

SENATE BILL 211

E4

8lr0220

By: **The President (By Request - Administration) and Senators Astle, Brinkley, Brochin, Colburn, DeGrange, Della, Edwards, Garagiola, Jones, Kasemeyer, King, Lenett, Madaleno, McFadden, Miller, ~~Mooney~~, Munson, Robey, ~~and Stone~~ Stone, Forehand, Jacobs, and Simonaire**

Introduced and read first time: January 18, 2008

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 22, 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 – Postconviction DNA Testing**

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
9 law enforcement data base or log for the purpose of identifying the source of
10 certain physical evidence; authorizing a certain petitioner to move for a new
11 trial on a certain ground; requiring a court to order a DNA data base search
12 under certain circumstances; requiring a court to order a new trial under
13 certain circumstances; authorizing the court to order a new trial under certain
14 circumstances; authorizing the court to release a petitioner on bond or certain
15 conditions in certain circumstances; requiring the court to hold a certain
16 hearing to determine a certain issue in certain circumstances; requiring the
17 court to enter a certain order under certain circumstances; authorizing a certain
18 appeal; requiring the collection of a DNA sample from a certain individual
19 ~~arrested for or~~ charged with certain criminal offenses in accordance with certain
20 regulations; requiring that a certain individual from whom a DNA sample is
21 collected be given a certain notice; providing that a DNA sample collected from
22 a crime scene or collected as sexual assault evidence at a hospital that a law
23 enforcement investigator considers relevant to the identification or exoneration

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 of a suspect shall be tested as soon as reasonably possible following collection of
2 the sample; requiring a certain DNA sample to be collected by a certain person
3 at the facility where ~~a certain arrest~~ certain charging is processed or at a facility
4 specified by the Director of the Crime Laboratory Division of the Department of
5 Public Safety and Correctional Services; providing that a certain DNA sample
6 may not be tested or placed in the statewide DNA data base system prior to a
7 certain arraignment date; providing that a certain DNA sample shall be
8 immediately destroyed and a certain notice shall be sent to a certain defendant
9 and counsel under certain circumstances; authorizing an individual to request
10 or consent to have a DNA sample processed prior to arraignment for a certain
11 purpose; altering a provision of law to provide that a certain DNA record and
12 sample shall be stored and maintained only by a certain crime laboratory, with
13 a certain exception; prohibiting a person from performing a certain search for a
14 certain purpose; altering certain requirements for expungement of certain DNA
15 samples in the statewide DNA data base system; requiring a certain
16 documentation notice to be sent to certain persons; requiring the Director of the
17 Crime Laboratory to adopt certain procedures; requiring DNA samples and
18 records generated as part of a criminal investigation or prosecution to be
19 destroyed or expunged automatically from every local, State, and federal data
20 base within a certain time period under certain circumstances; providing that a
21 DNA record or sample that qualifies for expungement and is matched at a
22 certain time may not be utilized for a determination of probable cause and is not
23 admissible in any proceeding for any reason; prohibiting a person from willfully
24 testing DNA for information that does not relate to the identification of
25 individuals in accordance with a certain provision of law; altering a certain
26 penalty and applying the penalty to a certain violation of this Act; requiring the
27 Department of State Police, on or before a certain date and annually thereafter,
28 to make a certain report to the General Assembly; requiring local law
29 enforcement agencies to report to the Department of State Police annually on or
30 before a certain date with certain information; requiring a certain report to be
31 posted on a certain website on or before a certain date each year; requiring the
32 police department of each county and Baltimore City and the Department of
33 State Police, on or before a certain date and annually thereafter, to make a
34 certain report to the Office of Legislative Audits; requiring the Office of
35 Legislative Audits to compile and evaluate certain information and submit an
36 annual report to the Governor and General Assembly; altering certain
37 definitions; defining certain terms; requiring the Secretary of State Police to
38 adopt certain regulations and procedures; providing for the effective date of
39 certain provisions of this Act; providing for the termination of certain provisions
40 of this Act; providing for a delayed effective date; and generally relating to the
41 statewide DNA data base system.

42 BY repealing and reenacting, with amendments,

43 Article – Criminal Procedure

44 Section 6–232 and 8–201

45 Annotated Code of Maryland

46 (2001 Volume and 2007 Supplement)

1 BY repealing and reenacting, with amendments,
 2 Article – Public Safety
 3 Section 2–501, 2–504, ~~and~~ 2–506, 2–511, and 2–512
 4 Annotated Code of Maryland
 5 (2003 Volume and 2007 Supplement)

6 BY adding to
 7 Article – Public Safety
 8 Section 2–513 and 2–514
 9 Annotated Code of Maryland
 10 (2003 Volume and 2007 Supplement)

11 BY repealing and reenacting, without amendments,
 12 Article – Criminal Procedure
 13 Section 6–232 and 8–201
 14 Annotated Code of Maryland
 15 (2001 Volume and 2007 Supplement)
 16 (As enacted by Section 1 of this Act)

17 BY repealing and reenacting, with amendments,
 18 Article – Public Safety
 19 Section 2–501 and 2–504
 20 Annotated Code of Maryland
 21 (2003 Volume and 2007 Supplement)
 22 (As enacted by Section 1 of this Act)

23 BY repealing and reenacting, without amendments,
 24 Article – Public Safety
 25 Section 2–506, 2–511, 2–512, 2–513, and 2–514
 26 Annotated Code of Maryland
 27 (2003 Volume and 2007 Supplement)
 28 (As enacted by Section 1 of this Act)

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

31 **Article – Criminal Procedure**

32 **6–232.**

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

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

3 **8-201.**

4 **(a) (1) In this section the following words have the meanings indicated.**

5 **(2) “Biological evidence” includes, but is not limited to, any blood, hair,**
6 **saliva, semen, epithelial cells, buccal cells, or other bodily substances from which**
7 **genetic marker groupings may be obtained.**

8 **(3) “DNA” means deoxyribonucleic acid.**

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

10 **(i) a municipal or county police department;**

11 **(ii) sheriff’s office;**

12 **(iii) the Maryland State Police;**

13 **(iv) any prosecuting authority;**

14 **(v) any state, university, county, or municipal police unit or**
15 **police force; and**

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

19 **(5) “Scientific identification evidence” means evidence that:**

20 **(i) is related to an investigation or prosecution that resulted in**
21 **a judgment of conviction;**

22 **(ii) is in the actual or constructive possession of a law**
23 **enforcement agency or agent of a law enforcement agency; and**

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

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

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

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

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

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

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

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

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

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

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

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

31 (1) the specific evidence to be tested;

32 (2) the method of testing to be used;

33 (3) the preservation of some of the sample for replicate testing and
34 analysis;

1 (4) the laboratory where the testing is to be performed, provided that
2 if the parties cannot agree on a laboratory, the court may approve testing at any
3 laboratory accredited by the American Society of Crime Laboratory Directors
4 (ASCLAD), the Laboratory Accreditation Board (LAB), or the National Forensic
5 Science Technology Center; and

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

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

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

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

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

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

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

22 (i) if no postconviction proceeding has been previously initiated
23 by the petitioner under § 7–102 of this article, open a postconviction proceeding under
24 § 7–102 of this article; [or]

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

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

32 (3) IF THE COURT FINDS THAT A SUBSTANTIAL POSSIBILITY DOES
33 NOT EXIST UNDER PARAGRAPH (2)(III) OF THIS SUBSECTION, THE COURT MAY

1 ORDER A NEW TRIAL IF THE COURT DETERMINES THAT THE ACTION IS IN THE
2 INTEREST OF JUSTICE.

3 (4) IF A NEW TRIAL IS GRANTED, THE COURT MAY ORDER THE
4 RELEASE OF THE PETITIONER ON BOND OR ON CONDITIONS THAT THE COURT
5 FINDS WILL REASONABLY ASSURE THE PRESENCE OF THE PETITIONER AT
6 TRIAL.

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

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

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

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

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

20 (II) THE COURT SHALL ORDER A POSTCONVICTION
21 HEARING TO BE CONDUCTED IN ACCORDANCE WITH SUBPARAGRAPH (III) OF
22 THIS PARAGRAPH IF:

23 1. THE COURT DETERMINES AT A HEARING UNDER
24 SUBPARAGRAPH (I) OF THIS PARAGRAPH THAT THE FAILURE TO PRODUCE
25 EVIDENCE WAS THE RESULT OF INTENTIONAL AND WILLFUL DESTRUCTION; AND

26 2. THE COURT MAKES A FINDING THAT:

27 A. THERE IS AN INFERENCE THAT THE RESULTS OF
28 THE POSTCONVICTION DNA TESTING WOULD HAVE BEEN FAVORABLE TO THE
29 PETITIONER; AND

30 B. A SUBSTANTIAL POSSIBILITY EXISTS THAT THE
31 PETITIONER WOULD NOT HAVE BEEN CONVICTED IF THE DNA TESTING HAD
32 BEEN KNOWN OR INTRODUCED AT TRIAL.

33 (III) 1. A COURT ORDERING A POSTCONVICTION
34 HEARING UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL OPEN THE

1 POSTCONVICTION HEARING UNDER § 7-102 OF THIS ARTICLE, IF NO
2 POSTCONVICTION HEARING HAS BEEN PREVIOUSLY INITIATED BY THE
3 PETITIONER UNDER § 7-102 OF THIS ARTICLE.

4 2. A COURT ORDERING A POSTCONVICTION
5 HEARING UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL REOPEN THE
6 POSTCONVICTION HEARING UNDER § 7-104 OF THIS ARTICLE, IF NO
7 POSTCONVICTION HEARING HAS BEEN PREVIOUSLY INITIATED BY THE
8 PETITIONER UNDER § 7-102 OF THIS ARTICLE.

9 [(3)] (4) The State shall make the scientific identification evidence
10 available to parties in the case under terms that are mutually agreed on between
11 them.

12 [(4)] (5) If an agreement cannot be reached, the party requesting the
13 testing may file an application in the circuit court that entered the judgment for an
14 order setting the terms under which the evidence will be made available for testing.

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

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

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

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

22 (2) The notification required in paragraph (1) of this subsection shall
23 include:

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

25 (ii) a statement that the State intends to dispose of the
26 evidence;

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

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

32 (3) Unless another law or court order requires the preservation of the
33 scientific identification evidence, if no objection to the disposition of the evidence is

1 filed within 120 days of the notice required under this subsection, the State may
2 dispose of the evidence.

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

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

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

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

22 (6) An appeal to the court of appeals may be taken from an order
23 entered under [subsection (c), (h)(2), or (j)(4) of] this section.

24 **Article – Public Safety**

25 2–501.

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

27 **(B) “BURGLARY” INCLUDES THE CRIMES ENUMERATED IN §§ 6–202,**
28 **~~6–203, 6–204, AND 6–205~~ AND 6–204 OF THE CRIMINAL LAW ARTICLE.**

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

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

1 [(c)] (D) “Crime Laboratory” means the [Crime Laboratory] **FORENSIC**
2 **SCIENCES** Division of the Department.

3 ~~(E)~~ ~~“CRIME~~

4 **(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
5 **SUBSECTION, “CRIME OF VIOLENCE” HAS THE MEANING STATED IN § 14-101 OF**
6 **THE CRIMINAL LAW ARTICLE.**

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

8 [(d)] (F) “Director” means the Director of the Crime Laboratory or the
9 Director’s designee.

10 [(e)] (G) “DNA” means deoxyribonucleic acid.

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

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

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

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

18 **(2) PROVIDED BY AN INDIVIDUAL WHO IS ~~ARRESTED FOR OR~~**
19 **CHARGED WITH:**

20 **(I) A CRIME OF VIOLENCE OR AN ATTEMPT TO COMMIT A**
21 **CRIME OF VIOLENCE; OR**

22 **(II) BURGLARY OR AN ATTEMPT TO COMMIT BURGLARY; OR**

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

25 [(2)] **(3)** submitted to the statewide DNA data base system for
26 ~~analysis~~ **TESTING** as part of a criminal investigation.

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

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

1 2-504.

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

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

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

10 (2) An individual who was convicted of a felony or a violation of §
 11 6-205 or § 6-206 of the Criminal Law Article on or before October 1, 2003 and who
 12 remains confined in a correctional facility on or after October 1, 1999, shall submit a
 13 DNA sample to the Department.

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

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

19 ~~(II)~~ 2. BURGLARY OR AN ATTEMPT TO COMMIT
 20 BURGLARY; OR

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

23 (II) AT THE TIME OF COLLECTION OF THE DNA SAMPLE
 24 UNDER THIS PARAGRAPH, THE INDIVIDUAL FROM WHOM A SAMPLE IS
 25 COLLECTED SHALL BE GIVEN NOTICE THAT THE DNA RECORD MAY BE
 26 EXPUNGED AND THE DNA SAMPLE DESTROYED IN ACCORDANCE WITH § 2-511
 27 OF THIS SUBTITLE.

28 (III) A DNA SAMPLE COLLECTED FROM A CRIME SCENE OR
 29 COLLECTED AS EVIDENCE OF SEXUAL ASSAULT AT A HOSPITAL THAT A LAW
 30 ENFORCEMENT INVESTIGATOR CONSIDERS RELEVANT TO THE IDENTIFICATION
 31 OR EXONERATION OF A SUSPECT SHALL BE TESTED AS SOON AS REASONABLY
 32 POSSIBLE FOLLOWING COLLECTION OF THE SAMPLE.

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

1 (1) AT THE FACILITY WHERE THE ~~ARREST~~ CHARGING OF THE
2 INDIVIDUAL IS PROCESSED BY:

3 (I) THE ARRESTING AGENCY; OR

4 (II) THE BOOKING FACILITY RESPONSIBLE FOR
5 PROCESSING THE ARREST;

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

8 [(1)] ~~(2)~~ (3) at the correctional facility where the individual is confined, if
9 the individual is confined in a correctional facility on or after October 1, 2003, or is
10 sentenced to a term of imprisonment on or after October 1, 2003;

11 [(2)] ~~(3)~~ (4) at a facility specified by the Director, if the individual is on
12 probation or is not sentenced to a term of imprisonment; or

13 [(3)] ~~(4)~~ (5) at a suitable location in a circuit court following the
14 imposition of sentence.

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

16 (1) designated by the Director; and

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

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

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

26 (I) THE DNA SAMPLE SHALL BE IMMEDIATELY
27 DESTROYED; AND

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

1 **(3) AN INDIVIDUAL MAY REQUEST OR CONSENT TO HAVE THE**
2 **INDIVIDUAL'S DNA SAMPLE PROCESSED PRIOR TO ARRAIGNMENT FOR THE**
3 **SOLE PURPOSE OF HAVING THE SAMPLE CHECKED AGAINST A SAMPLE THAT:**

4 **(I) HAS BEEN PROCESSED FROM THE CRIME SCENE OR THE**
5 **HOSPITAL; AND**

6 **(II) IS RELATED TO THE CHARGES AGAINST THE**
7 **INDIVIDUAL.**

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

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

14 2-506.

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

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

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

24 **(D) A PERSON MAY NOT PERFORM A SEARCH OF THE STATEWIDE DNA**
25 **DATA BASE FOR THE PURPOSE OF IDENTIFICATION OF AN OFFENDER IN**
26 **CONNECTION WITH A CRIME FOR WHICH THE OFFENDER MAY BE A BIOLOGICAL**
27 **RELATIVE OF THE INDIVIDUAL FROM WHOM THE DNA SAMPLE WAS ACQUIRED.**

28 2-511.

29 ~~(a) An individual whose DNA record or profile is included in the statewide~~
30 ~~DNA data base system and whose DNA sample is stored in the statewide DNA~~
31 ~~repository may request that information be expunged on the grounds that the ARREST~~
32 ~~OR conviction that resulted in the inclusion meets the expungement criteria specified~~
33 ~~in § 10-105 or § 10-106 of the Criminal Procedure Article.~~

1 ~~(b) Expungement proceedings shall be conducted in accordance with §~~
2 ~~10-105 or § 10-106 of the Criminal Procedure Article.~~

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

6 ~~(1) ON RECEIVING AN ORDER OF EXPUNGEMENT FOR AN~~
7 ~~INDIVIDUAL WHOSE DNA SAMPLE HAS BEEN INCLUDED IN THE STATEWIDE~~
8 ~~DNA DATA BASE SYSTEM, THE DNA SAMPLE SHALL BE EXPUNGED EXCEPT~~
9 ~~THAT THE ORDER MAY NOT APPLY TO OTHER OFFENSES COMMITTED BY THE~~
10 ~~INDIVIDUAL WHO QUALIFIES FOR INCLUSION IN THE STATEWIDE DNA DATA~~
11 ~~BASE SYSTEM.~~

12 ~~(2) A LETTER DOCUMENTING EXPUNGEMENT OF THE DNA~~
13 ~~SAMPLE AND DESTRUCTION OF THE DNA SAMPLE SHALL BE SENT BY THE~~
14 ~~DIRECTOR TO THE DEFENDANT AND THE DEFENDANT'S ATTORNEY AT THE~~
15 ~~ADDRESS SPECIFIED BY THE COURT IN THE ORDER OF EXPUNGEMENT.~~

16 ~~(3) THE DIRECTOR SHALL ADOPT PROCEDURES TO COMPLY WITH~~
17 ~~THIS SUBSECTION~~

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

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

25 (II) THE CONVICTION IS REVERSED OR VACATED; OR

26 (III) THE INDIVIDUAL IS GRANTED AN UNCONDITIONAL
27 PARDON.

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

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

1 **(C) ANY DNA RECORD EXPUNGED IN ACCORDANCE WITH THIS SECTION**
2 **SHALL BE EXPUNGED FROM EVERY DATA BASE INTO WHICH IT HAS BEEN**
3 **ENTERED, INCLUDING LOCAL, STATE, AND FEDERAL DATA BASES.**

4 **(D) AN EXPUNGEMENT OR DESTRUCTION OF SAMPLE UNDER THIS**
5 **SECTION SHALL OCCUR WITHIN 60 DAYS OF AN EVENT LISTED IN SUBSECTION**
6 **(A) OF THIS SECTION.**

7 **(E) A LETTER DOCUMENTING EXPUNGEMENT OF THE DNA RECORD**
8 **AND DESTRUCTION OF THE DNA SAMPLE SHALL BE SENT BY THE DIRECTOR TO**
9 **THE DEFENDANT AND THE DEFENDANT'S ATTORNEY AT THE ADDRESS**
10 **SPECIFIED BY THE COURT IN THE ORDER OF EXPUNGEMENT.**

11 **(F) A RECORD OR SAMPLE THAT QUALIFIES FOR EXPUNGEMENT OR**
12 **DESTRUCTION UNDER THIS SECTION AND IS MATCHED CONCURRENT WITH OR**
13 **SUBSEQUENT TO THE DATE OF QUALIFICATION FOR EXPUNGEMENT:**

14 **(1) MAY NOT BE UTILIZED FOR A DETERMINATION OF PROBABLE**
15 **CAUSE REGARDLESS OF WHETHER IT IS EXPUNGED OR DESTROYED TIMELY;**
16 **AND**

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

18 **(G) THE DIRECTOR SHALL ADOPT PROCEDURES TO COMPLY WITH THIS**
19 **SECTION.**

20 **2-512.**

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

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

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

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

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

3 **(2) DESTRUCTION HAS BEEN ORDERED.**

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

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

10 **2-513.**

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

16 **(II) ON OR BEFORE SEPTEMBER 1, 2009, AND ANNUALLY**
17 **THEREAFTER, LOCAL LAW ENFORCEMENT AGENCIES SHALL REPORT TO THE**
18 **DEPARTMENT WITH THE INFORMATION NECESSARY FOR THE DEPARTMENT TO**
19 **COMPLY WITH THE REQUIREMENTS OF SUBSECTION (B) OF THIS SECTION.**

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

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

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

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

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

31 **(I) INDIVIDUALS WHO HAVE BEEN CHARGED WITH A CRIME**
32 **OF VIOLENCE OR BURGLARY, OR ATTEMPT TO COMMIT A CRIME OF VIOLENCE**
33 **OR BURGLARY, AS DEFINED IN § 2-501 OF THIS SUBTITLE; AND**

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

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

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

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

10 (I) THE NUMBER OF MATCHES;

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

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

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

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

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

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

23 **2-514.**

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

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

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

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

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

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

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

16 **(VI) THE NUMBER OF CRIME SCENE DNA SAMPLES,**
17 **INCLUDING SEXUAL ASSAULT EVIDENCE, COLLECTED BY HOSPITALS IN THE**
18 **COUNTY DURING THE PRECEDING YEAR.**

19 **(B) THE OFFICE OF LEGISLATIVE AUDITS SHALL COMPILE AND**
20 **EVALUATE THE INFORMATION REPORTED BY THE POLICE DEPARTMENTS AND**
21 **SHERIFF OFFICES UNDER SUBSECTION (A) OF THIS SECTION AND SUBMIT AN**
22 **ANNUAL SUMMARY REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH §**
23 **2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY.**

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

26 **Article – Criminal Procedure**

27 6-232.

28 **(a) In a criminal case, when all of the charges against the defendant are**
29 **disposed of by acquittal, dismissal, probation before judgment, nolle prosequi, or stet,**
30 **the court shall advise the defendant that the defendant may be entitled to expunge the**
31 **records and any DNA sample and DNA record relating to the charge or charges**
32 **against the defendant in accordance with Title 10, Subtitle 1 of this article and Title 2,**
33 **Subtitle 5 of the Public Safety Article.**

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

3 8–201.

4 **(a)** **(1)** In this section the following words have the meanings indicated.

5 **(2)** “Biological evidence” includes, but is not limited to, any blood, hair,
6 saliva, semen, epithelial cells, buccal cells, or other bodily substances from which
7 genetic marker groupings may be obtained.

8 **(3)** “DNA” means deoxyribonucleic acid.

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

10 **(i)** a municipal or county police department;

11 **(ii)** sheriff’s office;

12 **(iii)** the Maryland State Police;

13 **(iv)** any prosecuting authority;

14 **(v)** any state, university, county, or municipal police unit or
15 police force; and

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

19 **(5)** “Scientific identification evidence” means evidence that:

20 **(i)** is related to an investigation or prosecution that resulted in
21 a judgment of conviction;

22 **(ii)** is in the actual or constructive possession of a law
23 enforcement agency or agent of a law enforcement agency; and

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

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

1 (1) for DNA testing of scientific identification evidence that the State
2 possesses as provided in subsection (j) of this section and that is related to the
3 judgment of conviction; or

4 (2) for a search by a law enforcement agency of a law enforcement
5 data base or log for the purpose of identifying the source of physical evidence used for
6 DNA testing.

7 (c) A petitioner may move for a new trial under this section on the grounds
8 that the conviction was based on unreliable scientific identification evidence and a
9 substantial possibility exists that the petitioner would not have been convicted
10 without the evidence.

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

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

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

18 (2) A court shall order a data base search by a law enforcement agency
19 if the court finds that a reasonable probability exists that the data base search will
20 produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction
21 or sentencing.

22 (e) (1) A petitioner shall notify the State in writing of the filing of a
23 petition under this section.

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

26 (f) If the court orders DNA testing under subsection (d) of this section, the
27 court in its order may issue orders the court considers appropriate, including
28 designation of any of the following:

29 (1) the specific evidence to be tested;

30 (2) the method of testing to be used;

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

33 (4) the laboratory where the testing is to be performed, provided that
34 if the parties cannot agree on a laboratory, the court may approve testing at any
35 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 (g) (1) Except as provided in paragraph (2) of this subsection, DNA
5 testing ordered under subsection (d) of this section shall be conducted as soon as
6 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 (h) (1) Except as provided in paragraph (2) of this subsection, the
10 petitioner shall pay the cost of DNA testing ordered under subsection (d) of this
11 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 (i) (1) If the results of the postconviction DNA testing are unfavorable to
16 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;

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 exists that the
26 petitioner would not have been convicted if the DNA testing results had been known or
27 introduced at trial, order a new trial.

28 (3) If the court finds that a substantial possibility does not exist under
29 paragraph (2)(iii) of this subsection, the court may order a new trial if the court
30 determines that the action is in the interests of justice.

31 (4) If a new trial is granted, the court may order the release of the
32 petitioner on bond or on conditions that the court finds will reasonably assure the
33 presence of the petitioner at trial.

34 (j) (1) The State shall preserve scientific identification evidence that:

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

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

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

7 (3) (i) If the State is unable to produce scientific identification
8 evidence described in paragraph (1) of this subsection, the court shall hold a hearing to
9 determine whether the failure to produce evidence was the result of intentional and
10 willful destruction.

11 (ii) The court shall order a post conviction hearing to be
12 conducted in accordance with subparagraph (iii) of this paragraph if:

13 1. the court determines at a hearing under
14 subparagraph (i) of this paragraph that the failure to produce evidence was the result
15 of intentional and willful destruction; and

16 2. the court makes a finding that:

17 A. there is an inference that the results of the
18 postconviction DNA testing would have been favorable to the petitioner; and

19 B. a substantial possibility exists that the petitioner
20 would not have been convicted if the DNA testing had been known or introduced at
21 trial.

22 (iii) 1. A court ordering a postconviction hearing under
23 subparagraph (ii) of this paragraph shall open the postconviction hearing under § 7–
24 102 of this article, if no postconviction hearing has been previously initiated by the
25 petitioner under § 7–102 of this article.

26 2. A court ordering a postconviction hearing under
27 subparagraph (ii) of this paragraph shall reopen the postconviction hearing under
28 § 7–104 of this article, if no postconviction hearing has been previously initiated by the
29 petitioner under § 7–102 of this article.

30 (4) The State shall make the scientific identification evidence
31 available to parties in the case under terms that are mutually agreed on between
32 them.

33 (5) If an agreement cannot be reached, the party requesting the
34 testing may file an application in the circuit court that entered the judgment for an
35 order setting the terms under which the evidence will be made available for testing.

1 (k) (1) The State may dispose of scientific identification evidence before
2 the expiration of the time period described in subsection (j) of this section if the State
3 notifies the following persons:

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

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

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

8 (2) The notification required in paragraph (1) of this subsection shall
9 include:

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

11 (ii) a statement that the State intends to dispose of the
12 evidence;

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

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

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

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

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

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

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

3 (2) provided by an individual who [is] WAS charged ON OR AFTER
4 JANUARY 1, 2009, BUT BEFORE JANUARY 1, 2014, with:

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

7 (ii) burglary or an attempt to commit burglary; or

8 (3) submitted to the statewide DNA data base system for testing as
9 part of a criminal investigation.

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

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

14 2–504.

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

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

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

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

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

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

31 2. burglary or an attempt to commit burglary.

1 (ii) At the time of collection of the DNA sample under this
2 paragraph, the individual from whom the sample is collected shall be given notice that
3 the DNA record may be expunged and the DNA sample destroyed in accordance with §
4 2-511 of this subtitle.

5 (iii) A DNA sample collected from a crime scene or collected as
6 sexual assault evidence at a hospital that a law enforcement investigator deems
7 relevant to the identification or exoneration of a suspect shall be tested as soon as
8 reasonably possible following collection of the sample.]

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

11 (1) [at the facility where the charging of the individual is processed by:

12 (i) the arresting agency; or

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

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

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

19 [(4) (2) at a facility specified by the Director, if the individual is on
20 probation or is not sentenced to a term of imprisonment; or

21 [(5) (3) at a suitable location in a circuit court following the
22 imposition of sentence.

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

24 (1) designated by the Director; and

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

27 (d) (1) A DNA sample collected from an individual charged **ON OR AFTER**
28 **JANUARY 1, 2009, BUT BEFORE JANUARY 1, 2014,** with a crime [under subsection
29 (a)(3) of this section] **OF VIOLENCE, AN ATTEMPT TO COMMIT A CRIME OF**
30 **VIOLENCE, BURGLARY, OR AN ATTEMPT TO COMMIT BURGLARY** may not be tested
31 or placed in the statewide DNA data base system prior to the first scheduled
32 arraignment date unless requested or consented to by the individual as provided in
33 paragraph (3) of this subsection.

1 (2) If a criminal charge is determined to be unsupported by probable
2 cause:

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

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

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

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

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

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

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

17 2-506.

18 (a) Each DNA record of identification characteristics that results from DNA
19 testing under this subtitle shall be stored and maintained only by the Crime
20 Laboratory in the statewide DNA data base system, except as necessary to participate
21 in CODIS.

22 (b) Each DNA sample obtained under this subtitle shall be stored securely
23 and maintained only by the Crime Laboratory in the statewide DNA repository.

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

26 (d) A person may not perform a search of the statewide DNA data base for
27 the purpose of identification of an offender in connection with a crime for which the
28 offender may be a biological relative of the individual from whom the DNA sample was
29 acquired.

30 2-511.

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

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

3 (ii) the conviction is reversed or vacated; or

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

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

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

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

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

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

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

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

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

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

26 2-512.

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

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

1 (c) A person may not willfully test a DNA sample for information that does
2 not relate to the identification of individuals as specified in this subtitle.

3 (d) A person may not willfully fail to destroy a DNA sample for which, under
4 this subtitle:

5 (1) notification has been sent stating that the DNA sample has been
6 destroyed; or

7 (2) destruction has been ordered.

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

11 (f) A person who violates subsection (d) of this section is guilty of a
12 misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a
13 fine not exceeding \$1,000.

14 2-513.

15 (a) (1) (i) On or before December 31, 2009, and annually thereafter,
16 the Department shall report to the Governor and, in accordance with § 2-1246 of the
17 State Government Article, the General Assembly, on the status of the statewide DNA
18 data base system as specified in subsection (b) of this section.

19 (ii) On or before September 1, 2009, and annually thereafter,
20 local law enforcement agencies shall report to the Department with the information
21 necessary for the Department to comply with the requirements of subsection (b) of this
22 section.

23 (2) The annual report shall be posted on the Department website on or
24 before December 31 of each year.

25 (b) The annual report shall include:

26 (1) total expenses incurred for the operation and management of the
27 DNA data base and DNA testing program, specifying the actual and human resource
28 costs of DNA collection and transport, DNA analyses, data base operation and
29 oversight, and State laboratory personnel and maintenance;

30 (2) total funding provided by the State to each forensic crime
31 laboratory in the preceding year;

32 (3) a statistical analysis of the racial demographics of:

- 1 (i) individuals who have been charged with a crime of violence
2 or burglary, or attempt to commit a crime of violence or burglary, as defined in § 2-501
3 of this subtitle; and
- 4 (ii) victims of crimes alleged to have been committed by those
5 individuals, when known;
- 6 (4) the number of biological samples collected from individuals;
- 7 (5) the sufficiency of protocols and procedures adopted to prevent the
8 unlawful testing of DNA and ensure the expungement of DNA as required under this
9 subtitle; and
- 10 (6) a detailed analysis of the investigations aided by DNA profiles that
11 includes:
- 12 (i) the number of matches;
- 13 (ii) the number of matches that resulted in investigation of the
14 person identified;
- 15 (iii) the number of matches that resulted in formal charges;
- 16 (iv) the number of matches that resulted in convictions;
- 17 (v) the number of matches that resulted in exonerations;
- 18 (vi) the number of matches that resulted in convictions for
19 persons not already incarcerated; and
- 20 (vii) the prior offenses for which a person has been convicted
21 where a match occurred.
- 22 2-514.
- 23 (a) (1) On or before December 31, 2009, and annually thereafter, the
24 police department or the office of the Sheriff, as appropriate, of each county and the
25 police department of Baltimore City shall report to the Office of Legislative Audits on
26 the status of crime scene DNA collection and analysis in their respective jurisdictions.
- 27 (2) The Department shall report to the Office of Legislative Audits on
28 the status of crime scene DNA collection statewide, including:
- 29 (i) the crimes for which crime scene DNA samples are routinely
30 collected;
- 31 (ii) the approximate number of crime scene DNA samples
32 collected during the preceding year for each category of crime;

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

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

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

7 (vi) the number of crime scene DNA samples, including sexual
8 assault evidence, collected by hospitals in the county during the preceding year.

9 (b) The Office of Legislative Audits shall compile and evaluate the
10 information reported by the police departments and sheriff offices under subsection (a)
11 of this section and submit an annual summary report to the Governor and, in
12 accordance with § 2-1246 of the State Government Article, the General Assembly.

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

15 SECTION 3. AND BE IT FURTHER ENACTED, That, the Secretary of State
16 Police shall adopt regulations and procedures to comply with this Act, including
17 regulations relating to approved methods for obtaining a DNA sample from a person
18 from whom a DNA sample is required to be collected in compliance with this Act and
19 who refuses to voluntarily submit to collection of the sample.

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

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

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