

HOUSE BILL 370

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CF SB 211

By: ~~The Speaker (By Request Administration) and Delegates Jameson, Kramer, Ali, Anderson, Barkley, Barnes, Bates, Bohanan, Branch, Bronrott, Busch, G. Clagett, DeBoy, Dwyer, Eckardt, Elmore, Feldman, Gaines, George, Gilchrist, Guzzone, Haddaway, Hammen, Haynes, Heller, James, Jones, Kelly, King, Kipke, Krebs, Kullen, Levi, Levy, Love, Malone, Mathias, McHale, McIntosh, Murphy, O'Donnell, Olszewski, Reznik, Rice, Rosenberg, Ross, Schuh, Shank, Simmons, Sophocleus, Stocksdale, Weldon, and Wood~~ 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

Introduced and read first time: January 25, 2008

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 18, 2008

CHAPTER _____

1 AN ACT concerning

2 **Public Safety – Statewide DNA Data Base System – Crimes of Violence, and**
3 **Burglary, and Breaking and Entering a Motor Vehicle – Sample Collections**
4 **on Arrest Charge**

5 FOR the purpose of adding DNA samples and DNA records to a provision of law
6 requiring a court to advise a certain defendant that the defendant may be
7 entitled to expunge certain records under certain circumstances; authorizing a
8 certain person to file a petition for a search by a law enforcement agency of a

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 law enforcement data base or log for the purpose of identifying the source of
2 certain physical evidence; authorizing a certain petitioner to move for a new
3 trial on a certain ground; requiring a court to order a DNA data base search
4 under certain circumstances; requiring a court to order a new trial under
5 certain circumstances; authorizing the court to order a new trial under certain
6 circumstances; authorizing the court to release a petitioner on bond or certain
7 conditions in certain circumstances; requiring the court to hold a certain
8 hearing to determine a certain issue in certain circumstances; requiring the
9 court to enter a certain order under certain circumstances; authorizing a certain
10 appeal; requiring the collection of a DNA sample from a certain individual
11 ~~arrested for or~~ charged with certain criminal offenses in accordance with certain
12 regulations; requiring that a certain individual from whom a DNA sample is
13 collected be given a certain notice; providing that a DNA sample collected from
14 a crime scene or collected as sexual assault evidence at a hospital that a law
15 enforcement investigator deems relevant to the identification or exoneration of a
16 suspect shall be tested as soon as reasonably possible following collection of the
17 sample; requiring a certain DNA sample to be collected ~~by a certain person at~~
18 ~~the facility where a certain arrest is processed~~ at a facility specified by the
19 Director of the Crime Laboratory Division of the Department of Public Safety
20 and Correctional Services; providing that a certain DNA sample may not be
21 tested or placed in the statewide DNA data base system prior to a certain
22 arraignment date; providing that a certain DNA sample shall be immediately
23 destroyed or returned and a certain notice shall be sent to a certain defendant
24 and counsel under certain circumstances; authorizing an individual to request
25 or consent to have a DNA sample processed prior to arraignment for a certain
26 purpose; altering a provision of law to provide that a certain DNA record and
27 sample shall be stored and maintained only by a certain crime laboratory, with
28 a certain exception; prohibiting a person from performing a search for a certain
29 purpose; altering certain requirements for expungement of certain DNA
30 samples in the statewide DNA data base system; requiring a certain
31 ~~documentation notice~~ to be sent to certain persons; ~~requiring the Director of the~~
32 ~~Crime Laboratory to adopt certain procedures~~ requiring DNA records and
33 samples generated as part of a criminal investigation or prosecution to be
34 expunged automatically from every local, State, and federal data base within a
35 certain time period under certain circumstances; providing that a DNA record
36 or sample that ~~is required to be expunged by a certain provision of law may not~~
37 ~~be used for any purpose, including the establishment of probable cause in a~~
38 ~~subsequent civil or criminal proceeding~~ qualifies for expungement and is
39 matched at a certain time may not be utilized for a determination of probable
40 cause and is not admissible in any proceeding for any reason; prohibiting a
41 person from willfully testing DNA for information that does not relate to the
42 identification of individuals in accordance with a certain provision of law;
43 altering a certain provision of law to provide that certain violations are felonies;
44 altering a certain penalty and applying the penalty to a certain violation of this
45 Act; requiring the Department of State Police, on or before a certain date and
46 annually thereafter, to make a certain report to the General Assembly;
47 requiring local law enforcement agencies to report to the Department of State
48 Police annually on or before a certain date with certain information; requiring a

1 certain report to be posted on a certain website on or before a certain date each
2 year; requiring the police department of each county and Baltimore City and the
3 Department of State Police, on or before a certain date and annually thereafter,
4 to make a certain report to the Office of Legislative Audits; requiring the Office
5 of Legislative Audits to compile and evaluate certain information and submit an
6 annual report to the Governor and General Assembly; altering certain
7 definitions; defining certain terms; requiring the Secretary of State Police to
8 adopt certain regulations and procedures; requiring the Office of the Public
9 Defender and the Governor's Office of Crime Control and Prevention to jointly
10 submit a certain report to certain committees; providing for a delayed effective
11 date; and generally relating to the statewide DNA data base system.

12 BY repealing and reenacting, with amendments,

13 Article – Criminal Procedure

14 Section 6–232 and 8–201

15 Annotated Code of Maryland

16 (2001 Volume and 2007 Supplement)

17 BY repealing and reenacting, with amendments,

18 Article – Public Safety

19 Section 2–501, 2–504, ~~and 2–506~~, 2–511, and 2–512

20 Annotated Code of Maryland

21 (2003 Volume and 2007 Supplement)

22 BY adding to

23 Article – Public Safety

24 Section ~~2–511.1, 2–513, and 2–513~~ and 2–514

25 Annotated Code of Maryland

26 (2003 Volume and 2007 Supplement)

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

29 **Article – Criminal Procedure**

30 6–232.

31 (a) In a criminal case, when all of the charges against the defendant are
32 disposed of by acquittal, dismissal, probation before judgment, nolle prosequi, or stet,
33 the court shall advise the defendant that the defendant may be entitled to expunge the
34 records **AND ANY DNA SAMPLE AND DNA RECORD** relating to the charge or
35 charges against the defendant in accordance with Title 10, Subtitle 1 of this article
36 **AND TITLE 2, SUBTITLE 5 OF THE PUBLIC SAFETY ARTICLE.**

37 (b) The failure of a court to comply with subsection (a) of this section does
38 not affect the legality or efficacy of the sentence or disposition of the case.

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
5 genetic marker groupings may be obtained.

6 (3) “DNA” means deoxyribonucleic acid.

7 (4) “Law enforcement agency” means any of the following:

8 (i) a municipal or county police department;

9 (ii) sheriff’s office;

10 (iii) the Maryland State Police;

11 (iv) any prosecuting authority;

12 (v) any state, university, county, or municipal police unit or
13 police force; and

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

17 (5) “Scientific identification evidence” means evidence that:

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

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

22 (iii) contains biological evidence from which DNA may be
23 recovered that may produce exculpatory or mitigating evidence relevant to a claim of a
24 convicted person of wrongful conviction or sentencing if subject to DNA testing.

25 (b) Notwithstanding any other law governing postconviction relief, a person
26 who is convicted of a violation of § 2-201, § 2-204, § 2-207, or §§ 3-303 through 3-306
27 of the Criminal Law Article may file a petition:

28 (1) for DNA testing of scientific identification evidence that the State
29 possesses as provided in [subsection (i)] SUBSECTION (J) of this section and that is
30 related to the judgment of conviction; OR

1 **(2) FOR A SEARCH BY A LAW ENFORCEMENT AGENCY OF A LAW**
2 **ENFORCEMENT DATA BASE OR LOG FOR THE PURPOSE OF IDENTIFYING THE**
3 **SOURCE OF PHYSICAL EVIDENCE USED FOR DNA TESTING.**

4 **(C) A PETITIONER MAY MOVE FOR A NEW TRIAL UNDER THIS SECTION**
5 **ON THE GROUNDS THAT THE CONVICTION WAS BASED ON UNRELIABLE**
6 **SCIENTIFIC IDENTIFICATION EVIDENCE AND A SUBSTANTIAL POSSIBILITY**
7 **EXISTS THAT THE PETITIONER WOULD NOT HAVE BEEN CONVICTED WITHOUT**
8 **THE EVIDENCE.**

9 **[(c)] (D) (1) Subject to [subsection (d)] SUBSECTION (E) of this section,**
10 **a court shall order DNA testing if the court finds that:**

11 **[(1)] (I) a reasonable probability exists that the DNA testing has the**
12 **scientific potential to produce exculpatory or mitigating evidence relevant to a claim of**
13 **wrongful conviction or sentencing; and**

14 **[(2)] (II) the requested DNA test employs a method of testing**
15 **generally accepted within the relevant scientific community.**

16 **(2) A COURT SHALL ORDER A DATA BASE SEARCH BY A LAW**
17 **ENFORCEMENT AGENCY IF THE COURT FINDS THAT A REASONABLE**
18 **PROBABILITY EXISTS THAT THE DATA BASE SEARCH WILL PRODUCE**
19 **EXCULPATORY OR MITIGATING EVIDENCE RELEVANT TO A CLAIM OF WRONGFUL**
20 **CONVICTION OR SENTENCING.**

21 **[(d)] (E) (1) A petitioner shall notify the State in writing of the filing of a**
22 **petition under this section.**

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

25 **[(e)] (F) If the court orders DNA testing under [subsection (c)]**
26 **SUBSECTION (D) of this section, the court in its order may issue orders the court**
27 **considers appropriate, including designation of any of the following:**

28 **(1) the specific evidence to be tested;**

29 **(2) the method of testing to be used;**

30 **(3) the preservation of some of the sample for replicate testing and**
31 **analysis;**

32 **(4) the laboratory where the testing is to be performed, provided that**
33 **if the parties cannot agree on a laboratory, the court may approve testing at any**
34 **laboratory accredited by the American Society of Crime Laboratory Directors**

1 (ASCLAD), the Laboratory Accreditation Board (LAB), or the National Forensic
2 Science Technology Center; and

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

4 [(f)] (G) (1) Except as provided in paragraph (2) of this subsection, DNA
5 testing ordered under [subsection (c)] SUBSECTION (D) of this section shall be
6 conducted as soon as practicable.

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

9 [(g)] (H) (1) Except as provided in paragraph (2) of this subsection, the
10 petitioner shall pay the cost of DNA testing ordered under [subsection (c)]
11 SUBSECTION (D) of this section.

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

15 [(h)] (I) (1) If the results of the postconviction DNA testing are
16 unfavorable to the 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
20 by the petitioner under § 7–102 of this article, open a postconviction proceeding under
21 § 7–102 of this article; [or]

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

25 (III) ON A FINDING THAT A SUBSTANTIAL POSSIBILITY
26 EXISTS THAT THE PETITIONER WOULD NOT HAVE BEEN CONVICTED IF THE DNA
27 TESTING RESULTS HAD BEEN KNOWN OR INTRODUCED AT TRIAL, ORDER A NEW
28 TRIAL.

29 (3) IF THE COURT FINDS THAT A SUBSTANTIAL POSSIBILITY DOES
30 NOT EXIST UNDER PARAGRAPH (2)(III) OF THIS SUBSECTION, THE COURT MAY
31 ORDER A NEW TRIAL IF THE COURT DETERMINES THAT THE ACTION IS IN THE
32 INTERESTS OF JUSTICE.

33 (4) IF A NEW TRIAL IS GRANTED, THE COURT MAY ORDER THE
34 RELEASE OF THE PETITIONER ON BOND OR ON CONDITIONS THAT THE COURT

1 FINDS WILL REASONABLY ASSURE THE PRESENCE OF THE PETITIONER AT
2 TRIAL.

3 [(i)] (J) (1) The State shall preserve scientific identification evidence
4 that:

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

6 (ii) is secured in connection with an offense described in
7 subsection (b) of this section.

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

11 (3) (I) IF THE STATE IS UNABLE TO PRODUCE SCIENTIFIC
12 IDENTIFICATION EVIDENCE DESCRIBED IN PARAGRAPH (1) OF THIS
13 SUBSECTION, THE COURT SHALL HOLD A HEARING TO DETERMINE WHETHER
14 THE FAILURE TO PRODUCE EVIDENCE WAS THE RESULT OF INTENTIONAL AND
15 WILLFUL DESTRUCTION.

16 (II) IF THE FAILURE TO PRODUCE SCIENTIFIC
17 IDENTIFICATION EVIDENCE DESCRIBED IN PARAGRAPH (1) OF THIS
18 SUBSECTION IS DETERMINED TO BE THE RESULT OF WILLFUL AND
19 INTENTIONAL DESTRUCTION AND THE COURT FINDS THAT THE PETITION
20 SATISFIES THE REQUIREMENTS OF SUBSECTION (I)(2) OF THIS SECTION, THE
21 COURT SHALL ENTER AN ORDER GRANTING A POSTCONVICTION HEARING IN
22 ACCORDANCE WITH SUBSECTION (I)(2) OF THIS SECTION AND AN INFERENCE
23 THAT THE RESULTS OF THE POSTCONVICTION DNA TESTING WOULD HAVE
24 BEEN FAVORABLE TO THE PETITIONER.

25 [(3)] (4) The State shall make the scientific identification evidence
26 available to parties in the case under terms that are mutually agreed on between
27 them.

28 [(4)] (5) If an agreement cannot be reached, the party requesting the
29 testing may file an application in the circuit court that entered the judgment for an
30 order setting the terms under which the evidence will be made available for testing.

31 [(j)] (K) (1) The State may dispose of scientific identification evidence
32 before the expiration of the time period described in [subsection (i)] SUBSECTION (J)
33 of this section if the State notifies the following persons:

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

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

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

3 (2) The notification required in paragraph (1) of this subsection shall
4 include:

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

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

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

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

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

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

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

24 (ii) the evidence is of such size, bulk, or physical character that
25 it cannot practicably be retained by a law enforcement agency, on a showing of need,
26 the court shall order that the evidence be made available to the party objecting to the
27 disposition of the evidence for the purpose of obtaining representative samples from
28 the evidence in the form of cuttings, swabs, or other means, prior to the release or
29 destruction of the evidence.

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

1 (I) A CRIME OF VIOLENCE OR AN ATTEMPT TO COMMIT A
2 CRIME OF VIOLENCE; OR

3 (II) BURGLARY OR AN ATTEMPT TO COMMIT BURGLARY; OR

4 ~~(III) A VIOLATION OF § 6-206 OF THE CRIMINAL LAW~~
5 ~~ARTICLE; OR~~

6 [(2)] (3) submitted to the statewide DNA data base system for
7 ~~analysis~~ TESTING as part of a criminal investigation.

8 [(h)] (J) “Statewide DNA data base system” means the DNA record system
9 administered by the Department for identification purposes.

10 [(i)] (K) “Statewide DNA repository” means the State repository of DNA
11 samples collected under this subtitle.

12 2-504.

13 (a) (1) In accordance with regulations adopted under this subtitle, an
14 individual who is convicted of a felony or a violation of § 6-205 or § 6-206 of the
15 Criminal Law Article shall:

16 (i) have a DNA sample collected either at the time of sentence
17 or on intake to a correctional facility, if the individual is sentenced to a term of
18 imprisonment; or

19 (ii) provide a DNA sample as a condition of sentence or
20 probation, if the individual is not sentenced to a term of imprisonment.

21 (2) An individual who was convicted of a felony or a violation of §
22 6-205 or § 6-206 of the Criminal Law Article on or before October 1, 2003 and who
23 remains confined in a correctional facility on or after October 1, 1999, shall submit a
24 DNA sample to the Department.

25 (3) (I) IN ACCORDANCE WITH REGULATIONS ADOPTED UNDER
26 THIS SUBTITLE, A DNA SAMPLE SHALL BE COLLECTED FROM AN INDIVIDUAL
27 WHO IS ~~ARRESTED FOR OR~~ CHARGED WITH:

28 ~~(I)~~ 1. A CRIME OF VIOLENCE OR AN ATTEMPT TO
29 COMMIT A CRIME OF VIOLENCE; OR

30 ~~(II)~~ 2. BURGLARY OR AN ATTEMPT TO COMMIT
31 BURGLARY; ~~OR~~

1 ~~(III) A VIOLATION OF § 6-206 OF THE CRIMINAL LAW~~
2 ~~ARTICLE.~~

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

10 (III) A DNA SAMPLE COLLECTED FROM A CRIME SCENE OR
11 COLLECTED AS SEXUAL ASSAULT EVIDENCE AT A HOSPITAL THAT A LAW
12 ENFORCEMENT INVESTIGATOR DEEMS RELEVANT TO THE IDENTIFICATION OR
13 EXONERATION OF A SUSPECT SHALL BE TESTED AS SOON AS REASONABLY
14 POSSIBLE FOLLOWING COLLECTION OF THE SAMPLE.

15 (b) In accordance with regulations adopted under this subtitle, each DNA
16 sample required to be collected under this section shall be collected:

17 (1) AT THE FACILITY WHERE THE ARREST OF THE INDIVIDUAL IS
18 PROCESSED BY:

19 (I) THE ARRESTING AGENCY; OR

20 (II) THE BOOKING FACILITY RESPONSIBLE FOR
21 PROCESSING THE ARREST;

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

24 [(1)] ~~(2)~~ (3) at the correctional facility where the individual is confined,
25 if the individual is confined in a correctional facility on or after October 1, 2003, or is
26 sentenced to a term of imprisonment on or after October 1, 2003;

27 [(2)] ~~(3)~~ (4) at a facility specified by the Director, if the individual is on
28 probation or is not sentenced to a term of imprisonment; or

29 [(3)] ~~(4)~~ (5) at a suitable location in a circuit court following the
30 imposition of sentence.

31 (c) A DNA sample shall be collected by an individual who is:

32 (1) designated by the Director; and

1 (2) trained in the collection procedures that the Crime Laboratory
2 uses.

3 **(D) (1) A DNA SAMPLE COLLECTED FROM AN INDIVIDUAL CHARGED**
4 **WITH A CRIME UNDER SUBSECTION (A)(3) OF THIS SECTION MAY NOT BE TESTED**
5 **OR PLACED IN THE STATEWIDE DNA DATA BASE SYSTEM PRIOR TO THE FIRST**
6 **SCHEDULED ARRAIGNMENT DATE UNLESS REQUESTED OR CONSENTED TO BY**
7 **THE INDIVIDUAL AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION.**

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

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

12 **(II) NOTICE SHALL BE SENT TO THE DEFENDANT AND**
13 **COUNSEL OF RECORD FOR THE DEFENDANT THAT THE SAMPLE WAS DESTROYED**
14 **OR RETURNED.**

15 **(3) AN INDIVIDUAL MAY REQUEST OR CONSENT TO HAVE THE**
16 **INDIVIDUAL'S DNA SAMPLE PROCESSED PRIOR TO ARRAIGNMENT FOR THE**
17 **SOLE PURPOSE OF HAVING THE SAMPLE CHECKED AGAINST A SAMPLE THAT**
18 **HAS BEEN PROCESSED FROM THE CRIME SCENE OR THE HOSPITAL.**

19 ~~(d)~~ **(E)** A second DNA sample shall be taken if needed to obtain sufficient DNA
20 for the statewide DNA data base **SYSTEM** or if ordered by the court for good cause
21 shown.

22 ~~(e)~~ **(F)** Failure of an individual who is not sentenced to a term of
23 imprisonment to provide a DNA sample within 90 days after notice by the Director is a
24 violation of probation.

25 2-506.

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

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

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

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

4 2-511.

5 ~~(a) An individual whose DNA record or profile is included in the statewide~~
6 ~~DNA data base system and whose DNA sample is stored in the statewide DNA~~
7 ~~repository may request that information be expunged on the grounds that the ARREST~~
8 ~~CHARGE OR conviction that resulted in the inclusion meets the expungement criteria~~
9 ~~specified in § 10-105 or § 10-106 TITLE 10, SUBTITLE 1 of the Criminal Procedure~~
10 ~~Article.~~

11 ~~(b) Expungement proceedings shall be conducted in accordance with §~~
12 ~~10-105 or § 10-106 TITLE 10, SUBTITLE 1 of the Criminal Procedure Article.~~

13 ~~(c) [On receipt of an order of expungement, the Director shall purge any~~
14 ~~DNA record, DNA sample, or other identifiable information covered by the order from~~
15 ~~the statewide DNA data base system and the statewide DNA repository.]~~

16 (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
17 SUBSECTION, ANY DNA RECORDS AND SAMPLES GENERATED AS PART OF A
18 CRIMINAL INVESTIGATION OR PROSECUTION SHALL BE EXPUNGED
19 AUTOMATICALLY FROM THE STATE DNA DATA BASE IF:

20 (I) THE INDIVIDUAL IS RELEASED WITHOUT CHARGE;

21 (II) A CRIMINAL ACTION BEGUN AGAINST THE INDIVIDUAL
22 RELATING TO THE CRIME DOES NOT RESULT IN A CONVICTION OF THE
23 INDIVIDUAL;

24 (III) THE CONVICTION IS REVERSED OR VACATED; OR

25 (IV) THE INDIVIDUAL IS GRANTED AN UNCONDITIONAL
26 PARDON.

27 (2) A DNA RECORD OR SAMPLE MAY NOT BE EXPUNGED
28 AUTOMATICALLY FROM THE STATE DNA DATA BASE IF THE CRIMINAL ACTION
29 IS PUT ON THE STET DOCKET OR THE INDIVIDUAL RECEIVES PROBATION
30 BEFORE JUDGMENT.

31 (B) ANY DNA RECORD OR SAMPLE EXPUNGED IN ACCORDANCE WITH
32 THIS SECTION SHALL BE EXPUNGED FROM EVERY DATA BASE INTO WHICH IT
33 HAS BEEN ENTERED, INCLUDING LOCAL, STATE, AND FEDERAL DATA BASES.

1 (C) AN EXPUNGEMENT UNDER THIS SECTION SHALL OCCUR WITHIN 60
2 DAYS OF AN EVENT LISTED IN SUBSECTION (A) OF THIS SECTION.

3 (D) A LETTER DOCUMENTING EXPUNGEMENT OF THE DNA SAMPLE
4 AND DESTRUCTION OF THE DNA SAMPLE SHALL BE SENT BY THE DIRECTOR TO
5 THE DEFENDANT AND THE DEFENDANT'S ATTORNEY AT THE ADDRESS
6 SPECIFIED BY THE COURT IN THE ORDER OF EXPUNGEMENT.

7 (E) A RECORD OR SAMPLE THAT QUALIFIES FOR EXPUNGEMENT UNDER
8 THIS SECTION AND IS MATCHED CONCURRENT WITH OR SUBSEQUENT TO THE
9 DATE OF QUALIFICATION FOR EXPUNGEMENT:

10 (1) MAY NOT BE UTILIZED FOR A DETERMINATION OF PROBABLE
11 CAUSE REGARDLESS OF WHETHER IT IS EXPUNGED TIMELY; AND

12 (2) IS NOT ADMISSIBLE IN ANY PROCEEDING FOR ANY PURPOSE.

13 (F) THE DIRECTOR SHALL ADOPT PROCEDURES TO COMPLY WITH THIS
14 SECTION.

15 ~~(1) ON RECEIVING AN ORDER OF EXPUNGEMENT FOR AN~~
16 ~~INDIVIDUAL WHOSE DNA SAMPLE HAS BEEN INCLUDED IN THE STATEWIDE~~
17 ~~DNA DATA BASE SYSTEM, THE DNA SAMPLE SHALL BE EXPUNGED EXCEPT~~
18 ~~THAT THE ORDER MAY NOT APPLY TO OTHER OFFENSES COMMITTED BY THE~~
19 ~~INDIVIDUAL WHO QUALIFIES FOR INCLUSION IN THE STATEWIDE DNA DATA~~
20 ~~BASE SYSTEM.~~

21 ~~(2) A LETTER DOCUMENTING EXPUNGEMENT OF THE DNA~~
22 ~~SAMPLE AND DESTRUCTION OF THE DNA SAMPLE SHALL BE SENT BY THE~~
23 ~~DIRECTOR TO THE DEFENDANT AND THE DEFENDANT'S ATTORNEY AT THE~~
24 ~~ADDRESS SPECIFIED BY THE COURT IN THE ORDER OF EXPUNGEMENT.~~

25 ~~(3) THE DIRECTOR SHALL ADOPT PROCEDURES TO COMPLY WITH~~
26 ~~THIS SUBSECTION.~~

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

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

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

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

9 2-511.1.

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

14 2-512.

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

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

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

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

29 2-513.

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

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

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

7 **(B) THE ANNUAL REPORT SHALL INCLUDE:**

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

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

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

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

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

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

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

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

28 **(I) THE NUMBER OF MATCHES;**

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

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

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

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

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

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

9 2-514.

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

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

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

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

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

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

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

30 (B) THE OFFICE OF LEGISLATIVE AUDITS SHALL COMPILE AND
31 EVALUATE THE INFORMATION REPORTED BY THE POLICE DEPARTMENTS
32 UNDER SUBSECTION (A) OF THIS SECTION AND SUBMIT AN ANNUAL SUMMARY

1 **REPORT TO THE GOVERNOR AND IN ACCORDANCE WITH § 2-1246 OF THE STATE**
2 **GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.**

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

7 SECTION 3. AND BE IT FURTHER ENACTED, That, on or before January 15,
8 2009, the Office of the Public Defender and the Governor's Office of Crime Control and
9 Prevention jointly shall submit a report to the House Judiciary Committee and Senate
10 Judicial Proceedings Committee on barriers to postconviction review of claims of
11 factual innocence, and in particular, those based on DNA evidence.

12 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
13 effect January 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.