

HOUSE BILL 249

E4, E2
SB 967/23 – JPR

(PRE-FILED)

4lr4562
CF 4lr4563

By: **Chair, Judiciary Committee (By Request – Departmental – State Police)**

Requested: September 28, 2023

Introduced and read first time: January 10, 2024

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 27, 2024

CHAPTER _____

1 AN ACT concerning

2 **Public Safety – Statewide DNA Database System, DNA Collection, and Penalties**
3 **– Alterations**

4 FOR the purpose of requiring a certain DNA sample to be collected in a certain manner
5 from an individual who is required to register as a sex offender; requiring a DNA
6 sample to be collected by a certain individual or at a certain location under certain
7 circumstances; requiring a custodial agency or correctional facility to ensure a DNA
8 sample is collected in a certain manner; prohibiting a DNA sample from being tested
9 and placed in a certain statewide DNA database system until certain conditions are
10 met; prohibiting an individual from refusing to provide a DNA sample as required
11 for collection in the database system; requiring certain DNA samples or DNA records
12 to be destroyed ~~or~~ and expunged under certain circumstances; and generally relating
13 to the statewide DNA database system and the collection of DNA samples.

14 BY repealing and reenacting, without amendments,
15 Article – Public Safety
16 Section 2–501
17 Annotated Code of Maryland
18 (2022 Replacement Volume and 2023 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article – Public Safety
21 Section 2–504 and 2–511
22 Annotated Code of Maryland

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.



(2022 Replacement Volume and 2023 Supplement)

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) “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 database system.

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

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

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

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

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

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

4 (3) submitted to the statewide DNA database system for testing as part of
5 a criminal investigation.

6 (j) "Statewide DNA database system" means the DNA record system
7 administered by the Department for identification purposes.

8 (k) "Statewide DNA repository" means the State repository of DNA samples
9 collected under this subtitle.

10 2-504.

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

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

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

18 (2) An individual who was convicted of a felony or a violation of § 6-205 or
19 § 6-206 of the Criminal Law Article on or before October 1, 2003 and who remains confined
20 in a correctional facility on or after October 1, 1999, shall submit a DNA sample to the
21 Department.

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

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

26 2. burglary or an attempt to commit burglary.

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

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

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

(4) AN INDIVIDUAL REQUIRED TO REGISTER AS A SEX OFFENDER UNDER § 11-704 OF THE CRIMINAL PROCEDURE ARTICLE SHALL HAVE A DNA SAMPLE COLLECTED BY THE SUPERVISING AUTHORITY WHERE THE INDIVIDUAL IS INITIALLY REQUIRED TO REGISTER.

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

(1) BY AN INDIVIDUAL WHO IS:

(I) DESIGNATED BY THE DIRECTOR; AND

(II) TRAINED IN THE COLLECTION PROCEDURES THAT THE CRIME LABORATORY USES; AND

(2) (I) at the time the individual is charged, [at a facility specified by the Secretary] BY AN EMPLOYEE OF A BOOKING FACILITY OR THE ARRESTING AGENCY;

(II) AFTER A CONVICTION OF A QUALIFYING CRIME UNDER SUBSECTION (A)(1) OF THIS SECTION:

[(2)] 1. BY AN EMPLOYEE OF A CORRECTIONAL FACILITY AT THE TIME OF INTAKE 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)] 2. at a facility specified by the Director, if the individual is on probation or is not sentenced to a term of imprisonment; or

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

(III) AT THE TIME OF REGISTRATION AS A SEX OFFENDER UNDER § 11-704 OF THE CRIMINAL PROCEDURE ARTICLE, BY THE SUPERVISING AUTHORITY WHERE THE INDIVIDUAL IS INITIALLY REQUIRED TO REGISTER, IF APPLICABLE.

[(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.]

(C) BEFORE RELEASING AN INDIVIDUAL FROM CUSTODY, THE CUSTODIAL AGENCY OR CORRECTIONAL FACILITY SHALL ENSURE THAT THE INDIVIDUAL'S DNA SAMPLE HAS BEEN COLLECTED IN ACCORDANCE WITH THIS SECTION.

(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 database system [prior to the first scheduled arraignment date]:

(I) UNTIL:

1. A DETERMINATION IS MADE THAT PROBABLE CAUSE EXISTS FOR A QUALIFYING CRIME IN ACCORDANCE WITH THE MARYLAND RULES;

2. THE INDIVIDUAL HAS BEEN ARRESTED FOR A QUALIFYING CHARGE IN ACCORDANCE WITH AN ARREST WARRANT;

3. AN INFORMATION IS FILED BY A STATE'S ATTORNEY FOR A QUALIFYING CRIME IN ACCORDANCE WITH § 4-102 OF THE CRIMINAL PROCEDURE ARTICLE; OR

4. AN INDICTMENT IS RETURNED BY A GRAND JURY CHARGING THE INDIVIDUAL WITH A QUALIFYING CRIME; OR

(II) 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] **A PROBABLE CAUSE DETERMINATION** for the sole purpose of having the sample checked against a sample that:

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

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

(e) A second DNA sample shall be taken if needed to obtain sufficient DNA for the statewide DNA database 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.

(G) (1) AN INDIVIDUAL MAY NOT REFUSE TO PROVIDE A DNA SAMPLE IN ACCORDANCE WITH THIS SECTION.

(2) AN INDIVIDUAL WHO VIOLATES ~~THIS SECTION~~ PARAGRAPH (1) OF THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$10,000.

(H) (1) AN EMPLOYEE WHO ATTEMPTS TO COLLECT A DNA SAMPLE IN ACCORDANCE WITH THIS SECTION, BUT IS UNABLE TO COLLECT THE SAMPLE BECAUSE THE INDIVIDUAL WHO IS REQUIRED TO SUBMIT THE SAMPLE REFUSES TO DO SO, SHALL BE DEEMED TO HAVE DISCHARGED THE EMPLOYEE'S DUTY UNDER THIS SECTION.

(2) A REFUSAL TO SUBMIT A DNA SAMPLE AS REQUIRED UNDER THIS SECTION SHALL BE REFERRED TO THE STATE'S ATTORNEY'S OFFICE FOR PROSECUTION UNDER SUBSECTION (G) OF THIS SECTION.

2-511.

(a) (1) Except as provided in paragraph [(2)] **(3)** of this subsection, [any] AN INDIVIDUAL'S DNA samples and records [generated as part of a criminal investigation or prosecution] **THAT ARE COLLECTED IN ACCORDANCE WITH § 2-504(A)(3) OF THIS SUBTITLE** shall be destroyed or expunged automatically from the [State] STATEWIDE DNA database SYSTEM if:

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

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

(iii) the individual is granted an unconditional pardon.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A DNA SAMPLE COLLECTED, BUT NOT TESTED, FROM AN INDIVIDUAL CHARGED WITH A CRIME UNDER § 2-504(A)(3) OF THIS SUBTITLE SHALL BE DESTROYED ~~OR~~ AND EXPUNGED IF:

(I) AT LEAST 2 YEARS HAVE PASSED FROM THE DATE OF COLLECTION OF THE DNA SAMPLE; AND

(II) THE DNA SAMPLE FAILED TO MEET THE REQUIREMENTS FOR TESTING.

(3) A DNA sample or DNA record may not be destroyed or expunged automatically from the [State] STATEWIDE DNA database if:

(I) the criminal action is put on the stet docket [or];

(II) the individual receives probation before judgment; OR

(III) THE TRIAL FOR A QUALIFYING CHARGE UNDER § 2-504(A)(3) OF THIS SUBTITLE REMAINS PENDING FOR ANY REASON.

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

(c) Any DNA record expunged in accordance with this section shall be expunged from every database into which it has been entered, including local, State, and federal databases.

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

(e) [A letter] WRITTEN NOTICE documenting expungement of the DNA record and destruction of the DNA sample shall, IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE DIRECTOR, 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.

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

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

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

(2) “DNA sample” has the meaning stated in § 2–501 of the Public Safety Article.

(3) “Statewide DNA database system” has the meaning stated in § 2–501 of the Public Safety Article.

(b) For any DNA sample collected in accordance with § 2–504(a)(3) of the Public Safety Article before the effective date of this Act, the Forensic Sciences Division in the Department of State Police shall, on or before October 1, 2027, destroy and expunge the record of any DNA sample that has not been tested or placed in the statewide DNA database system on or before November 1, 2026, because the DNA sample failed to meet the requirements of Title 2, Subtitle 5 of the Public Safety Article, as that subtitle existed before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2024.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.