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POSITION ON PROPOSED LEGISLATION

BILL: SB 202- Public Safety - Statewide DNA Database System, DNA Collection, and Penalties

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: January 14, 2025

The Maryland Office of the Public Defender respectfully requests that the Committee issue an unfavorable report on Senate Bill 202.

Senate Bill 202 makes a number of changes to the processes surrounding DNA collection and creates concerning consequences for individuals involved in the criminal legal system prior to any adjudication.

The primary concern of the Office of the Public Defender is that it moves up the date on which the initial testing of a DNA sample is permitted. While the current law allows collection of a DNA sample upon arrest, the Maryland State Police (MSP) cannot test the DNA or place the profile in the DNA database prior to the scheduled arraignment date of an individual who is charged with a qualifying crime. Under the proposed changes, it appears that the DNA could be tested as early as when a commissioner makes a probable cause determination and before the first scheduled arraignment date. Testing the DNA sample *before* the first scheduled arraignment date would undermine due process, as a person merely needs to be charged with such a crime and survive a minimal probable cause determination before an individual's DNA sample is tested. Requiring an actual arraignment date on a qualifying offense, makes the consequential step of testing the DNA of a legally innocent person more thoughtful and deliberate, as it should be. Testing a DNA sample is an irreversible invasion of an individual's privacy and should only be done with due deliberation, particularly before an individual has been convicted of any crime.

Another concern is that the bill makes refusal to give a DNA sample a crime. (Page 5 line 29-page 6 line 3). This is an incredibly coercive circumstance to put an individual in and if there are issues with individuals to be easily addressed with contempt of court rather than additional criminal penalties.

For these reasons, the Maryland Office of the Public Defender urges this Committee to issue an unfavorable report on Senate Bill 202.

Submitted by: Maryland Office of the Public Defender, Government Relations Division.