

HB0370/593425/1

BY: Senator Frosh

AMENDMENTS TO HOUSE BILL 370, AS AMENDED
(Third Reading File Bill)

AMENDMENT NO. 1

Strike the Judicial Proceedings Committee Amendments (HB0370/108978/1) in their entirety.

AMENDMENT NO. 2

On page 1 of the bill, in line 4, after “Charge” insert “– Postconviction DNA Testing”.

On page 2 of the bill, in line 9, after “order” insert “and infer certain results”; in line 15, strike “deems” and substitute “considers”; strike beginning with “Director” in line 19 down through “Services” in line 20 and substitute “Secretary of State Police under certain circumstances”; in line 31, after “persons;” insert “requiring the Director of the Crime Laboratory to adopt certain procedures;”; in lines 32 and 33, strike “records and samples” and substitute “samples and records”; and in line 33, after “be” insert “destroyed or”.

On page 3 of the bill, in line 2, strike “the police department of each county and Baltimore City” and substitute “local law enforcement units”; and strike beginning with “requiring” in line 8 down through “committees;” in line 10 and substitute “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; providing for the termination of this Act;”.

AMENDMENT NO. 3

(Over)

On page 7 of the bill, strike in their entirety lines 16 through 24, inclusive, and substitute:

“(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 A POSTCONVICTION HEARING HAS BEEN PREVIOUSLY INITIATED BY THE PETITIONER UNDER § 7-102 OF THIS ARTICLE.”.

AMENDMENT NO. 4

On page 9 of the bill, in line 7, after “6-204” insert “OF THE CRIMINAL LAW ARTICLE”.

On page 11 of the bill, strike beginning with “INDIVIDUAL” in line 5 down through “ARTICLE” in line 9 and substitute “DNA RECORD MAY BE EXPUNGED AND THE DNA SAMPLE DESTROYED IN ACCORDANCE WITH § 2-511 OF THIS SUBTITLE”; in line 10, strike “A DNA SAMPLE” and substitute “DNA EVIDENCE”; in line 11, after “AS” insert “EVIDENCE OF”; in line 12, strike “DEEMS” and substitute “CONSIDERS”; strike beginning with “FACILITY” in line 17 down through “(2)” in line 22 and substitute “TIME THE INDIVIDUAL IS CHARGED”; strike beginning with the comma in line 22 down through “ARRESTED” in line 23; and in lines 24, 27, and 29, strike “(3)”, “(4)”, and “(5)”, respectively, and substitute “(2)”, “(3)”, and “(4)”, respectively.

On page 12 of the bill, in line 8, strike “A CRIMINAL CHARGE IS” and substitute “ALL QUALIFYING CRIMINAL CHARGES ARE”; in lines 11 and 14, in each instance, strike “OR RETURNED”; and in line 17, after “THAT” insert “:

(I)”;

in line 18, after “HOSPITAL” insert “; AND

(II) IS RELATED TO THE CHARGES AGAINST THE INDIVIDUAL”.

On page 13 of the bill, in line 1, after “SEARCH” insert “OF THE STATEWIDE DNA DATA BASE”; strike in their entirety lines 2 and 3, inclusive, and substitute “IDENTIFICATION OF AN OFFENDER IN CONNECTION WITH A CRIME FOR WHICH THE OFFENDER MAY BE A BIOLOGICAL RELATIVE OF THE INDIVIDUAL FROM WHOM THE DNA SAMPLE WAS ACQUIRED.”; in line 17, strike “RECORDS AND

(Over)

SAMPLES” and substitute “SAMPLES AND RECORDS”; in line 18, after “BE” insert “DESTROYED OR EXPUNGED”; strike in its entirety line 20; in lines 21, 24, and 25, strike “(II)”, “(III)”, and “(IV)”, respectively, and substitute “(I)”, “(II)”, and “(III)”, respectively; in line 24, strike “REVERSED OR VACATED” and substitute “FINALLY REVERSED OR VACATED AND NO NEW TRIAL IS PERMITTED”; in line 27, after “DNA” insert “SAMPLE OR DNA”; in the same line, after “BE” insert “DESTROYED OR”; after line 30, insert:

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

in line 31, strike “(B)” and substitute “(C)”; and in the same line, strike “OR SAMPLE”.

On page 14 of the bill, in lines 1, 3, 7, and 13, strike “(C)”, “(D)”, “(E)”, and “(F)”, respectively, and substitute “(D)”, “(E)”, “(F)”, and “(G)”, respectively; in line 3, strike “SAMPLE” and substitute “RECORD”; in line 7, after “EXPUNGEMENT” insert “OR DESTRUCTION”; and in line 11, after “EXPUNGED” insert “OR DESTROYED”.

AMENDMENT NO. 5

On page 15 of the bill, in line 23, strike “DNA” and substitute “A DNA SAMPLE”; after line 25, insert:

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

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

(2) DESTRUCTION HAS BEEN ORDERED.;

in line 26, strike “(D)” and substitute “(E)”; after line 28, insert:

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

in line 30, strike “DECEMBER 31, 2009” and substitute “APRIL 1, 2010”; and in the same line, after “AND” insert “ON OR BEFORE APRIL 1”.

On page 16 of the bill, in line 1, strike “LOCAL” and substitute “ON OR BEFORE JANUARY 31, 2010, AND ON OR BEFORE JANUARY 31 ANNUALLY THEREAFTER, LOCAL”; in line 2, strike “ANNUALLY ON OR BEFORE SEPTEMBER 1” and substitute “FOR THE PRECEDING CALENDAR YEAR”; in line 6, strike “DECEMBER 31” and substitute “APRIL 1”; in line 7, after “INCLUDE” insert “, FOR THE PRECEDING CALENDAR YEAR”; strike beginning with the colon in line 15 down through “(I)” in line 16; strike beginning with “AND” in line 18 down through “KNOWN” in line 20; in line 21, strike “BIOLOGICAL” and substitute “DNA”; and in line 22, after “INDIVIDUALS” insert “CHARGED WITH A CRIME OF VIOLENCE OR BURGLARY, OR ATTEMPT TO COMMIT A CRIME OF VIOLENCE OR BURGLARY, AS DEFINED IN § 2-501 OF THIS SUBTITLE”.

On page 17 of the bill, in line 10, strike “DECEMBER 31, 2009” and substitute “APRIL 1, 2010”; in the same line, strike “ANNUALLY” and substitute “ON OR BEFORE APRIL 1 OF EVERY EVEN-NUMBERED YEAR”; in line 11, strike “THE POLICE DEPARTMENTS OF EACH COUNTY AND BALTIMORE CITY” and substitute “EACH LOCAL LAW ENFORCEMENT UNIT”; in line 13, strike “THEIR” and substitute “ITS”; in the same line, strike “JURISDICTIONS” and substitute “JURISDICTION FOR THE PRECEDING CALENDAR YEAR”; in line 15, after “STATEWIDE” insert “FOR THE”.

(Over)

PRECEDING CALENDAR YEAR"; in line 17, strike "SAMPLES ARE" and substitute "EVIDENCE IS"; in lines 19, 23, 25, and 27, in each instance, after "DNA" insert "EVIDENCE"; in line 21, strike "SAMPLE" and substitute "EVIDENCE"; and in line 31, strike "POLICE DEPARTMENTS" and substitute "LOCAL LAW ENFORCEMENT UNITS AND THE DEPARTMENT".

AMENDMENT NO. 6

On page 18 of the bill, in line 5, after "person" insert "from whom a DNA sample is required to be collected in compliance with this Act and"; and strike in their entirety lines 7 through 13, inclusive, and substitute:

"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.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect January 1, 2009. It shall remain effective for a period of 5 years and, at the end of December 31, 2013, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect."