~~FACILITY WHERE THE ARREST CHARGING OF THE~~**
25 **~~INDIVIDUAL IS PROCESSED BY:~~**

26 ~~(I)~~ **~~THE ARRESTING AGENCY; OR~~**

27 ~~(II)~~ **~~THE BOOKING FACILITY RESPONSIBLE FOR~~**
28 **~~PROCESSING THE ARREST;~~**

29 ~~(2)~~ **TIME THE INDIVIDUAL IS CHARGED, AT A FACILITY SPECIFIED**
30 **BY THE SECRETARY, ~~IF THE INDIVIDUAL IS CHARGED BUT NOT ARRESTED;~~**

31 [(1)] ~~(2)~~ ~~(3)~~ **(2)** at the correctional facility where the individual is
32 confined, if the individual is confined in a correctional facility on or after October 1,
33 2003, or is sentenced to a term of imprisonment on or after October 1, 2003;

1 [(2)] ~~(3)~~ ~~(4)~~ (3) at a facility specified by the Director, if the individual
2 is on probation or is not sentenced to a term of imprisonment; or

3 [(3)] ~~(4)~~ ~~(5)~~ (4) at a suitable location in a circuit court following the
4 imposition of sentence.

5 (c) A DNA sample shall be collected by an individual who is:

6 (1) designated by the Director; and

7 (2) trained in the collection procedures that the Crime Laboratory
8 uses.

9 **(D) (1) A DNA SAMPLE COLLECTED FROM AN INDIVIDUAL CHARGED**
10 **WITH A CRIME UNDER SUBSECTION (A)(3) OF THIS SECTION MAY NOT BE TESTED**
11 **OR PLACED IN THE STATEWIDE DNA DATA BASE SYSTEM PRIOR TO THE FIRST**
12 **SCHEDULED ARRAIGNMENT DATE UNLESS REQUESTED OR CONSENTED TO BY**
13 **THE INDIVIDUAL AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION.**

14 **(2) IF A ~~CRIMINAL CHARGE IS~~ ALL QUALIFYING CRIMINAL**
15 **CHARGES ARE DETERMINED TO BE UNSUPPORTED BY PROBABLE CAUSE:**

16 **(I) THE DNA SAMPLE SHALL BE IMMEDIATELY**
17 **DESTROYED; AND**

18 **(II) NOTICE SHALL BE SENT TO THE DEFENDANT AND**
19 **COUNSEL OF RECORD FOR THE DEFENDANT THAT THE SAMPLE WAS**
20 **DESTROYED.**

21 **(3) AN INDIVIDUAL MAY REQUEST OR CONSENT TO HAVE THE**
22 **INDIVIDUAL'S DNA SAMPLE PROCESSED PRIOR TO ARRAIGNMENT FOR THE**
23 **SOLE PURPOSE OF HAVING THE SAMPLE CHECKED AGAINST A SAMPLE THAT:**

24 **(I) HAS BEEN PROCESSED FROM THE CRIME SCENE OR THE**
25 **HOSPITAL; AND**

26 **(II) IS RELATED TO THE CHARGES AGAINST THE**
27 **INDIVIDUAL.**

28 ~~(d)~~ **(E)** A second DNA sample shall be taken if needed to obtain sufficient
29 DNA for the statewide DNA data base **SYSTEM** or if ordered by the court for good
30 cause shown.

1 ~~(e)~~ (F) Failure of an individual who is not sentenced to a term of
2 imprisonment to provide a DNA sample within 90 days after notice by the Director is a
3 violation of probation.

4 2-506.

5 (a) Each DNA record of identification characteristics that results from DNA
6 testing UNDER THIS SUBTITLE shall be stored and maintained ONLY by the Crime
7 Laboratory in the statewide DNA data base system, EXCEPT AS NECESSARY TO
8 PARTICIPATE IN CODIS.

9 (b) Each DNA sample OBTAINED UNDER THIS SUBTITLE shall be stored
10 securely and maintained ONLY by the Crime Laboratory in the statewide DNA
11 repository.

12 (c) Typing results shall be stored securely in the statewide DNA data base
13 system.

14 (D) A PERSON MAY NOT PERFORM A SEARCH OF THE STATEWIDE DNA
15 DATA BASE FOR THE PURPOSE OF IDENTIFICATION OF AN OFFENDER IN
16 CONNECTION WITH A CRIME FOR WHICH THE OFFENDER MAY BE A BIOLOGICAL
17 RELATIVE OF THE INDIVIDUAL FROM WHOM THE DNA SAMPLE WAS ACQUIRED.

18 2-511.

19 ~~(a) An individual whose DNA record or profile is included in the statewide~~
20 ~~DNA data base system and whose DNA sample is stored in the statewide DNA~~
21 ~~repository may request that information be expunged on the grounds that the ARREST~~
22 ~~OR conviction that resulted in the inclusion meets the expungement criteria specified~~
23 ~~in § 10-105 or § 10-106 of the Criminal Procedure Article.~~

24 ~~(b) Expungement proceedings shall be conducted in accordance with §~~
25 ~~10-105 or § 10-106 of the Criminal Procedure Article.~~

26 ~~(c) [On receipt of an order of expungement, the Director shall purge any~~
27 ~~DNA record, DNA sample, or other identifiable information covered by the order from~~
28 ~~the statewide DNA data base system and the statewide DNA repository.]~~

29 ~~(1) ON RECEIVING AN ORDER OF EXPUNGEMENT FOR AN~~
30 ~~INDIVIDUAL WHOSE DNA SAMPLE HAS BEEN INCLUDED IN THE STATEWIDE~~
31 ~~DNA DATA BASE SYSTEM, THE DNA SAMPLE SHALL BE EXPUNGED EXCEPT~~
32 ~~THAT THE ORDER MAY NOT APPLY TO OTHER OFFENSES COMMITTED BY THE~~
33 ~~INDIVIDUAL WHO QUALIFIES FOR INCLUSION IN THE STATEWIDE DNA DATA~~
34 ~~BASE SYSTEM.~~

1 ~~(2) A LETTER DOCUMENTING EXPUNGEMENT OF THE DNA~~
2 ~~SAMPLE AND DESTRUCTION OF THE DNA SAMPLE SHALL BE SENT BY THE~~
3 ~~DIRECTOR TO THE DEFENDANT AND THE DEFENDANT'S ATTORNEY AT THE~~
4 ~~ADDRESS SPECIFIED BY THE COURT IN THE ORDER OF EXPUNGEMENT.~~

5 ~~(3) THE DIRECTOR SHALL ADOPT PROCEDURES TO COMPLY WITH~~
6 ~~THIS SUBSECTION~~

7 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
8 SUBSECTION, ANY DNA SAMPLES AND RECORDS GENERATED AS PART OF A
9 CRIMINAL INVESTIGATION OR PROSECUTION SHALL BE DESTROYED OR
10 EXPUNGED AUTOMATICALLY FROM THE STATE DNA DATA BASE IF:

11 (I) A CRIMINAL ACTION BEGUN AGAINST THE INDIVIDUAL
12 RELATING TO THE CRIME DOES NOT RESULT IN A CONVICTION OF THE
13 INDIVIDUAL;

14 (II) THE CONVICTION IS ~~REVERSED OR VACATED~~ FINALLY
15 REVERSED OR VACATED AND NO NEW TRIAL IS PERMITTED; OR

16 (III) THE INDIVIDUAL IS GRANTED AN UNCONDITIONAL
17 PARDON.

18 (2) A DNA SAMPLE OR DNA RECORD MAY NOT BE DESTROYED
19 OR EXPUNGED AUTOMATICALLY FROM THE STATE DNA DATA BASE IF THE
20 CRIMINAL ACTION IS PUT ON THE STET DOCKET OR THE INDIVIDUAL RECEIVES
21 PROBATION BEFORE JUDGMENT.

22 (B) IF THE DNA SAMPLE OR DNA RECORD WAS OBTAINED OR
23 GENERATED ONLY IN CONNECTION WITH A CASE IN WHICH ELIGIBILITY FOR
24 EXPUNGEMENT HAS BEEN ESTABLISHED, THE DNA SAMPLE SHALL BE
25 DESTROYED AND THE DNA RECORD SHALL BE EXPUNGED.

26 (C) ANY DNA RECORD EXPUNGED IN ACCORDANCE WITH THIS SECTION
27 SHALL BE EXPUNGED FROM EVERY DATA BASE INTO WHICH IT HAS BEEN
28 ENTERED, INCLUDING LOCAL, STATE, AND FEDERAL DATA BASES.

29 (D) AN EXPUNGEMENT OR DESTRUCTION OF SAMPLE UNDER THIS
30 SECTION SHALL OCCUR WITHIN 60 DAYS OF AN EVENT LISTED IN SUBSECTION
31 (A) OF THIS SECTION.

32 (E) A LETTER DOCUMENTING EXPUNGEMENT OF THE DNA RECORD
33 AND DESTRUCTION OF THE DNA SAMPLE SHALL BE SENT BY THE DIRECTOR TO

1 THE DEFENDANT AND THE DEFENDANT'S ATTORNEY AT THE ADDRESS
2 SPECIFIED BY THE COURT IN THE ORDER OF EXPUNGEMENT.

3 (F) A RECORD OR SAMPLE THAT QUALIFIES FOR EXPUNGEMENT OR
4 DESTRUCTION UNDER THIS SECTION AND IS MATCHED CONCURRENT WITH OR
5 SUBSEQUENT TO THE DATE OF QUALIFICATION FOR EXPUNGEMENT:

6 (1) MAY NOT BE UTILIZED FOR A DETERMINATION OF PROBABLE
7 CAUSE REGARDLESS OF WHETHER IT IS EXPUNGED OR DESTROYED TIMELY;
8 AND

9 (2) IS NOT ADMISSIBLE IN ANY PROCEEDING FOR ANY PURPOSE.

10 (G) THE DIRECTOR SHALL ADOPT PROCEDURES TO COMPLY WITH THIS
11 SECTION.

12 2-512.

13 (a) A person who, by virtue of employment or official position, has possession
14 of or access to individually identifiable DNA information contained in the statewide
15 DNA data base system or statewide DNA repository may not willfully disclose the
16 information in any manner to a person or agency not entitled to receive the
17 information.

18 (b) A person may not, without authorization, willfully obtain individually
19 identifiable DNA information from the statewide DNA data base system or statewide
20 DNA repository.

21 (C) A PERSON MAY NOT WILLFULLY TEST A DNA SAMPLE FOR
22 INFORMATION THAT DOES NOT RELATE TO THE IDENTIFICATION OF
23 INDIVIDUALS AS SPECIFIED IN THIS SUBTITLE.

24 (D) A PERSON MAY NOT WILLFULLY FAIL TO DESTROY A DNA SAMPLE
25 FOR WHICH, UNDER THIS SUBTITLE:

26 (1) NOTIFICATION HAS BEEN SENT STATING THAT THE DNA
27 SAMPLE HAS BEEN DESTROYED; OR

28 (2) DESTRUCTION HAS BEEN ORDERED.

29 [(c)] (E) A person who violates SUBSECTION (A), (B), OR (C) OF this
30 section is guilty of a misdemeanor and on conviction is subject to imprisonment not
31 exceeding [3] 5 years or a fine not exceeding [\$1,000] \$5,000 or both.

1 (F) A PERSON WHO VIOLATES SUBSECTION (D) OF THIS SECTION IS
2 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO
3 IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$1,000.

4 2-513.

5 (A) (1) (I) ON OR BEFORE ~~DECEMBER 31, 2009~~ *APRIL 1, 2010,*
6 AND *ON OR BEFORE APRIL 1* ANNUALLY THEREAFTER, THE DEPARTMENT
7 SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF
8 THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, ON THE STATUS
9 OF THE STATEWIDE DNA DATA BASE SYSTEM AS SPECIFIED IN SUBSECTION (B)
10 OF THIS SECTION.

11 (II) ON OR BEFORE ~~SEPTEMBER 1, 2009~~ *JANUARY 31, 2010,*
12 AND *ON OR BEFORE JANUARY 31* ANNUALLY THEREAFTER, LOCAL LAW
13 ENFORCEMENT AGENCIES SHALL REPORT TO THE DEPARTMENT *FOR THE*
14 *PRECEDING CALENDAR YEAR* WITH THE INFORMATION NECESSARY FOR THE
15 DEPARTMENT TO COMPLY WITH THE REQUIREMENTS OF SUBSECTION (B) OF
16 THIS SECTION.

17 (2) THE ANNUAL REPORT SHALL BE POSTED ON THE
18 DEPARTMENT WEBSITE ON OR BEFORE ~~DECEMBER 31~~ *APRIL 1* OF EACH YEAR.

19 (B) THE ANNUAL REPORT SHALL INCLUDE, *FOR THE PRECEDING*
20 *CALENDAR YEAR:*

21 (1) TOTAL EXPENSES INCURRED FOR THE OPERATION AND
22 MANAGEMENT OF THE DNA DATA BASE AND DNA TESTING PROGRAM,
23 SPECIFYING THE ACTUAL AND HUMAN RESOURCE COSTS OF DNA COLLECTION
24 AND TRANSPORT, DNA ANALYSES, DATA BASE OPERATION AND OVERSIGHT,
25 AND STATE LABORATORY PERSONNEL AND MAINTENANCE;

26 (2) TOTAL FUNDING PROVIDED BY THE STATE TO EACH FORENSIC
27 CRIME LABORATORY IN THE PRECEDING YEAR;

28 (3) A STATISTICAL ANALYSIS OF THE RACIAL DEMOGRAPHICS OF:

29 ~~(I)~~ *INDIVIDUALS WHO HAVE BEEN CHARGED WITH A CRIME*
30 *OF VIOLENCE OR BURGLARY, OR ATTEMPT TO COMMIT A CRIME OF VIOLENCE*
31 *OR BURGLARY, AS DEFINED IN § 2-501 OF THIS SUBTITLE; AND*

32 ~~(II) VICTIMS OF CRIMES ALLEGED TO HAVE BEEN~~
33 ~~COMMITTED BY THOSE INDIVIDUALS, WHEN KNOWN;~~

1 **(4) THE NUMBER OF ~~BIOLOGICAL~~ DNA SAMPLES COLLECTED**
2 **FROM INDIVIDUALS CHARGED WITH A CRIME OF VIOLENCE OR BURGLARY, OR**
3 **ATTEMPT TO COMMIT A CRIME OF VIOLENCE OR BURGLARY, AS DEFINED IN**
4 **§ 2-501 OF THIS SUBTITLE;**

5 **(5) THE SUFFICIENCY OF PROTOCOLS AND PROCEDURES**
6 **ADOPTED TO PREVENT THE UNLAWFUL TESTING OF DNA AND ENSURE THE**
7 **EXPUNGEMENT OF DNA AS REQUIRED UNDER THIS SUBTITLE; AND**

8 **(6) A DETAILED ANALYSIS OF THE INVESTIGATIONS AIDED BY**
9 **DNA PROFILES THAT INCLUDES:**

10 **(I) THE NUMBER OF MATCHES;**

11 **(II) THE NUMBER OF MATCHES THAT RESULTED IN**
12 **INVESTIGATION OF THE PERSON IDENTIFIED;**

13 **(III) THE NUMBER OF MATCHES THAT RESULTED IN FORMAL**
14 **CHARGES;**

15 **(IV) THE NUMBER OF MATCHES THAT RESULTED IN**
16 **CONVICTIONS;**

17 **(V) THE NUMBER OF MATCHES THAT RESULTED IN**
18 **EXONERATIONS;**

19 **(VI) THE NUMBER OF MATCHES THAT RESULTED IN**
20 **CONVICTIONS FOR PERSONS NOT ALREADY INCARCERATED; AND**

21 **(VII) THE PRIOR OFFENSES FOR WHICH A PERSON HAS BEEN**
22 **CONVICTED WHERE A MATCH OCCURRED.**

23 **2-514.**

24 **(A) ~~(1)~~ ON OR BEFORE ~~DECEMBER 31, 2009~~ APRIL 1, 2010, AND ON**
25 **OR BEFORE APRIL 1 OF EVERY EVEN-NUMBERED YEAR ANNUALLY THEREAFTER,**
26 **~~THE POLICE DEPARTMENT OR THE OFFICE OF THE SHERIFF, AS APPROPRIATE,~~**
27 **~~OF EACH COUNTY AND THE POLICE DEPARTMENT OF BALTIMORE CITY EACH~~**
28 **LOCAL LAW ENFORCEMENT UNIT SHALL REPORT TO THE OFFICE OF**
29 **LEGISLATIVE AUDITS ON THE STATUS OF CRIME SCENE DNA COLLECTION AND**
30 **ANALYSIS IN ~~THEIR~~ ITS RESPECTIVE JURISDICTIONS.**

31 **(2) ~~THE~~ JURISDICTION FOR THE PRECEDING CALENDAR YEAR,**
32 **AND THE DEPARTMENT SHALL REPORT TO THE OFFICE OF LEGISLATIVE**

1 AUDITS ON THE STATUS OF CRIME SCENE DNA COLLECTION STATEWIDE FOR
 2 THE PRECEDING CALENDAR YEAR, INCLUDING:

3 ~~(I)~~ (1) THE CRIMES FOR WHICH CRIME SCENE DNA
 4 ~~SAMPLES ARE EVIDENCE IS ROUTINELY COLLECTED;~~

5 ~~(II)~~ (2) THE APPROXIMATE NUMBER OF CRIME SCENE
 6 DNA EVIDENCE SAMPLES COLLECTED DURING THE PRECEDING YEAR FOR
 7 EACH CATEGORY OF CRIME;

8 ~~(III)~~ (3) THE AVERAGE TIME BETWEEN CRIME SCENE DNA
 9 ~~SAMPLE EVIDENCE COLLECTION AND ANALYSIS;~~

10 ~~(IV)~~ (4) THE NUMBER OF CRIME SCENE DNA EVIDENCE
 11 SAMPLES COLLECTED AND NOT ANALYZED AT THE TIME OF THE STUDY;

12 ~~(V)~~ (5) THE NUMBER OF CRIME SCENE DNA EVIDENCE
 13 SAMPLES SUBMITTED TO THE STATEWIDE DNA DATA BASE DURING THE
 14 PRECEDING YEAR; AND

15 ~~(VI)~~ (6) THE NUMBER OF CRIME SCENE DNA EVIDENCE
 16 SAMPLES, INCLUDING SEXUAL ASSAULT EVIDENCE, COLLECTED BY HOSPITALS
 17 IN THE COUNTY DURING THE PRECEDING YEAR.

18 (B) THE OFFICE OF LEGISLATIVE AUDITS SHALL COMPILE AND
 19 EVALUATE THE INFORMATION REPORTED BY THE POLICE DEPARTMENTS AND
 20 SHERIFF OFFICES LOCAL LAW ENFORCEMENT UNITS AND THE DEPARTMENT
 21 UNDER SUBSECTION (A) OF THIS SECTION AND SUBMIT AN ANNUAL SUMMARY
 22 REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH §
 23 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.

24 SECTION 2. AND BE IT FURTHER ENACTED, That, the Laws of Maryland
 25 read as follows:

26 ~~Article—Criminal Procedure~~

27 ~~6-232.~~

28 ~~(a) In a criminal case, when all of the charges against the defendant are~~
 29 ~~disposed of by acquittal, dismissal, probation before judgment, nolle prosequi, or stet,~~
 30 ~~the court shall advise the defendant that the defendant may be entitled to expunge the~~
 31 ~~records and any DNA sample and DNA record relating to the charge or charges~~
 32 ~~against the defendant in accordance with Title 10, Subtitle 1 of this article and Title 2,~~
 33 ~~Subtitle 5 of the Public Safety Article.~~

~~(b) The failure of a court to comply with subsection (a) of this section does not affect the legality or efficacy of the sentence or disposition of the case.~~

~~§ 201.~~

~~(a) (1) In this section the following words have the meanings indicated:~~

~~(2) "Biological evidence" includes, but is not limited to, any blood, hair, saliva, semen, epithelial cells, buccal cells, or other bodily substances from which genetic marker groupings may be obtained.~~

~~(3) "DNA" means deoxyribonucleic acid.~~

~~(4) "Law enforcement agency" means any of the following:~~

~~(i) a municipal or county police department;~~

~~(ii) sheriff's office;~~

~~(iii) the Maryland State Police;~~

~~(iv) any prosecuting authority;~~

~~(v) any state, university, county, or municipal police unit or police force; and~~

~~(vi) any hospital, medical facility, or private entity that is conducting forensic examinations and securing biological evidence related to criminal investigations.~~

~~(5) "Scientific identification evidence" means evidence that:~~

~~(i) is related to an investigation or prosecution that resulted in a judgment of conviction;~~

~~(ii) is in the actual or constructive possession of a law enforcement agency or agent of a law enforcement agency; and~~

~~(iii) contains biological evidence from which DNA may be recovered that may produce exculpatory or mitigating evidence relevant to a claim of a convicted person of wrongful conviction or sentencing if subject to DNA testing.~~

~~(b) Notwithstanding any other law governing postconviction relief, a person who is convicted of a violation of § 2-201, § 2-204, § 2-207, or §§ 3-303 through 3-306 of the Criminal Law Article may file a petition:~~

1 ~~(1) for DNA testing of scientific identification evidence that the State~~
2 ~~possesses as provided in subsection (j) of this section and that is related to the~~
3 ~~judgment of conviction; or~~

4 ~~(2) for a search by a law enforcement agency of a law enforcement~~
5 ~~data base or log for the purpose of identifying the source of physical evidence used for~~
6 ~~DNA testing;~~

7 ~~(e) A petitioner may move for a new trial under this section on the grounds~~
8 ~~that the conviction was based on unreliable scientific identification evidence and a~~
9 ~~substantial possibility exists that the petitioner would not have been convicted~~
10 ~~without the evidence.~~

11 ~~(d) (1) Subject to subsection (e) of this section, a court shall order DNA~~
12 ~~testing if the court finds that:~~

13 ~~(i) a reasonable probability exists that the DNA testing has the~~
14 ~~scientific potential to produce exculpatory or mitigating evidence relevant to a claim of~~
15 ~~wrongful conviction or sentencing; and~~

16 ~~(ii) the requested DNA test employs a method of testing~~
17 ~~generally accepted within the relevant scientific community.~~

18 ~~(2) A court shall order a data base search by a law enforcement agency~~
19 ~~if the court finds that a reasonable probability exists that the data base search will~~
20 ~~produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction~~
21 ~~or sentencing.~~

22 ~~(e) (1) A petitioner shall notify the State in writing of the filing of a~~
23 ~~petition under this section.~~

24 ~~(2) The State may file a response to the petition within 15 days after~~
25 ~~notice of the filing or within the time that the court orders.~~

26 ~~(f) If the court orders DNA testing under subsection (d) of this section, the~~
27 ~~court in its order may issue orders the court considers appropriate, including~~
28 ~~designation of any of the following:~~

29 ~~(1) the specific evidence to be tested;~~

30 ~~(2) the method of testing to be used;~~

31 ~~(3) the preservation of some of the sample for replicate testing and~~
32 ~~analysis;~~

33 ~~(4) the laboratory where the testing is to be performed, provided that~~
34 ~~if the parties cannot agree on a laboratory, the court may approve testing at any~~

1 ~~laboratory accredited by the American Society of Crime Laboratory Directors~~
2 ~~(ASCLAD), the Laboratory Accreditation Board (LAB), or the National Forensic~~
3 ~~Science Technology Center; and~~

4 ~~(5) release of biological evidence by a third party.~~

5 ~~(g) (1) Except as provided in paragraph (2) of this subsection, DNA~~
6 ~~testing ordered under subsection (d) of this section shall be conducted as soon as~~
7 ~~practicable.~~

8 ~~(2) Based on a finding of necessity, the court may order the DNA~~
9 ~~testing to be completed by a date that the court provides.~~

10 ~~(h) (1) Except as provided in paragraph (2) of this subsection, the~~
11 ~~petitioner shall pay the cost of DNA testing ordered under subsection (d) of this~~
12 ~~section.~~

13 ~~(2) If the results of the DNA testing that the court orders under this~~
14 ~~section are favorable to the petitioner, the court shall order the State to pay the costs~~
15 ~~of the testing.~~

16 ~~(i) (1) If the results of the postconviction DNA testing are unfavorable to~~
17 ~~the petitioner, the court shall dismiss the petition.~~

18 ~~(2) If the results of the postconviction DNA testing are favorable to the~~
19 ~~petitioner, the court shall:~~

20 ~~(i) if no postconviction proceeding has been previously initiated~~
21 ~~by the petitioner under § 7-102 of this article, open a postconviction proceeding under~~
22 ~~§ 7-102 of this article;~~

23 ~~(ii) if a postconviction proceeding has been previously initiated~~
24 ~~by the petitioner under § 7-102 of this article, reopen a postconviction proceeding~~
25 ~~under § 7-104 of this article; or~~

26 ~~(iii) on a finding that a substantial possibility exists that the~~
27 ~~petitioner would not have been convicted if the DNA testing results had been known or~~
28 ~~introduced at trial, order a new trial.~~

29 ~~(3) If the court finds that a substantial possibility does not exist under~~
30 ~~paragraph (2)(iii) of this subsection, the court may order a new trial if the court~~
31 ~~determines that the action is in the interests of justice.~~

32 ~~(4) If a new trial is granted, the court may order the release of the~~
33 ~~petitioner on bond or on conditions that the court finds will reasonably assure the~~
34 ~~presence of the petitioner at trial.~~

1 ~~(j) (1) The State shall preserve scientific identification evidence that:~~

2 ~~(i) the State has reason to know contains DNA material; and~~

3 ~~(ii) is secured in connection with an offense described in~~
4 ~~subsection (b) of this section.~~

5 ~~(2) The State shall preserve scientific identification evidence described~~
6 ~~in paragraph (1) of this subsection for the time of the sentence, including any~~
7 ~~consecutive sentence imposed in connection with the offense.~~

8 ~~(3) (i) If the State is unable to produce scientific identification~~
9 ~~evidence described in paragraph (1) of this subsection, the court shall hold a hearing to~~
10 ~~determine whether the failure to produce evidence was the result of intentional and~~
11 ~~willful destruction.~~

12 ~~(ii) The court shall order a post conviction hearing to be~~
13 ~~conducted in accordance with subparagraph (iii) of this paragraph if:~~

14 ~~1. the court determines at a hearing under~~
15 ~~subparagraph (i) of this paragraph that the failure to produce evidence was the result~~
16 ~~of intentional and willful destruction; and~~

17 ~~2. the court makes a finding that:~~

18 ~~A. there is an inference that the results of the~~
19 ~~postconviction DNA testing would have been favorable to the petitioner; and~~

20 ~~B. a substantial possibility exists that the petitioner~~
21 ~~would not have been convicted if the DNA testing had been known or introduced at~~
22 ~~trial.~~

23 ~~(iii) 1. A court ordering a postconviction hearing under~~
24 ~~subparagraph (ii) of this paragraph shall open the postconviction hearing under~~
25 ~~§ 7-102 of this article, if no postconviction hearing has been previously initiated by~~
26 ~~the petitioner under § 7-102 of this article.~~

27 ~~2. A court ordering a postconviction hearing under~~
28 ~~subparagraph (ii) of this paragraph shall reopen the postconviction hearing under~~
29 ~~§ 7-104 of this article, if no postconviction hearing has been previously initiated by the~~
30 ~~petitioner under § 7-102 of this article.~~

31 ~~(4) The State shall make the scientific identification evidence~~
32 ~~available to parties in the case under terms that are mutually agreed on between~~
33 ~~them.~~

1 ~~(5) If an agreement cannot be reached, the party requesting the~~
2 ~~testing may file an application in the circuit court that entered the judgment for an~~
3 ~~order setting the terms under which the evidence will be made available for testing.~~

4 ~~(k) (1) The State may dispose of scientific identification evidence before~~
5 ~~the expiration of the time period described in subsection (j) of this section if the State~~
6 ~~notifies the following persons:~~

7 ~~(i) the person who is incarcerated in connection with the case;~~

8 ~~(ii) any attorney of record for the person incarcerated; and~~

9 ~~(iii) the Office of Public Defender for the judicial district in which~~
10 ~~the judgment of conviction was entered.~~

11 ~~(2) The notification required in paragraph (1) of this subsection shall~~
12 ~~include:~~

13 ~~(i) a description of the scientific identification evidence;~~

14 ~~(ii) a statement that the State intends to dispose of the~~
15 ~~evidence;~~

16 ~~(iii) a statement that the State will dispose of the evidence~~
17 ~~unless a party files an objection in writing within 120 days from the date of service in~~
18 ~~the circuit court that entered the judgment; and~~

19 ~~(iv) the name and mailing address of the circuit court where an~~
20 ~~objection may be filed.~~

21 ~~(3) Unless another law or court order requires the preservation of the~~
22 ~~scientific identification evidence, if no objection to the disposition of the evidence is~~
23 ~~filed within 120 days of the notice required under this subsection, the State may~~
24 ~~dispose of the evidence.~~

25 ~~(4) If a person files written objections to the State's notice that it~~
26 ~~intends to dispose of scientific identification evidence, the court shall hold a hearing on~~
27 ~~the proposed disposition of the evidence and at the conclusion of the hearing, if the~~
28 ~~court determines by a preponderance of the evidence that:~~

29 ~~(i) the evidence has no significant value for forensic science~~
30 ~~analysis, the court may order the return of the evidence to its rightful owner, the~~
31 ~~destruction of the evidence, or other disposition as provided by law; or~~

32 ~~(ii) the evidence is of such size, bulk, or physical character that~~
33 ~~it cannot practicably be retained by a law enforcement agency, on a showing of need,~~
34 ~~the court shall order that the evidence be made available to the party objecting to the~~

~~1 disposition of the evidence for the purpose of obtaining representative samples from
2 the evidence in the form of cuttings, swabs, or other means, prior to the release or
3 destruction of the evidence.~~

~~4 (5) If the court orders that representative samples be made available
5 under paragraph (4)(ii) of this subsection, the court shall further order that the
6 samples be obtained by a qualified crime scene technician acting on behalf of the party
7 seeking to obtain the samples or by the law enforcement agency in possession of the
8 evidence, which also shall preserve and store the representative samples until the
9 representative samples are released to the custody of a DNA testing facility.~~

~~10 (6) An appeal to the court of appeals may be taken from an order
11 entered under this section.~~

~~Article Public Safety~~

~~12 2-501.~~

~~13 (a) In this subtitle the following words have the meanings indicated.~~

~~14 (b) "Burglary" includes the crimes enumerated in §§ 6-202, 6-203, and
15 6-204 of the Criminal Law Article.~~

~~16 (c) (1) "CODIS" means the Federal Bureau of Investigation's "Combined
17 DNA Index System" that allows the storage and exchange of DNA records submitted
18 by federal, state and local forensic DNA laboratories.~~

~~19 (2) "CODIS" includes the national DNA index administered and
20 operated by the Federal Bureau of Investigation.~~

~~21 (d) "Crime Laboratory" means the Forensic Sciences Division of the
22 Department.~~

~~23 (e) (1) Except as provided in paragraph (2) of this subsection, "crime of
24 violence" has the meaning stated in § 14-101 of the Criminal Law Article.~~

~~25 (2) "Crime of violence" does not include mayhem.~~

~~26 (f) "Director" means the Director of the Crime Laboratory or the Director's
27 designee.~~

~~28 (g) "DNA" means deoxyribonucleic acid.~~

~~29 (h) (1) "DNA record" means DNA information stored in CODIS or the
30 statewide DNA data base system.
31~~

1 ~~(2) "DNA record" includes the information commonly referred to as a~~
2 ~~DNA profile.~~

3 ~~(i) "DNA sample" means a body fluid or tissue sample that is:~~

4 ~~(1) provided by an individual who is convicted of a felony or a violation~~
5 ~~of § 6-205 or § 6-206 of the Criminal Law Article;~~

6 ~~(2) provided by an individual who [is] WAS charged ON OR AFTER~~
7 ~~JANUARY 1, 2009, BUT BEFORE JANUARY 1, 2014, with:~~

8 ~~(i) a crime of violence or an attempt to commit a crime of~~
9 ~~violence; or~~

10 ~~(ii) burglary or an attempt to commit burglary; or~~

11 ~~(3) submitted to the statewide DNA data base system for testing as~~
12 ~~part of a criminal investigation.~~

13 ~~(j) "Statewide DNA data base system" means the DNA record system~~
14 ~~administered by the Department for identification purposes.~~

15 ~~(k) "Statewide DNA repository" means the State repository of DNA samples~~
16 ~~collected under this subtitle.~~

17 ~~2-504.~~

18 ~~(a) (1) In accordance with regulations adopted under this subtitle, an~~
19 ~~individual who is convicted of a felony or a violation of § 6-205 or § 6-206 of the~~
20 ~~Criminal Law Article shall:~~

21 ~~(i) have a DNA sample collected either at the time of sentence~~
22 ~~or on intake to a correctional facility, if the individual is sentenced to a term of~~
23 ~~imprisonment; or~~

24 ~~(ii) provide a DNA sample as a condition of sentence or~~
25 ~~probation, if the individual is not sentenced to a term of imprisonment.~~

26 ~~(2) An individual who was convicted of a felony or a violation of §~~
27 ~~6-205 or § 6-206 of the Criminal Law Article on or before October 1, 2003 and who~~
28 ~~remains confined in a correctional facility on or after October 1, 1999, shall submit a~~
29 ~~DNA sample to the Department.~~

30 ~~(3) (i) In accordance with regulations adopted under this subtitle,~~
31 ~~a DNA sample shall be collected from an individual who is charged with:~~

1 ~~1. a crime of violence or an attempt to commit a crime of~~
2 ~~violence; or~~

3 ~~2. burglary or an attempt to commit burglary.~~

4 ~~(ii) At the time of collection of the DNA sample under this~~
5 ~~paragraph, the individual from whom the sample is collected shall be given notice that~~
6 ~~the DNA record may be expunged and the DNA sample destroyed in accordance with §~~
7 ~~2-511 of this subtitle.~~

8 ~~(iii) A DNA sample collected from a crime scene or collected as~~
9 ~~sexual assault evidence at a hospital that a law enforcement investigator deems~~
10 ~~relevant to the identification or exoneration of a suspect shall be tested as soon as~~
11 ~~reasonably possible following collection of the sample.~~

12 ~~(b) In accordance with regulations adopted under this subtitle, each DNA~~
13 ~~sample required to be collected under this section shall be collected:~~

14 ~~(1) [at the facility where the charging of the individual is processed by:~~

15 ~~(i) the arresting agency; or~~

16 ~~(ii) the booking facility responsible for processing the arrest;~~

17 ~~(2) at a facility specified by the Secretary, if the individual is charged~~
18 ~~but not arrested;~~

19 ~~(3) at the correctional facility where the individual is confined, if the~~
20 ~~individual is confined in a correctional facility on or after October 1, 2003, or is~~
21 ~~sentenced to a term of imprisonment on or after October 1, 2003;~~

22 ~~[(4)](2) at a facility specified by the Director, if the individual is on~~
23 ~~probation or is not sentenced to a term of imprisonment; or~~

24 ~~[(5)](3) at a suitable location in a circuit court following the~~
25 ~~imposition of sentence.~~

26 ~~(c) A DNA sample shall be collected by an individual who is:~~

27 ~~(1) designated by the Director; and~~

28 ~~(2) trained in the collection procedures that the Crime Laboratory~~
29 ~~uses.~~

30 ~~(d) (1) A DNA sample collected from an individual charged ON OR AFTER~~
31 ~~JANUARY 1, 2009, BUT BEFORE JANUARY 1, 2014, with a crime [under subsection~~

1 ~~(a)(3) of this section~~ ~~OF VIOLENCE, AN ATTEMPT TO COMMIT A CRIME OF~~
2 ~~VIOLENCE, BURGLARY, OR AN ATTEMPT TO COMMIT BURGLARY~~ may not be tested
3 ~~or placed in the statewide DNA data base system prior to the first scheduled~~
4 ~~arraignment date unless requested or consented to by the individual as provided in~~
5 ~~paragraph (3) of this subsection.~~

6 ~~(2) If a criminal charge is determined to be unsupported by probable~~
7 ~~cause:~~

8 ~~(i) the DNA sample shall be immediately destroyed; and~~

9 ~~(ii) notice shall be sent to the defendant and counsel of record~~
10 ~~for the defendant that the sample was destroyed.~~

11 ~~(3) An individual may request or consent to have the individual's DNA~~
12 ~~sample processed prior to arraignment for the sole purpose of having the sample~~
13 ~~checked against a sample that:~~

14 ~~(i) has been processed from the crime scene or the hospital; and~~

15 ~~(ii) is related to the charges against the individual.~~

16 ~~(e) A second DNA sample shall be taken if needed to obtain sufficient DNA~~
17 ~~for the statewide DNA data base system or if ordered by the court for good cause~~
18 ~~shown.~~

19 ~~(f) Failure of an individual who is not sentenced to a term of imprisonment~~
20 ~~to provide a DNA sample within 90 days after notice by the Director is a violation of~~
21 ~~probation.~~

22 ~~2-506.~~

23 ~~(a) Each DNA record of identification characteristics that results from DNA~~
24 ~~testing under this subtitle shall be stored and maintained only by the Crime~~
25 ~~Laboratory in the statewide DNA data base system, except as necessary to participate~~
26 ~~in CODIS.~~

27 ~~(b) Each DNA sample obtained under this subtitle shall be stored securely~~
28 ~~and maintained only by the Crime Laboratory in the statewide DNA repository.~~

29 ~~(c) Typing results shall be stored securely in the statewide DNA data base~~
30 ~~system.~~

31 ~~(d) A person may not perform a search of the statewide DNA data base for~~
32 ~~the purpose of identification of an offender in connection with a crime for which the~~
33 ~~offender may be a biological relative of the individual from whom the DNA sample was~~
34 ~~acquired.~~

1 ~~2-511.~~

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

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

7 ~~(ii) the conviction is reversed or vacated; or~~

8 ~~(iii) the individual is granted an unconditional pardon.~~

9 ~~(2) A DNA sample or record may not be destroyed or expunged~~
10 ~~automatically from the State DNA data base if the criminal action is put on the stet~~
11 ~~docket or the individual receives probation before judgment.~~

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

15 ~~(c) Any DNA record expunged in accordance with this section shall be~~
16 ~~expunged from every data base into which it has been entered, including local, State,~~
17 ~~and federal data bases.~~

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

20 ~~(e) A letter documenting expungement of the DNA record and destruction of~~
21 ~~the DNA sample shall be sent by the Director to the defendant and the defendant's~~
22 ~~attorney at the address specified by the court in the order of expungement.~~

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

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

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

29 ~~(g) The Director shall adopt procedures to comply with this section.~~

30 ~~2-512.~~

1 ~~(a) A person who, by virtue of employment or official position, has possession~~
2 ~~of or access to individually identifiable DNA information contained in the statewide~~
3 ~~DNA data base system or statewide DNA repository may not willfully disclose the~~
4 ~~information in any manner to a person or agency not entitled to receive the~~
5 ~~information.~~

6 ~~(b) A person may not, without authorization, willfully obtain individually~~
7 ~~identifiable DNA information from the statewide DNA data base system or statewide~~
8 ~~DNA repository.~~

9 ~~(c) A person may not willfully test a DNA sample for information that does~~
10 ~~not relate to the identification of individuals as specified in this subtitle.~~

11 ~~(d) A person may not willfully fail to destroy a DNA sample for which, under~~
12 ~~this subtitle:~~

13 ~~(1) notification has been sent stating that the DNA sample has been~~
14 ~~destroyed; or~~

15 ~~(2) destruction has been ordered.~~

16 ~~(e) A person who violates subsection (a), (b), or (c) of this section is guilty of a~~
17 ~~misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a~~
18 ~~fine not exceeding \$5,000 or both.~~

19 ~~(f) A person who violates subsection (d) of this section is guilty of a~~
20 ~~misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a~~
21 ~~fine not exceeding \$1,000.~~

22 ~~2-513.~~

23 ~~(a) (1) (i) On or before December 31, 2009, and annually thereafter,~~
24 ~~the Department shall report to the Governor and, in accordance with § 2-1246 of the~~
25 ~~State Government Article, the General Assembly, on the status of the statewide DNA~~
26 ~~data base system as specified in subsection (b) of this section.~~

27 ~~(ii) On or before September 1, 2009, and annually thereafter,~~
28 ~~local law enforcement agencies shall report to the Department with the information~~
29 ~~necessary for the Department to comply with the requirements of subsection (b) of this~~
30 ~~section.~~

31 ~~(2) The annual report shall be posted on the Department website on or~~
32 ~~before December 31 of each year.~~

33 ~~(b) The annual report shall include:~~

1 ~~(1) total expenses incurred for the operation and management of the~~
2 ~~DNA data base and DNA testing program, specifying the actual and human resource~~
3 ~~costs of DNA collection and transport, DNA analyses, data base operation and~~
4 ~~oversight, and State laboratory personnel and maintenance;~~

5 ~~(2) total funding provided by the State to each forensic crime~~
6 ~~laboratory in the preceding year;~~

7 ~~(3) a statistical analysis of the racial demographics of:~~

8 ~~(i) individuals who have been charged with a crime of violence~~
9 ~~or burglary, or attempt to commit a crime of violence or burglary, as defined in § 2-501~~
10 ~~of this subtitle; and~~

11 ~~(ii) victims of crimes alleged to have been committed by those~~
12 ~~individuals, when known;~~

13 ~~(4) the number of biological samples collected from individuals;~~

14 ~~(5) the sufficiency of protocols and procedures adopted to prevent the~~
15 ~~unlawful testing of DNA and ensure the expungement of DNA as required under this~~
16 ~~subtitle; and~~

17 ~~(6) a detailed analysis of the investigations aided by DNA profiles that~~
18 ~~includes:~~

19 ~~(i) the number of matches;~~

20 ~~(ii) the number of matches that resulted in investigation of the~~
21 ~~person identified;~~

22 ~~(iii) the number of matches that resulted in formal charges;~~

23 ~~(iv) the number of matches that resulted in convictions;~~

24 ~~(v) the number of matches that resulted in exonerations;~~

25 ~~(vi) the number of matches that resulted in convictions for~~
26 ~~persons not already incarcerated; and~~

27 ~~(vii) the prior offenses for which a person has been convicted~~
28 ~~where a match occurred.~~

29 ~~2-514.~~

30 ~~(a) (1) On or before December 31, 2009, and annually thereafter, the~~
31 ~~police department or the office of the Sheriff, as appropriate, of each county and the~~

~~1 police department of Baltimore City shall report to the Office of Legislative Audits on
2 the status of crime scene DNA collection and analysis in their respective jurisdictions.~~

~~3 (2) The Department shall report to the Office of Legislative Audits on
4 the status of crime scene DNA collection statewide, including:~~

~~5 (i) the crimes for which crime scene DNA samples are routinely
6 collected;~~

~~7 (ii) the approximate number of crime scene DNA samples
8 collected during the preceding year for each category of crime;~~

~~9 (iii) the average time between crime scene DNA sample
10 collection and analysis;~~

~~11 (iv) the number of crime scene DNA samples collected and not
12 analyzed at the time of the study;~~

~~13 (v) the number of crime scene DNA samples submitted to the
14 statewide DNA data base during the preceding year; and~~

~~15 (vi) the number of crime scene DNA samples, including sexual
16 assault evidence, collected by hospitals in the county during the preceding year.~~

~~17 (b) The Office of Legislative Audits shall compile and evaluate the
18 information reported by the police departments and sheriff offices under subsection (a)
19 of this section and submit an annual summary report to the Governor and, in
20 accordance with § 2-1246 of the State Government Article, the General Assembly.~~

~~21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
22 January 1, 2009.~~

~~23 SECTION 3. AND BE IT FURTHER ENACTED, That, the Secretary of State
24 Police shall adopt regulations and procedures to comply with this Act, including
25 regulations relating to approved methods for obtaining a DNA sample from a person
26 from whom a DNA sample is required to be collected in compliance with this Act and
27 who refuses to voluntarily submit to collection of the sample.~~

~~28 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before January 15,
29 2009, the Office of the Public Defender and the Governor's Office of Crime Control and
30 Prevention jointly shall submit a report to the House Judiciary Committee and Senate
31 Judicial Proceedings Committee on barriers to postconviction review of claims of
32 factual innocence, and in particular, those based on DNA evidence.~~

~~33 SECTION 4. AND BE IT FURTHER ENACTED, That, Section 1 of this Act
34 shall take effect January 1, 2009. It shall remain effective for a period of 5 years and,~~

1 at the end of December 31, 2013, with no further action required by the General
2 Assembly, Section 1 of this Act shall be abrogated and of no further force and effect.

3 ~~SECTION 5. AND BE IT FURTHER ENACTED, That, Section 2 of this Act~~
4 ~~shall take effect on the taking effect of the termination provision specified in Section 4~~
5 ~~of this Act. If that termination provision takes effect, Section 1 of this Act shall be~~
6 ~~abrogated and of no further force and effect.~~

7 ~~SECTION 6. AND BE IT FURTHER ENACTED, That, subject to the provisions~~
8 ~~of Section 5 of this Act, this Act shall take effect January 1, 2009.~~

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.