

# SENATE BILL 677

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CF 7lr2842

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By: **Senators Kelley, Conway, Ferguson, Guzzone, Lee, McFadden, Muse, Ramirez, Rosapepe, and Smith**

Introduced and read first time: February 3, 2017

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **DNA Testing – Postconviction Review**

3 FOR the purpose of clarifying the group of persons who may file a certain petition for  
4 postconviction DNA testing or a database or log search; requiring a court to order a  
5 new trial under certain circumstances for certain classes of persons filing for  
6 postconviction DNA testing and having received favorable results; altering the  
7 remedy for intentional and willful destruction of DNA evidence; defining a certain  
8 term; and generally relating to postconviction review of DNA evidence.

9 BY repealing and reenacting, with amendments,  
10 Article – Criminal Procedure  
11 Section 8–201  
12 Annotated Code of Maryland  
13 (2008 Replacement Volume and 2016 Supplement)

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

16 **Article – Criminal Procedure**

17 8–201.

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

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

22 (3) **“CONVICTION” MEANS:**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (I) A VERDICT OF GUILTY REACHED AS A RESULT OF A TRIAL;

2 (II) A PLEA OF GUILTY;

3 (III) AN ALFORD PLEA; OR

4 (IV) A PLEA OF NOLO CONTENDERE.

5 (4) "DNA" means deoxyribonucleic acid.

6 [(4)](5) "Law enforcement agency" means any of the following:

7 (i) a municipal or county police department;

8 (ii) sheriff's office;

9 (iii) the Maryland State Police;

10 (iv) any prosecuting authority;

11 (v) any state, university, county, or municipal police unit or police  
12 force; and

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

15 [(5)](6) "Scientific identification evidence" means evidence that:

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

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

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

23 (b) Notwithstanding any other law governing postconviction relief, a person who  
24 is convicted of a crime of violence under § 14–101 of the Criminal Law Article may file a  
25 petition:

26 (1) for DNA testing of scientific identification evidence that the State  
27 possesses that is related to the judgment of conviction; or

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

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

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

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

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

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

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

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

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

24                     (1)     the specific evidence to be tested;

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

26                     (3)     the preservation of some of the sample for replicate testing and  
27 analysis;

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

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

1 (g) (1) Except as provided in paragraph (2) of this subsection, DNA testing  
2 ordered under subsection (d) of this section shall be conducted as soon as practicable.

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

5 (h) (1) Except as provided in paragraph (2) of this subsection, the petitioner  
6 shall pay the cost of DNA testing ordered under subsection (d) of this section.

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

9 (i) (1) If the results of the postconviction DNA testing are unfavorable to the  
10 petitioner, the court shall dismiss the petition.

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

13 (i) if no postconviction proceeding has been previously initiated by  
14 the petitioner under § 7–102 of this article, open a postconviction proceeding under § 7–102  
15 of this article;

16 (ii) if a postconviction proceeding has been previously initiated by  
17 the petitioner under § 7–102 of this article, reopen a postconviction proceeding under  
18 § 7–104 of this article; [or]

19 (iii) **IN THE CASE OF A PETITIONER WHO WAS CONVICTED BY**  
20 **MEANS OF A GUILTY VERDICT REACHED AS A RESULT OF TRIAL**, on a finding that a  
21 substantial possibility exists that the petitioner would not have been convicted if the DNA  
22 testing results had been known or introduced at trial, order a new trial; **OR**

23 **(IV) IN THE CASE OF A PETITIONER WHO WAS CONVICTED BY**  
24 **MEANS OF A GUILTY PLEA, AN ALFORD PLEA, OR A PLEA OF NOLO CONTENDERE, ON**  
25 **A FINDING THAT A SUBSTANTIAL POSSIBILITY EXISTS THAT THE DNA EVIDENCE**  
26 **SUBSTANTIALLY OR SIGNIFICANTLY UNDERMINES THE FACTS SET FORTH BY THE**  
27 **STATE AS THE BASIS OF A PLEA AGREEMENT, 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 determines  
30 that the action is in the interest 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 presence  
33 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 a violation of § 2–201, § 2–204,  
3 § 2–207, or § 3–303 through § 3–306 of the Criminal Law Article.

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

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

11 (ii) If the court determines at a hearing under subparagraph (i) of  
12 this paragraph that the failure to produce evidence was the result of intentional and willful  
13 destruction, the court shall[:

14 1. order a postconviction hearing to be conducted in  
15 accordance with subparagraph (iii) of this paragraph; and

16 2. at the postconviction hearing infer that the results of the  
17 postconviction DNA testing would have been favorable to the petitioner.

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

22 2. A court ordering a postconviction hearing under  
23 subparagraph (ii) of this paragraph shall reopen the postconviction hearing under § 7–104  
24 of this article, if a postconviction hearing has been previously initiated by the petitioner  
25 under § 7–102 of this article] **INFER THAT THE RESULTS OF THE POSTCONVICTION  
26 DNA TESTING WOULD HAVE BEEN FAVORABLE TO THE PETITIONER IN ANY  
27 PROCEEDING TO DETERMINE WHETHER THE PETITIONER SHOULD BE GRANTED  
28 RELIEF UNDER SUBSECTION (1)(2) OF THIS SECTION.**

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

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

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

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

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

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

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

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

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

33 (5) If the court orders that representative samples be made available under  
34 paragraph (4)(ii) of this subsection, the court shall further order that the samples be

1 obtained by a qualified crime scene technician acting on behalf of the party seeking to  
2 obtain the samples or by the law enforcement agency in possession of the evidence, which  
3 also shall preserve and store the representative samples until the representative samples  
4 are released to the custody of a DNA testing facility.

5 (6) An appeal to the court of appeals may be taken from an order entered  
6 under this section.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 2017.