

HOUSE BILL 1052

E2, E4
HB 1074/08 – JUD

9lr2639

By: **Delegates Conaway and Kelly**

Introduced and read first time: February 13, 2009

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – DNA Sample Collection on Arrest – Undocumented Aliens**

3 FOR the purpose of requiring the collection of a DNA sample from an individual under
4 arrest and determined to be an undocumented alien; requiring a DNA sample to
5 be collected at the facility where a certain arrest is processed; providing that a
6 certain DNA record may be expunged under certain circumstances; altering a
7 certain definition; providing for the effective date of certain provisions of this
8 Act; providing for the termination of certain provisions of this Act; and generally
9 relating to the collection of DNA samples.

10 BY repealing and reenacting, with amendments,
11 Article – Public Safety
12 Section 2–501 and 2–504
13 Annotated Code of Maryland
14 (2003 Volume and 2008 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article – Public Safety
17 Section 2–511
18 Annotated Code of Maryland
19 (2003 Volume and 2008 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Public Safety
22 Section 2–501, 2–504, and 2–511
23 Annotated Code of Maryland
24 (2003 Volume and 2008 Supplement)
25 (As enacted by Chapter 337 of the Acts of the General Assembly of 2008)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Public Safety

2–501.

(a) In this subtitle the following words have the meanings indicated.

(b) “Burglary” includes the crimes enumerated in §§ 6–202, 6–203, and 6–204 of the Criminal Law Article.

(c) (1) “CODIS” means the Federal Bureau of Investigation’s “Combined DNA Index System” that allows the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories.

(2) “CODIS” includes the national DNA index administered and operated by the Federal Bureau of Investigation.

(d) “Crime Laboratory” means the Forensic Sciences Division of the Department.

(e) (1) Except as provided in paragraph (2) of this subsection, “crime of violence” has the meaning stated in § 14–101 of the Criminal Law Article.

(2) “Crime of violence” does not include mayhem.

(f) “Director” means the Director of the Crime Laboratory or the Director’s designee.

(g) “DNA” means deoxyribonucleic acid.

(h) (1) “DNA record” means DNA information stored in CODIS or the statewide DNA data base system.

(2) “DNA record” includes the information commonly referred to as a DNA profile.

(i) “DNA sample” means a body fluid or tissue sample that is:

(1) provided by an individual who is convicted of a felony or a violation of § 6–205 or § 6–206 of the Criminal Law Article;

(2) provided by an individual who is charged with:

(i) a crime of violence or an attempt to commit a crime of violence; or

(ii) burglary or an attempt to commit burglary; [or]

(3) submitted to the statewide DNA data base system for testing as part of a criminal investigation; **OR**

(4) PROVIDED BY AN INDIVIDUAL WHO HAS BEEN ARRESTED BY A LAW ENFORCEMENT OFFICER AND WHO HAS BEEN DETERMINED TO BE AN UNDOCUMENTED ALIEN.

(j) “Statewide DNA data base system” means the DNA record system administered by the Department for identification purposes.

(k) “Statewide DNA repository” means the State repository of DNA samples collected under this subtitle.

2–504.

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

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

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

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

(3) (i) In accordance with regulations adopted under this subtitle, a DNA sample shall be collected from an individual who is charged with:

1. a crime of violence or an attempt to commit a crime of violence; or

2. burglary or an attempt to commit burglary.

(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 DNA record may be expunged and the DNA sample destroyed in accordance with § 2–511 of this subtitle.

(iii) DNA evidence collected from a crime scene or collected as evidence of sexual assault at a hospital that a law enforcement investigator considers

relevant to the identification or exoneration of a suspect shall be tested as soon as reasonably possible following collection of the sample.

(4) AN INDIVIDUAL WHO HAS BEEN ARRESTED BY A LAW ENFORCEMENT OFFICER AND WHO HAS BEEN DETERMINED TO BE AN UNDOCUMENTED ALIEN SHALL SUBMIT A DNA SAMPLE TO THE DEPARTMENT.

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

(1) AT THE FACILITY WHERE THE ARREST OF THE INDIVIDUAL IS PROCESSED, IF THE INDIVIDUAL IS AN UNDOCUMENTED ALIEN;

[(1)] (2) at the time the individual is charged, at a facility specified by the Secretary;

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

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

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

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

(1) designated by the Director; and

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

(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 unless requested or consented to by the individual as provided in paragraph (3) of this subsection.

(2) If all qualifying criminal charges are determined to be unsupported by probable cause:

(i) the DNA sample shall be immediately destroyed; and

(ii) notice shall be sent to the defendant and counsel of record for the defendant that the sample was destroyed.

1 (3) An individual may request or consent to have the individual's DNA
2 sample processed prior to arraignment for the sole purpose of having the sample
3 checked against a sample that:

4 (i) has been processed from the crime scene or the hospital; and

5 (ii) is related to the charges against the individual.

6 (e) A second DNA sample shall be taken if needed to obtain sufficient DNA
7 for the statewide DNA data base system or if ordered by the court for good cause
8 shown.

9 (f) Failure of an individual who is not sentenced to a term of imprisonment
10 to provide a DNA sample within 90 days after notice by the Director is a violation of
11 probation.

12 2-511.

13 (a) (1) Except as provided in paragraph (2) of this subsection, any DNA
14 samples and records generated as part of a criminal investigation or prosecution shall
15 be destroyed or expunged automatically from the State DNA data base if:

16 (i) a criminal action begun against the individual relating to
17 the crime does not result in a conviction of the individual;

18 (ii) the conviction is finally reversed or vacated and no new trial
19 is permitted; or

20 (iii) the individual is granted an unconditional pardon.

21 (2) A DNA sample or DNA record may not be destroyed or expunged
22 automatically from the State DNA data base if the criminal action is put on the stet
23 docket or the individual receives probation before judgment.

24 (b) If the DNA sample or DNA record was obtained or generated only in
25 connection with a case in which eligibility for expungement has been established, the
26 DNA sample shall be destroyed and the DNA record shall be expunged.

27 (c) Any DNA record expunged in accordance with this section shall be
28 expunged from every data base into which it has been entered, including local, State,
29 and federal data bases.

30 (d) An expungement or destruction of sample under this section shall occur
31 within 60 days of an event listed in subsection (a) of this section.

32 (e) A letter documenting expungement of the DNA record and destruction of
33 the DNA sample shall be sent by the Director to the defendant and the defendant's
34 attorney at the address specified by the court in the order of expungement.

(f) A record or sample that qualifies for expungement or destruction under this section and is matched concurrent with or subsequent to the date of qualification for expungement:

(1) may not be utilized for a determination of probable cause regardless of whether it is expunged or destroyed timely; and

(2) is not admissible in any proceeding for any purpose.

(g) The Director shall adopt procedures to comply with this section.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Public Safety

2–501.

(a) In this subtitle the following words have the meanings indicated.

(b) (1) “CODIS” means the Federal Bureau of Investigation’s “Combined DNA Index System” that allows the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories.

(2) “CODIS” includes the national DNA index administered and operated by the Federal Bureau of Investigation.

(c) “Crime Laboratory” means the Crime Laboratory Division of the Department.

(d) “Director” means the Director of the Crime Laboratory or the Director’s designee.

(e) “DNA” means deoxyribonucleic acid.

(f) (1) “DNA record” means DNA information stored in CODIS or the statewide DNA data base system.

(2) “DNA record” includes the information commonly referred to as a DNA profile.

(g) “DNA sample” means a body fluid or tissue sample that is:

(1) provided by an individual who is convicted of a felony or a violation of § 6–205 or § 6–206 of the Criminal Law Article; [or]

(2) submitted to the statewide DNA data base system for analysis as part of a criminal investigation; **OR**

(3) PROVIDED BY AN INDIVIDUAL WHO HAS BEEN ARRESTED BY A LAW ENFORCEMENT OFFICER AND WHO HAS BEEN DETERMINED TO BE AN UNDOCUMENTED ALIEN.

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

(i) “Statewide DNA repository” means the State repository of DNA samples collected under this subtitle.

2–504.

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

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

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

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

(3) AN INDIVIDUAL WHO HAS BEEN ARRESTED BY A LAW ENFORCEMENT OFFICER AND WHO HAS BEEN DETERMINED TO BE AN UNDOCUMENTED ALIEN SHALL SUBMIT A DNA SAMPLE TO THE DEPARTMENT.

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

(1) AT THE FACILITY WHERE THE ARREST OF THE INDIVIDUAL IS PROCESSED;

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

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

1 ~~[(3)]~~ (4) at a suitable location in a circuit court following the
2 imposition of sentence.

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

4 (1) designated by the Director; and

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

7 (d) A second DNA sample shall be taken if needed to obtain sufficient DNA
8 for the statewide DNA data base or if ordered by the court for good cause shown.

9 (e) Failure of an individual who is not sentenced to a term of imprisonment
10 to provide a DNA sample within 90 days after notice by the Director is a violation of
11 probation.

12 2–511.

13 (a) An individual whose DNA record or profile is included in the statewide
14 DNA data base system and whose DNA sample is stored in the statewide DNA
15 repository may request that information be expunged on the grounds that the **ARREST**
16 **OR** conviction that resulted in the inclusion meets the expungement criteria specified
17 in § 10–105 or § 10–106 of the Criminal Procedure Article.

18 (b) Expungement proceedings shall be conducted in accordance with §
19 10–105 or § 10–106 of the Criminal Procedure Article.

20 (c) On receipt of an order of expungement, the Director shall purge any DNA
21 record, DNA sample, or other identifiable information covered by the order from the
22 statewide DNA data base system and the statewide DNA repository.

23 SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
24 take effect on the taking effect of the termination provision specified in Section 4 of
25 Chapter 337 of the Acts of the General Assembly of 2008. If that termination
26 provision takes effect, Section 1 of this Act shall be abrogated and of no further force
27 and effect. This Act may not be interpreted to have any effect on that termination
28 provision.

29 SECTION 4. AND BE IT FURTHER ENACTED, That, subject to the provisions
30 of Section 3 of this Act, this Act shall take effect October 1, 2009.