

SENATE BILL 967

E4, E2

3lr3003

By: **Senator Muse**

Introduced and read first time: February 28, 2023

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

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

4 FOR the purpose of altering the circumstances in which a certain DNA sample must be
5 collected from an individual charged with or convicted of certain offenses for storage
6 in the statewide DNA database system within the Department of State Police;
7 providing that a DNA sample collected from an individual charged with certain
8 offenses may not be placed in the database system until after a certain time;
9 prohibiting an individual from refusing to provide a DNA sample as required for
10 collection in the database system; and generally relating to the statewide DNA
11 database system and the collection of DNA samples.

12 BY repealing and reenacting, with amendments,
13 Article – Public Safety
14 Section 2–504
15 Annotated Code of Maryland
16 (2022 Replacement Volume)

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

19 **Article – Public Safety**

20 2–504.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(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) **(1) [In] SUBJECT TO SUBSECTION (C) OF THIS SECTION AND IN accordance with regulations adopted under this subtitle, FOR EACH INDIVIDUAL CHARGED WITH AN OFFENSE UNDER SUBSECTION (A)(2) OF THIS SECTION, 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.]

(I) FOR AN INDIVIDUAL WHO IS RELEASED AFTER BOOKING, BY A LAW ENFORCEMENT OFFICER OR AN EMPLOYEE OF THE DISTRICT COURT BEFORE THE INDIVIDUAL IS RELEASED; OR

(II) FOR AN INDIVIDUAL WHO IS DETAINED AFTER BOOKING, BY AN EMPLOYEE OF A BOOKING FACILITY, DETENTION CENTER, OR CORRECTIONAL FACILITY AT THE TIME OF INTAKE.

(2) SUBJECT TO SUBSECTION (C) OF THIS SECTION AND IN ACCORDANCE WITH REGULATIONS ADOPTED UNDER THIS SUBTITLE, FOR EACH INDIVIDUAL CONVICTED OF AN OFFENSE UNDER SUBSECTION (A)(1) OF THIS SECTION, EACH DNA SAMPLE REQUIRED TO BE COLLECTED UNDER THIS SECTION SHALL BE COLLECTED:

(I) FOR AN INDIVIDUAL WHO IS SENTENCED TO IMPRISONMENT, BY AN EMPLOYEE OF THE CORRECTIONAL FACILITY AT THE TIME OF INTAKE TO THE CORRECTIONAL FACILITY WHERE THE INDIVIDUAL IS CONFINED;

(II) FOR AN INDIVIDUAL WHO IS PLACED ON SUPERVISED PROBATION, BY A PROBATION OFFICER AT THE TIME THE INDIVIDUAL INITIALLY MEETS WITH THE PROBATION OFFICER; OR

(III) FOR AN INDIVIDUAL WHO IS PLACED ON UNSUPERVISED PROBATION OR WHOSE SENTENCE REQUIRES THE INDIVIDUAL TO REGISTER AS A SEX OFFENDER UNDER § 11-704 OF THE CRIMINAL PROCEDURE ARTICLE, BY A BAILIFF AT THE TIME OF SENTENCING AND AT A SUITABLE LOCATION IN THE DISTRICT COURT OR CIRCUIT COURT.

(3) BEFORE RELEASING AN INDIVIDUAL FROM CUSTODY, THE RELEASING ENTITY SHALL ENSURE THAT THE INDIVIDUAL'S DNA SAMPLE HAS BEEN COLLECTED IN ACCORDANCE WITH THIS SECTION.

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

(1) designated by the Director; and

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

(d) (1) A DNA sample collected from an individual charged with a crime under subsection [(a)(3)] (A)(2) of this section may not be tested or placed in the statewide DNA database system [prior to the first scheduled arraignment date unless] UNTIL:

(I) A DISTRICT COURT COMMISSIONER OR A JUDGE OF THE DISTRICT COURT OR CIRCUIT COURT HAS DETERMINED THAT THE CHARGE IS SUPPORTED BY PROBABLE CAUSE;

(II) AN INDICTMENT IS RETURNED BY A GRAND JURY CHARGING THE INDIVIDUAL WITH A CRIME SPECIFIED UNDER SUBSECTION (A)(2) OF THIS SECTION; OR

(III) 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 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] BEING CONVICTED AND SENTENCED TO PROBATION 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 SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

(I) FOR A FIRST OFFENSE, IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING \$1,000 OR BOTH; AND

(II) FOR A SECOND OR SUBSEQUENT OFFENSE, IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$2,500 OR BOTH.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2023.