

**SB0211/808175/1**

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 211

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “Mooney,”; in the same line, strike “and Stone” and substitute “Stone, Forehand, Jacobs, and Simonaire”; 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 – Postconviction DNA Testing”; 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; requiring a court to order a DNA data base search under certain circumstances; requiring the court to hold a hearing to review a certain sentence and order appropriate relief 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;”; in line 8, after “processed” insert “or 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 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 sample shall be stored and maintained only by a certain crime laboratory, with a certain exception; prohibiting a person from performing a certain search for a certain purpose”; in line 10, after the first “requiring” insert “a”; in the same line, strike “documentation” and substitute “notice”; in line 11, after “procedures;” insert “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”

(Over)

a certain provision of law; 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; providing for the effective date of certain provisions of this Act; providing for the termination of certain provisions of this Act;”; after line 13, insert:

“BY repealing and reenacting, with amendments,  
Article – Criminal Procedure  
Section 6-232 and 8-201(c) and (h)  
Annotated Code of Maryland  
(2001 Volume and 2007 Supplement)

BY repealing and reenacting, without amendments,  
Article – Criminal Procedure  
Section 6-232 and 8-201(c) and (h)  
Annotated Code of Maryland  
(2001 Volume and 2007 Supplement)  
(As enacted by Section 1 of this Act)”;

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)

BY repealing and reenacting, with amendments,

Article – Public Safety  
Section 2-501, 2-504, and 2-511  
Annotated Code of Maryland  
(2003 Volume and 2007 Supplement)  
(As enacted by Section 1 of this Act)

BY repealing and reenacting, without amendments,

Article – Public Safety  
Section 2-511.1, 2-512, 2-513, and 2-514  
Annotated Code of Maryland  
(2003 Volume and 2007 Supplement)  
(As enacted by Section 1 of this Act)”.

AMENDMENT NO. 2

On page 1, 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.

(Over)

(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.

8-201.

(c) (1) Subject to subsection (d) of this section, a court shall order DNA testing if the court finds that:

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

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

**(2) A COURT SHALL ORDER A DNA DATA BASE SEARCH IF THE COURT FINDS THAT A REASONABLE PROBABILITY EXISTS THAT THE DNA DATA BASE SEARCH HAS THE SCIENTIFIC POTENTIAL TO PRODUCE EXCULPATORY OR MITIGATING EVIDENCE RELEVANT TO A CLAIM OF WRONGFUL CONVICTION OR SENTENCING.**

(h) (1) If the results of the postconviction DNA testing are unfavorable to the petitioner, the court shall dismiss the petition.

(2) If the results of the postconviction DNA testing are favorable to the petitioner, the court shall:

(i) if no postconviction proceeding has been previously initiated by the petitioner under § 7-102 of this article, open a postconviction proceeding under § 7-102 of this article; or

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

**(3) IF THE RESULTS OF THE POSTCONVICTION DNA TESTING ARE FAVORABLE TO THE PETITIONER, THE COURT SHALL HOLD A HEARING, REVIEW THE EVIDENCE, AND ORDER APPROPRIATE RELIEF.**”.

AMENDMENT NO. 3

On page 2, in line 2, strike “**6-204, AND 6-205**” and substitute “**AND 6-204 OF THE CRIMINAL LAW ARTICLE**”; in line 10, after “(E)” insert:

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

after line 11, insert:

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

in line 22, strike “**ARRESTED FOR OR**”; in line 25, after “**VIOLENCE;**” insert “**OR**”; strike in their entirety lines 27 and 28; and in line 30, strike “analysis” and substitute “**TESTING**”.

On page 3, in line 18, after “(3)” insert “(I)”; in line 20, strike “**ARRESTED FOR OR**”; in line 21, strike “(I)” and substitute “**1.**”; in line 22, after “**VIOLENCE;**” insert “**OR**”; in line 23, strike “(II)” and substitute “**2.**”; strike beginning with “; OR” in line 23 down through “**ARTICLE**” in line 25; and after line 25, 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 DNA RECORD AND THE DNA SAMPLE MAY BE EXPUNGED IN ACCORDANCE WITH § 2-511 OF THIS SUBTITLE.”.

On page 4, after line 2, insert:

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

in lines 3, 6, and 8, strike “(2)”, “(3)”, and “(4)”, respectively, and substitute “(3)”, “(4)”, and “(5)”, respectively; after line 13, 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; AND

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

in line 14, strike “(d)” and substitute “(E)”; in line 17, strike “(e)” and substitute “(F)”; after line 19 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.

**(D) A PERSON MAY NOT PERFORM A SEARCH OF THE STATEWIDE DNA DATA BASE FOR THE PURPOSE OF 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 21, strike “An” and substitute “**EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SUBSECTION, AN**”; in line 23, strike “ARREST” and substitute “**CHARGE**”; in line 25, strike “§ 10-105 or § 10-106” and substitute “**TITLE 10, SUBTITLE 1**”; in line 26, after “(b)” insert “**(1)**”; in lines 26 and 27, strike “§ 10-105 or § 10-106” and substitute “**TITLE 10, SUBTITLE 1**”; and after line 27, insert:

**“(2) IF A CRIMINAL ACTION BEGUN AGAINST AN INDIVIDUAL FOR WHICH COLLECTION OF A DNA SAMPLE IS REQUIRED DOES NOT RESULT IN THE CONVICTION OF THE INDIVIDUAL OR PROBATION BEFORE JUDGMENT, A DNA SAMPLE COLLECTED AS REQUIRED UNDER § 2-504 OF THIS SUBTITLE SHALL BE**

**DESTROYED AND A DNA RECORD GENERATED FROM THE SAMPLE SHALL BE EXPUNGED FROM THE STATE DNA DATA BASE.”.**

**AMENDMENT NO. 4**

On page 5, after line 9, insert:

**“2-511.1.**

**A DNA RECORD OR DNA SAMPLE THAT IS ORDERED TO BE EXPUNGED OR DESTROYED 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.**

**(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) EXPUNGEMENT HAS BEEN ORDERED.

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

(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.

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) ON OR BEFORE SEPTEMBER 1, 2009, AND ANNUALLY THEREAFTER, LOCAL LAW ENFORCEMENT AGENCIES SHALL REPORT TO THE DEPARTMENT 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

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

**2-514.**

(A) (1) ON OR BEFORE DECEMBER 31, 2009, AND ANNUALLY THEREAFTER, THE POLICE DEPARTMENT OR AN OFFICE OF THE SHERIFF, AS APPROPRIATE, OF EACH COUNTY AND THE POLICE DEPARTMENT OF BALTIMORE CITY SHALL REPORT TO THE OFFICE OF LEGISLATIVE AUDITS ON THE STATUS OF CRIME SCENE DNA COLLECTION AND ANALYSIS IN THEIR RESPECTIVE JURISDICTIONS.

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**(2) THE DEPARTMENT SHALL REPORT TO THE OFFICE OF LEGISLATIVE AUDITS ON THE STATUS OF CRIME SCENE DNA COLLECTION STATEWIDE, INCLUDING:**

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

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

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

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

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

**(VI) 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 AND SHERIFF OFFICES 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. 5

On page 5, before line 10, insert:

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

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.

8-201.

(c) (1) Subject to subsection (d) of this section, a court shall order DNA testing if the court finds that:

(i) a reasonable probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing; and

(ii) the requested DNA test employs a method of testing generally accepted within the relevant scientific community.

(Over)

(2) A court shall order a DNA data base search if the court finds that a reasonable probability exists that the DNA data base search has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing.

(h) (1) If the results of the postconviction DNA testing are unfavorable to the petitioner, the court shall dismiss the petition.

(2) If the results of the postconviction DNA testing are favorable to the petitioner, the court shall:

(i) if no postconviction proceeding has been previously initiated by the petitioner under § 7-102 of this article, open a postconviction proceeding under § 7-102 of this article; or

(ii) if a postconviction proceeding has been previously initiated by the petitioner under § 7-102 of this article, reopen a postconviction proceeding under § 7-104 of this article.

(3) If the results of the postconviction DNA testing are favorable to the petitioner, the court shall hold a hearing, review the evidence, and order appropriate relief.

#### 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] WAS charged ON OR BETWEEN JANUARY 1, 2009 AND DECEMBER 31, 2013 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.

(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 the sample is collected shall be given notice that the DNA record and the DNA sample may be expunged in accordance with § 2-511 of this subtitle.]

(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 by:

(i) the arresting agency; or

(ii) the booking facility responsible for processing the arrest;

(2) at a facility specified by the Secretary, if the individual is charged but not arrested;

(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;

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

[(5)] (3) 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 **ON OR BETWEEN JANUARY, 1, 2009 AND DECEMBER 31, 2013** with a crime [under subsection (a)(3) of this section] **OF VIOLENCE, AN ATTEMPT TO COMMIT A CRIME OF VIOLENCE, BURGLARY, OR AN ATTEMPT TO COMMIT BURGLARY** 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; and

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

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

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

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.

(d) A person may not perform a search of the statewide DNA data base for the purpose of 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.

2-511.

(a) Except as provided in subsection (b) of this subsection, an individual whose DNA record or profile is included in the statewide DNA data base system and whose DNA sample is stored in the statewide DNA repository may request that information be expunged on the grounds that the charge or conviction that resulted in the inclusion meets the expungement criteria specified in Title 10, Subtitle 1 of the Criminal Procedure Article.

(b) (1) Expungement proceedings shall be conducted in accordance with Title 10, Subtitle 1 of the Criminal Procedure Article.

(2) If a criminal action begun **ON OR BETWEEN JANUARY 1, 2009 AND DECEMBER 31, 2013** against an individual for which collection of a DNA sample is required does not result in the conviction of the individual or probation before judgment, a DNA sample collected [as required under § 2-504 of this subtitle] **BEFORE DECEMBER 31, 2013**, shall be destroyed and a DNA record generated from the sample shall be expunged from the State DNA data base.

(c) (1) On receiving an order of expungement for an individual whose DNA sample has been included in the Statewide DNA data base system, the DNA sample shall be expunged except that the order may not apply to other offenses committed by the individual who qualifies for inclusion in the statewide DNA data base system.

(2) A letter documenting expungement of the DNA sample and destruction of the DNA sample shall be sent by the director to the defendant and the defendant's attorney at the address specified by the court in the order of expungement.

(3) The Director shall adopt procedures to comply with this subsection.

2-511.1.

A DNA record or DNA sample that is ordered to be expunged or destroyed 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.

(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) expungement has been ordered.

(e) A person who violates subsection (a), (b), or (c) of this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

(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.

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

(Over)

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) On or before September 1, 2009, and annually thereafter, local law enforcement agencies shall report to the Department 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;

(vii) the prior offenses for which a person has been convicted where a match occurred.

2-514.

(a) (1) On or before December 31, 2009, and annually thereafter, the police department or an office of the Sheriff, as appropriate, of each county and the police department of Baltimore City shall report to the Office of Legislative Audits on the status of crime scene DNA collection and analysis in their respective jurisdictions.

(Over)

(2) The Department shall report to the Office of Legislative Audits on the status of crime scene DNA collection statewide, including:

(i) the crimes for which crime scene DNA samples are routinely collected;

(ii) the approximate number of crime scene DNA samples collected during the preceding year for each category of crime;

(iii) the average time between crime scene DNA sample collection and analysis;

(iv) the number of crime scene DNA samples collected and not analyzed at the time of the study;

(v) the number of crime scene DNA samples submitted to the statewide DNA data base during the preceding year; and

(vi) 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 and sheriff offices 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. 6

On page 5, strike lines 10 and 11 in their entirety and substitute:

“SECTION 3. 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 from whom a DNA sample is required to be collected in compliance with this Act and who refuses to voluntarily submit to collection of the sample.

SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of 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, Section 1 of this Act shall be abrogated and of no further force and effect.

SECTION 5. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect on the taking effect of the termination provision specified in Section 4 of this Act. If that termination provision takes effect, Section 1 of this Act shall be abrogated and of no further force and effect.

SECTION 6. AND BE IT FURTHER ENACTED, That, subject to the provisions of Section 5 of this Act, this Act shall take effect January 1, 2009.”.