

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL 370

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike beginning with “The” down through “Wood” and substitute “The Speaker (By Request – Administration) and Delegate Kramer and Delegates Jameson, Ali, Anderson, Barkley, Barnes, Bates, Beitzel, Bohanan, Boteler, Branch, Bronrott, Busch, G. Clagett, V. Clagett, Conaway, DeBoy, Doory, Dwyer, Eckardt, Elmore, Feldman, Frank, Gaines, George, Gilchrist, Guzzone, Haddaway, Hammen, Haynes, Healey, Hecht, Heller, Impallaria, Ivey, James, Jennings, Jones, Kach, Kelly, King, Kipke, Krebs, Krysiak, Kullen, Lee, Levi, Levy, Love, Malone, Manno, Mathias, McComas, McConkey, McDonough, McHale, McIntosh, Miller, Minnick, Montgomery, Murphy, Myers, O’Donnell, Olszewski, Reznik, Rice, Riley, Rosenberg, Ross, Schuh, Shank, Simmons, Sophocleus, Sossi, Stein, Stocksdale, Stull, Valderrama, Vaughn, Weir, Weldon, and Wood”; in line 2, strike the comma and substitute “and”; in line 3, strike “, and Breaking and Entering a Motor Vehicle”; in line 4, strike “Arrest” and substitute “Charge”; in line 5, after the first “of” insert “adding DNA samples and DNA records to a provision of law requiring a court to advise a certain defendant that the defendant may be entitled to expunge certain records under certain circumstances;”; in line 6, strike “arrested for or”; in line 7, after “regulations;” insert “requiring that a certain individual from whom a DNA sample is collected be given a certain notice;”; strike beginning with “by” in line 7 down through “processed” in line 8 and substitute “at a facility specified by the Director of the Crime Laboratory Division of the Department of Public Safety and Correctional Services; providing that a certain DNA sample may not be tested or placed in the statewide DNA data base system prior to a certain arraignment date; providing that a certain DNA sample shall be immediately destroyed or returned and a certain notice shall be sent to a certain defendant and counsel under certain circumstances; altering a provision of law to provide that a certain DNA record and”

(Over)

sample shall be stored and maintained only by a certain crime laboratory, with a certain exception; prohibiting a person from performing a search for a certain purpose"; in line 10, after the first "requiring" insert "a"; in the same line, strike "documentation" and substitute "notice"; strike beginning with the second "requiring" in line 10 down through "procedures" in line 11 and substitute "providing that a DNA record or sample that is required to be expunged by a certain provision of law may not be used for any purpose, including the establishment of probable cause in a subsequent civil or criminal proceeding; prohibiting a person from willfully testing DNA for information that does not relate to the identification of individuals in accordance with a certain provision of law; altering a certain provision of law to provide that certain violations are felonies; altering a certain penalty and applying the penalty to a certain violation of this Act; requiring the Department of State Police, on or before a certain date and annually thereafter, to make a certain report to the General Assembly; requiring local law enforcement agencies to report to the Department of State Police annually on or before a certain date with certain information; requiring a certain report to be posted on a certain website on or before a certain date each year; requiring the police department of each county and Baltimore City and the Department of State Police, on or before a certain date and annually thereafter, to make a certain report to the Office of Legislative Audits; requiring the Office of Legislative Audits to compile and evaluate certain information and submit an annual report to the Governor and General Assembly"; in line 12, after "terms," insert "requiring the Secretary of State Police to adopt certain regulations and procedures; requiring the Office of the Public Defender and the Governor's Office of Crime Control and Prevention to jointly submit a certain report to certain committees;"; after line 13, insert:

"BY repealing and reenacting, with amendments,

Article – Criminal Procedure

Section 6-232

Annotated Code of Maryland

(2001 Volume and 2007 Supplement)";

in line 16, strike “and” and substitute “2-506.”; in the same line, after “2-511” insert “, and 2-512”; after line 18, insert:

“BY adding to
Article – Public Safety
Section 2-511.1, 2-513, and 2-514
Annotated Code of Maryland
(2003 Volume and 2007 Supplement)”;

after line 20, insert:

“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.”.

AMENDMENT NO. 2

On page 2, in line 4, strike “**6-204, AND 6-205**” and substitute “AND 6-204”; in line 12, after “(E)” insert:

“(1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION.”;

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in the same line, strike “**CRIME**” and substitute “**CRIME**”; after line 13, insert:

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

in line 24, strike “**ARRESTED FOR OR**”; in line 27, after “**VIOLENCE;**” insert “**OR**”.

On page 3, strike in their entirety lines 1 and 2; in line 4, strike “analysis” and substitute “**TESTING**”; in line 22, after “**(3)**” insert “**(1)**”; in line 24, strike “**ARRESTED FOR OR**”; in line 25, strike “**(1)**” and substitute “**1.**”; in line 26, after “**VIOLENCE;**” insert “**OR**”; in line 27, strike “**(II)**” and substitute “**2.**”; strike beginning with “**; OR**” in line 27 down through “**ARTICLE**” in line 29; and after line 29, insert:

“(II) AT THE TIME OF COLLECTION OF THE DNA SAMPLE UNDER THIS PARAGRAPH, THE INDIVIDUAL FROM WHOM A SAMPLE IS COLLECTED SHALL BE GIVEN NOTICE THAT THE INDIVIDUAL MAY HAVE THE RIGHT TO HAVE THE DNA RECORD AND THE DNA SAMPLE EXPUNGED ON REQUEST IN ACCORDANCE WITH § 2-511 OF THIS SUBTITLE IF THE INDIVIDUAL MEETS THE REQUIREMENTS OF TITLE 10, SUBTITLE 1 OF THE CRIMINAL PROCEDURE ARTICLE.”.

On page 4, after line 5, insert:

“(2) AT A FACILITY SPECIFIED BY THE SECRETARY, IF THE INDIVIDUAL IS CHARGED BUT NOT ARRESTED;”;

in lines 6, 9, and 11, strike “**(2)**”, “**(3)**”, and “**(4)**”, respectively, and substitute “**(3)**”, “**(4)**”, and “**(5)**”, respectively; after line 16, insert:

“(D) (1) A DNA SAMPLE COLLECTED FROM AN INDIVIDUAL CHARGED WITH A CRIME UNDER SUBSECTION (A)(3) OF THIS SECTION MAY NOT BE TESTED

OR PLACED IN THE STATEWIDE DNA DATA BASE SYSTEM PRIOR TO THE FIRST SCHEDULED ARRAIGNMENT DATE.

(2) IF A CRIMINAL CHARGE IS DETERMINED TO BE UNSUPPORTED BY PROBABLE CAUSE:

(I) THE DNA SAMPLE SHALL BE IMMEDIATELY DESTROYED OR RETURNED; AND

(II) NOTICE SHALL BE SENT TO THE DEFENDANT AND COUNSEL OF RECORD FOR THE DEFENDANT THAT THE SAMPLE WAS DESTROYED OR RETURNED.”;

in line 17, strike “(d)” and substitute “**(E)**”; in line 20, strike “(e)” and substitute “**(F)**”; after line 22, insert:

“2-506.

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

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

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

(Over)

(D) A PERSON MAY NOT PERFORM A SEARCH FOR THE PURPOSE OF IDENTIFYING A FAMILY MEMBER OF THE INDIVIDUAL FROM WHOM THE DNA SAMPLE WAS ACQUIRED.;

in line 26, strike “ARREST” and substitute “CHARGE”; in line 28, strike “§ 10-105 or § 10-106” and substitute “TITLE 10, SUBTITLE 1”; and in lines 29 and 30, strike “§ 10-105 or § 10-106” and substitute “TITLE 10, SUBTITLE 1”.

AMENDMENT NO. 3

On page 5, in line 1, strike “(c)”; strike in their entirety lines 4 through 15, inclusive, and substitute:

“(C) EXPUNGEMENT OF A DNA SAMPLE AND DNA RECORD MAY BE ORDERED ONLY IF THE DNA SAMPLE AND DNA RECORD WAS OBTAINED IN CONNECTION WITH A CASE IN WHICH ELIGIBILITY FOR EXPUNGEMENT HAS BEEN ESTABLISHED.

(D) IN ACCORDANCE WITH REGULATIONS ADOPTED UNDER THIS SUBTITLE, ON RECEIPT OF AN ORDER OF EXPUNGEMENT, THE DIRECTOR SHALL:

(1) WITHIN 60 DAYS AFTER RECEIPT OF THE ORDER, PURGE FROM THE STATEWIDE DNA DATA BASE SYSTEM ANY DNA RECORD OR OTHER IDENTIFIABLE INFORMATION COVERED BY THE ORDER AND DESTROY ANY DNA SAMPLE FROM THE STATEWIDE DNA REPOSITORY COVERED BY THE ORDER; AND

(2) WITHIN 10 DAYS AFTER EXPUNGEMENT, NOTIFY THE INDIVIDUAL WHOSE DNA RECORD AND DNA SAMPLE ARE EXPUNGED BY CERTIFIED MAIL AT THE ADDRESS SPECIFIED BY THE COURT.

2-511.1.

A DNA RECORD OR DNA SAMPLE THAT IS ORDERED TO BE EXPUNGED UNDER THIS SUBTITLE MAY NOT BE USED FOR ANY PURPOSE, INCLUDING THE ESTABLISHMENT OF PROBABLE CAUSE IN A SUBSEQUENT CIVIL OR CRIMINAL PROCEEDING.

2-512.

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

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

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

[(c)] (D) A person who violates this section is guilty of a [misdemeanor] FELONY and on conviction is subject to imprisonment not exceeding [3] 5 years or a fine not exceeding [\$1,000] \$5,000 or both.

2-513.

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

(II) LOCAL LAW ENFORCEMENT AGENCIES SHALL REPORT TO THE DEPARTMENT ANNUALLY ON OR BEFORE SEPTEMBER 1 WITH THE INFORMATION NECESSARY FOR THE DEPARTMENT TO COMPLY WITH THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION.

(2) THE ANNUAL REPORT SHALL BE POSTED ON THE DEPARTMENT WEBSITE ON OR BEFORE DECEMBER 31 OF EACH YEAR.

(B) THE ANNUAL REPORT SHALL INCLUDE:

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

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

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

(I) INDIVIDUALS WHO HAVE BEEN ARRESTED FOR A CRIME OF VIOLENCE OR BURGLARY, OR ATTEMPT TO COMMIT A CRIME OF VIOLENCE OR BURGLARY, AS DEFINED IN § 2-501 OF THIS SUBTITLE; AND

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

(4) THE NUMBER OF BIOLOGICAL SAMPLES COLLECTED FROM INDIVIDUALS;

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

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

(I) THE NUMBER OF MATCHES;

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

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

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

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

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

(Over)

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

2-514.

(A) ON OR BEFORE DECEMBER 31, 2009, AND ANNUALLY THEREAFTER, THE POLICE DEPARTMENTS OF EACH COUNTY AND BALTIMORE CITY SHALL REPORT TO THE OFFICE OF LEGISLATIVE AUDITS ON THE STATUS OF CRIME SCENE DNA COLLECTION AND ANALYSIS IN THEIR RESPECTIVE JURISDICTIONS, AND THE DEPARTMENT SHALL REPORT TO THE OFFICE OF LEGISLATIVE AUDITS ON THE STATUS OF CRIME SCENE DNA COLLECTION STATEWIDE, INCLUDING:

(1) THE CRIMES FOR WHICH CRIME SCENE DNA SAMPLES ARE ROUTINELY COLLECTED;

(2) THE APPROXIMATE NUMBER OF CRIME SCENE DNA SAMPLES COLLECTED DURING THE PRECEDING YEAR FOR EACH CATEGORY OF CRIME;

(3) THE AVERAGE TIME BETWEEN CRIME SCENE DNA SAMPLE COLLECTION AND ANALYSIS;

(4) THE NUMBER OF CRIME SCENE DNA SAMPLES COLLECTED AND NOT ANALYZED AT THE TIME OF THE STUDY;

(5) THE NUMBER OF CRIME SCENE DNA SAMPLES SUBMITTED TO THE STATEWIDE DNA DATA BASE DURING THE PRECEDING YEAR; AND

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

(B) THE OFFICE OF LEGISLATIVE AUDITS SHALL COMPILE AND EVALUATE THE INFORMATION REPORTED BY THE POLICE DEPARTMENTS UNDER SUBSECTION (A) OF THIS SECTION AND SUBMIT AN ANNUAL SUMMARY REPORT TO THE GOVERNOR AND IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.”.

AMENDMENT NO. 4

On page 5, after line 15, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That the Secretary of State Police shall adopt regulations and procedures to comply with this Act, including regulations relating to approved methods for obtaining a DNA sample from a person who refuses to voluntarily submit to collection of the sample.

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

and in line 16, strike “2.” and substitute “4.”.