

HOUSE BILL 1209

E4

0lr3065
CF SB 848

By: **Delegate Shetty**

Introduced and read first time: February 7, 2020

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – DNA Collection, Records, Analysis, and Reporting**

3 FOR the purpose of prohibiting the collection of a certain DNA sample without the consent
4 of a certain individual, subject to certain exceptions; prohibiting a person from
5 performing a search of the statewide DNA data base or statewide DNA repository
6 for the purpose of identification of an offender in connection with a crime for which
7 the offender may be a biological relative of the individual from whom the DNA
8 sample was acquired; providing that a person may perform a search of certain
9 genealogical repositories or data bases for the purpose of aiding a certain
10 investigation of a law enforcement agency under certain circumstances; prohibiting
11 the issuance of a warrant, subpoena, or court order to compel access to a certain
12 individual's DNA-related data from a certain service if certain individuals have not
13 consented to the search of their DNA record or DNA sample by a law enforcement
14 agency; prohibiting a person from continuing a genetic genealogy investigation
15 through a certain service if a certain search of certain DNA-related data does not
16 return a match that is within a certain degree of relatedness; requiring a person to
17 provide a full report of their genetic investigation, as well as record and report
18 certain findings to the investigating law enforcement agency; requiring that a certain
19 request for certain information relating to the DNA profile of an individual in the
20 statewide DNA data base system be accompanied by a warrant, subpoena, or court
21 order; requiring certain DNA samples and records to be destroyed or expunged under
22 certain circumstances; adding to the information required to be reported by the
23 Department of State Police in a certain annual report; defining a certain term;
24 altering a certain definition; and generally relating to DNA analysis.

25 BY repealing and reenacting, with amendments,
26 Article – Public Safety
27 Section 2–501, 2–504, 2–506, 2–508(a)(1), 2–511(a), and 2–513(b)
28 Annotated Code of Maryland
29 (2018 Replacement Volume and 2019 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

Article – Public Safety

2–501.

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

(b) “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) “DIRECT-TO-CONSUMER GENETIC GENEALOGY SERVICE” MEANS AN ENTITY THAT TESTS DNA SAMPLES OR STORES DNA RECORDS THAT ARE SUBMITTED BY THE PUBLIC FOR ANY PURPOSE.

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

[(g)] (H) “DNA” means deoxyribonucleic acid.

[(h)] (I) (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)] (J) “DNA sample” means a body fluid or tissue sample **THAT IS CAPABLE OF UNDERGOING DNA ANALYSIS, INCLUDING ONE** that is:

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

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

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

or

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

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

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

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

2–504.

(A) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A DNA SAMPLE MAY NOT BE COLLECTED FROM AN INDIVIDUAL WITHOUT THE KNOWLEDGE AND CONSENT OF THE INDIVIDUAL WHO IS TO PROVIDE THE DNA SAMPLE.

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

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

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

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

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

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

2. burglary or an attempt to commit burglary.

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

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

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

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

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

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

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

[(c)] (D) 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)] (E) (1) A DNA sample collected from an individual charged with a crime under subsection **[(a)(3)] (B)(3)** of this section may not be tested or placed in the statewide DNA data base system prior to the first scheduled arraignment date unless requested or consented to by the individual as provided in paragraph (3) of this subsection.

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

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

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

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

1 against a sample that:

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

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

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

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

9 2–506.

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

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

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

17 (d) A person may not perform a search of the statewide DNA data base **OR THE**
18 **STATEWIDE DNA REPOSITORY** for the purpose of identification of an offender in
19 connection with a crime for which the offender may be a biological relative of the individual
20 from whom the DNA sample was acquired.

21 **(E) A PERSON MAY PERFORM A SEARCH OF THE STATEWIDE DNA DATA**
22 **BASE, STATEWIDE DNA REPOSITORY, DNA OR GENEALOGICAL DATA FROM A**
23 **DIRECT-TO-CONSUMER GENETIC GENEALOGY SERVICE, OR OTHER GENEALOGICAL**
24 **REPOSITORY OR DATA BASE FOR THE PURPOSE OF AIDING THE INVESTIGATION OF**
25 **A LAW ENFORCEMENT AGENCY IF:**

26 **(1) THE INDIVIDUAL, SUBJECT TO THE PROVISIONS OF § 2–504(B) OF**
27 **THIS SUBTITLE, HAS CONSENTED TO THE SEARCH OF THE INDIVIDUAL’S DNA**
28 **RECORD, DNA SAMPLE, OR OTHER DNA-RELATED DATA BY A LAW ENFORCEMENT**
29 **AGENCY; AND**

30 **(2) THE SEARCH IS INTENDED TO IDENTIFY AN INDIVIDUAL WHO HAS**
31 **COMMITTED:**

32 **(I) A CRIME OF VIOLENCE; OR**

(II) BURGLARY OR ATTEMPTED BURGLARY.

(F) A WARRANT, SUBPOENA, OR COURT ORDER MAY NOT BE ISSUED TO COMPEL ACCESS TO AN INDIVIDUAL'S DNA RECORD, DNA SAMPLE, OR OTHER DNA-RELATED DATA FROM A DIRECT-TO-CONSUMER GENETIC GENEALOGY SERVICE IF THE INDIVIDUAL DOES NOT CONSENT TO THE SEARCH BY A LAW ENFORCEMENT AGENCY.

(G) A PERSON MAY NOT CONTINUE A GENETIC GENEALOGY INVESTIGATION THROUGH A DIRECT-TO-CONSUMER GENETIC GENEALOGY SERVICE IF A SEARCH OF A DNA RECORD, DNA SAMPLE, OR OTHER DNA-RELATED DATA DOES NOT RETURN A MATCH THAT IS WITHIN A THIRD DEGREE OF RELATEDNESS.

(H) A PERSON SHALL PROVIDE A FULL REPORT OF THE PERSON'S GENETIC GENEALOGY INVESTIGATION, AS WELL AS RECORD AND REPORT ANY FINDINGS IN SOURCE CATEGORIES OF NONGENETIC INVESTIGATORY MATERIAL, INCLUDING CERTIFICATES OF BIRTH, CRIMINAL RECORDS, OR SOCIAL MEDIA, TO THE INVESTIGATING LAW ENFORCEMENT AGENCY.

2-508.

(a) (1) On written or electronic request, **ACCOMPANIED BY A WARRANT, SUBPOENA, OR COURT ORDER**, after verification by the Director that a match has been made in the population data base, the typing results and personal identification information of the DNA profile of an individual in the statewide DNA data base system may be made available to:

(i) federal, State, or local law enforcement agencies;

(ii) crime laboratories that have been approved by the Director and that serve federal, State, and local law enforcement agencies;

(iii) a State's Attorney's office or other prosecutorial office; and

(iv) a person participating in a judicial proceeding in which the data base information may be offered as evidence.

2-511.

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

(i) a criminal action begun against the individual relating to the

1 crime does not result in a conviction of the individual;

2 (ii) the conviction is finally reversed or vacated and no new trial is
3 permitted; [or]

4 (iii) the individual is granted an unconditional pardon; **OR**

5 **(IV) THE DNA SAMPLES OR RECORDS DO NOT MATCH AN**
6 **EVIDENCE SAMPLE FROM A CRIME SCENE.**

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

10 2–513.

11 (b) The annual report shall include, for the preceding calendar year:

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

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

18 (3) a statistical analysis of the racial demographics of individuals who have
19 been charged with a crime of violence or burglary, or attempt to commit a crime of violence
20 or burglary, as defined in § 2–501 of this subtitle;

21 (4) the number of DNA samples collected from individuals charged with a
22 crime of violence or burglary, or attempt to commit a crime of violence or burglary, as
23 defined in § 2–501 of this subtitle;

24 (5) the sufficiency of protocols and procedures adopted to prevent the
25 unlawful testing of DNA and ensure the expungement of DNA as required under this
26 subtitle; [and]

27 **(6) AN EXPLANATION OF ALL DNA TESTING PROCEDURES USED BY**
28 **THE STATE;**

29 **(7) A LIST OF ALL DNA DATA BASES USED BY THE STATE; AND**

30 **[(6)] (8)** a detailed analysis of the investigations aided by DNA profiles
31 that includes:

- 1 (i) the number of matches;
- 2 (ii) the number of matches that resulted in investigation of the
3 person identified;
- 4 (iii) the number of matches that resulted in formal charges;
- 5 (iv) the number of matches that resulted in convictions;
- 6 (v) the number of matches that resulted in exonerations;
- 7 (vi) the number of matches that resulted in convictions for persons
8 not already incarcerated; and
- 9 (vii) the prior offenses for which a person has been convicted where a
10 match occurred.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2020.