

# HOUSE BILL 411

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By: **Delegates Anderson, Alston, Braveboy, Carter, Clippinger, Conaway, Gaines, Glenn, Haynes, Howard, Jones, McDermott, Nathan-Pulliam, Oaks, Pena-Melnyk, B. Robinson, Smigiel, Stukes, Tarrant, V. Turner, Vallario, Vaughn, Waldstreicher, Walker, Washington, and Zucker**

Introduced and read first time: February 1, 2012

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **DNA Evidence – Postconviction Review – Continuation of Reforms**

3 FOR the purpose of authorizing a certain person to file a petition for a search by a law  
4 enforcement agency of a law enforcement data base or log for the purpose of  
5 identifying the source of certain physical evidence; authorizing a certain  
6 petitioner to move for a new trial on a certain ground; requiring a court to order  
7 a DNA data base search under certain circumstances; requiring a court to order  
8 a new trial under certain circumstances; authorizing the court to order a new  
9 trial under certain circumstances; authorizing the court to release a petitioner  
10 on bond or on certain conditions in certain circumstances; requiring the court to  
11 hold a certain hearing to determine a certain issue in certain circumstances;  
12 requiring the court to enter a certain order and infer certain results under  
13 certain circumstances; requiring a court ordering a certain postconviction  
14 hearing to open the postconviction hearing under a certain provision of law  
15 under certain circumstances; requiring a court ordering a certain postconviction  
16 hearing to reopen the postconviction hearing under a certain provision of law  
17 under certain circumstances; authorizing a certain appeal; providing for the  
18 effective date of this Act; and generally relating to postconviction review of DNA  
19 evidence.

20 BY repealing and reenacting, with amendments,

21 Article – Criminal Procedure

22 Section 8–201

23 Annotated Code of Maryland

24 (2008 Replacement Volume and 2011 Supplement)

25 (As enacted by Chapter 337 of the Acts of the General Assembly of 2008)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Criminal Procedure**

4 8–201.

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

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

9 (3) “DNA” means deoxyribonucleic acid.

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

11 (i) a municipal or county police department;

12 (ii) sheriff’s office;

13 (iii) the Maryland State Police;

14 (iv) any prosecuting authority;

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

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

20 (5) “Scientific identification evidence” means evidence that:

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

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

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

28 (b) Notwithstanding any other law governing postconviction relief, a person  
29 who is convicted of a violation of § 2–201, § 2–204, § 2–207, or §§ 3–303 through 3–306  
30 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)] (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**  
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)] (E)** of this section, a court shall  
13 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)] (D)** of this  
29 section, the court in its order may issue orders the court considers appropriate,  
30 including designation of any of the following:

31           **(1)** the specific evidence to be tested;

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

1                   (3)     the preservation of some of the sample for replicate testing and  
2 analysis;

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

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

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

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

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

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

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

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

24                           (i)     if no postconviction proceeding has been previously initiated  
25 by the petitioner under § 7–102 of this article, open a postconviction proceeding under  
26 § 7–102 of this article; **[or]**

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

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

1           **(3) IF THE COURT FINDS THAT A SUBSTANTIAL POSSIBILITY DOES**  
2 **NOT EXIST UNDER PARAGRAPH (2)(III) OF THIS SUBSECTION, THE COURT MAY**  
3 **ORDER A NEW TRIAL IF THE COURT DETERMINES THAT THE ACTION IS IN THE**  
4 **INTEREST OF JUSTICE.**

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

9           **[(i)] (J) (1) The State shall preserve scientific identification evidence**  
10 **that:**

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

12                   **(ii) is secured in connection with an offense described in**  
13 **subsection (b) of this section.**

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

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

22                   **(II) IF THE COURT DETERMINES AT A HEARING UNDER**  
23 **SUBPARAGRAPH (I) OF THIS PARAGRAPH THAT THE FAILURE TO PRODUCE**  
24 **EVIDENCE WAS THE RESULT OF INTENTIONAL AND WILLFUL DESTRUCTION, THE**  
25 **COURT SHALL:**

26                           **1. ORDER A POSTCONVICTION HEARING TO BE**  
27 **CONDUCTED IN ACCORDANCE WITH SUBPARAGRAPH (III) OF THIS PARAGRAPH;**  
28 **AND**

29                           **2. AT THE POSTCONVICTION HEARING, INFER THAT**  
30 **THE RESULTS OF THE POSTCONVICTION DNA TESTING WOULD HAVE BEEN**  
31 **FAVORABLE TO THE PETITIONER.**

32                           **(III) 1. A COURT ORDERING A POSTCONVICTION**  
33 **HEARING UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL OPEN THE**  
34 **POSTCONVICTION HEARING UNDER § 7-102 OF THIS ARTICLE, IF NO**

1 POSTCONVICTION HEARING HAS BEEN PREVIOUSLY INITIATED BY THE  
2 PETITIONER UNDER § 7-102 OF THIS ARTICLE.

3 2. A COURT ORDERING A POSTCONVICTION  
4 HEARING UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH SHALL REOPEN THE  
5 POSTCONVICTION HEARING UNDER § 7-104 OF THIS ARTICLE, IF A  
6 POSTCONVICTION HEARING HAS BEEN PREVIOUSLY INITIATED BY THE  
7 PETITIONER UNDER § 7-102 OF THIS ARTICLE.

8 [(3)] (4) The State shall make the scientific identification evidence  
9 available to parties in the case under terms that are mutually agreed on between  
10 them.

11 [(4)] (5) If an agreement cannot be reached, the party requesting the  
12 testing may file an application in the circuit court that entered the judgment for an  
13 order setting the terms under which the evidence will be made available for testing.

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

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

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

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

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

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

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

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

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

31 (3) Unless another law or court order requires the preservation of the  
32 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 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
25 January 1, 2014, contingent on the taking effect of the termination provision of  
26 Chapter 337 of the Acts of the General Assembly of 2008, and if the termination  
27 provision in Chapter 337 does not become effective, this Act shall be null and void  
28 without the necessity of further action by the General Assembly.