

# SENATE BILL 423

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CF HB 395

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By: **Senator Zirkin**

Introduced and read first time: January 25, 2018

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Postconviction – DNA Testing and Petition for Writ of**  
3 **Actual Innocence**

4 FOR the purpose of clarifying the group of persons who may file a certain petition for  
5 postconviction DNA testing or a database or log search; requiring a court to order a  
6 new trial under certain circumstances for certain classes of persons filing for  
7 postconviction DNA testing; defining the term “conviction” as it relates to the  
8 standard required to file a writ of actual innocence by a person convicted at trial;  
9 establishing a standard required to file a petition for writ of actual innocence by a  
10 person convicted as a result of a guilty plea, an Alford plea, or a plea of nolo  
11 contendere; defining a certain term; and generally relating to postconviction DNA  
12 testing and petitions for writ of actual innocence.

13 BY repealing and reenacting, with amendments,  
14 Article – Criminal Procedure  
15 Section 8–201  
16 Annotated Code of Maryland  
17 (2008 Replacement Volume and 2017 Supplement)  
18 (As enacted by Chapter 62 of the Acts of the General Assembly of 2017)

19 BY repealing and reenacting, with amendments,  
20 Article – Criminal Procedure  
21 Section 8–301(a)  
22 Annotated Code of Maryland  
23 (2008 Replacement Volume and 2017 Supplement)

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

26 **Article – Criminal Procedure**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 8–201.

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

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

6 (3) **“CONVICTION” MEANS:**

7 (I) **A VERDICT OF GUILTY REACHED AS A RESULT OF A TRIAL;**

8 (II) **A PLEA OF GUILTY;**

9 (III) **AN ALFORD PLEA; OR**

10 (IV) **A PLEA OF NOLO CONTENDERE.**

11 (4) “DNA” means deoxyribonucleic acid.

12 [(4)] (5) “Law enforcement agency” means any of the following:

13 (i) a municipal or county police department;

14 (ii) sheriff’s office;

15 (iii) the Maryland State Police;

16 (iv) any prosecuting authority;

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

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

21 [(5)] (6) “Scientific identification evidence” means evidence that:

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

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

26 (iii) contains biological evidence from which DNA may be recovered  
27 that may produce exculpatory or mitigating evidence relevant to a claim of a convicted

1 person of wrongful conviction or sentencing if subject to DNA testing.

2 (b) Notwithstanding any other law governing postconviction relief, a person who  
3 is convicted of a crime of violence under § 14–101 of the Criminal Law Article may file a  
4 petition:

5 (1) for DNA testing of scientific identification evidence that the State  
6 possesses that is related to the judgment of conviction; or

7 (2) for a search by a law enforcement agency of a law enforcement data  
8 base or log for the purpose of identifying the source of physical evidence used for DNA  
9 testing.

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

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

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

18 (ii) the requested DNA test employs a method of testing generally  
19 accepted within the relevant scientific community.

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

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

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

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

30 (1) the specific evidence to be tested;

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

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

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

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

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

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

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

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

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

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

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

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

25 (iii) **IN THE CASE OF A PETITIONER WHO WAS CONVICTED BY**  
26 **MEANS OF A GUILTY VERDICT REACHED AS A RESULT OF A TRIAL**, on a finding that a  
27 substantial possibility exists that the petitioner would not have been convicted if the DNA  
28 testing results had been known or introduced at trial, order a new trial; **OR**

29 **(IV) IN THE CASE OF A PETITIONER WHO WAS CONVICTED BY**  
30 **MEANS OF A GUILTY PLEA, AN ALFORD PLEA, OR A PLEA OF NOLO CONTENDERE, ON**  
31 **A FINDING THAT A SUBSTANTIAL POSSIBILITY EXISTS THAT THE DNA TESTING**  
32 **RESULTS SUBSTANTIALLY OR SIGNIFICANTLY UNDERMINE THE FACTS SET FORTH**  
33 **BY THE STATE AS THE BASIS OF A PLEA AGREEMENT, ORDER A NEW TRIAL.**

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

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

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

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

9 (ii) is secured in connection with a violation of § 2–201, § 2–204, §  
10 2–207, § 3–303, or § 3–304 of the Criminal Law Article.

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

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

18 (ii) If the court determines at a hearing under subparagraph (i) of  
19 this paragraph that the failure to produce evidence was the result of intentional and willful  
20 destruction, the court shall[:

21 1. order a postconviction hearing to be conducted in  
22 accordance with subparagraph (iii) of this paragraph; and

23 2. at the postconviction hearing infer that the results of the  
24 postconviction DNA testing would have been favorable to the petitioner.

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

29 2. A court ordering a postconviction hearing under  
30 subparagraph (ii) of this paragraph shall reopen the postconviction hearing under § 7–104  
31 of this article, if a postconviction hearing has been previously initiated by the petitioner  
32 under § 7–102 of this article] **INFER THAT THE RESULTS OF THE POSTCONVICTION  
33 DNA TESTING WOULD HAVE BEEN FAVORABLE TO THE PETITIONER IN ANY  
34 PROCEEDING TO DETERMINE WHETHER THE PETITIONER SHOULD BE GRANTED  
35 RELIEF UNDER SUBSECTION (1)(2) OF THIS SECTION.**

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

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

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

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

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

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

13           (2)    The notification required in paragraph (1) of this subsection shall  
14 include:

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

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

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

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

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

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

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

33                   (ii)   the evidence is of such size, bulk, or physical character that it

1 cannot practicably be retained by a law enforcement agency, on a showing of need, the court  
 2 shall order that the evidence be made available to the party objecting to the disposition of  
 3 the evidence for the purpose of obtaining representative samples from the evidence in the  
 4 form of cuttings, swabs, or other means, prior to the release or destruction of the evidence.

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

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

13 8–301.

14 (a) (1) **IN THIS SUBSECTION, “CONVICTION” MEANS:**

15 (I) **A VERDICT OF GUILTY REACHED AS A RESULT OF A TRIAL;**

16 (II) **A PLEA OF GUILTY;**

17 (III) **AN ALFORD PLEA; OR**

18 (IV) **A PLEA OF NOLO CONTENDERE.**

19 (2) A person charged by indictment or criminal information with a crime  
 20 triable in circuit court and convicted of that crime may, at any time, file a petition for writ  
 21 of actual innocence in the circuit court for the county in which the conviction was imposed  
 22 if the person claims that there is newly discovered evidence that:

23 [(1)] (I) 1. **IF THE CONVICTION RESULTED FROM A TRIAL,** creates  
 24 a substantial or significant possibility that the result may have been different, as that  
 25 standard has been judicially determined; [and] **OR**

26 2. **IF THE CONVICTION RESULTED FROM A GUILTY PLEA,**  
 27 **AN ALFORD PLEA, OR A PLEA OF NOLO CONTENDERE, SUBSTANTIALLY OR**  
 28 **SIGNIFICANTLY UNDERMINES THE FACTS SET FORTH BY THE STATE AS THE BASIS**  
 29 **OF THE PLEA AGREEMENT; AND**

30 [(2)] (II) could not have been discovered in time to move for a new trial  
 31 under Maryland Rule 4–331.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 33 October 1, 2018.

