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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: March 21<sup>st</sup>, 2025

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The Maryland Office of the Public Defender (OPD) strongly urges the Committee to issue an unfavorable report on Senate Bill 202

Senate Bill 202 introduces several changes to DNA collection procedures, creating troubling implications for individuals entangled in the criminal legal system before any adjudication occurs. The bill accelerates the timeline for initial DNA sample testing, significantly weakening due process protections.

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. This shift is deeply concerning. It effectively allows DNA testing based on nothing more than an arrest and a minimal probable cause determination, rather than the more deliberate step of a formal arraignment. Such a change undermines the fundamental principle that individuals are presumed innocent until proven guilty. DNA testing is a profound and irreversible intrusion into personal privacy, and it should be conducted only with due deliberation—particularly before a person has been convicted of any crime.

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.

Another concern is that the bill makes refusal to give a DNA sample a crime. (Page 5 line 29-page 6 line 3). This provision places individuals in an unduly coercive situation, compelling compliance under threat of criminal charges. If concerns arise regarding an individual's refusal, they can be appropriately addressed through contempt of court rather than imposing additional criminal penalties.

Senate Bill 202 represents an overreach in state authority that threatens the rights of Maryland residents. The current statutory framework already allows for DNA collection while maintaining reasonable safeguards for due process. By accelerating DNA testing prior to an individual's arraignment and criminalizing refusal to provide a DNA sample, this bill unnecessarily infringes upon privacy rights, due process, and the presumption of innocence.

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.