

No. 12-207

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In The  
Supreme Court of the United States

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STATE OF MARYLAND,  
*Petitioner,*

*v.*

ALONZO JAY KING JR.,  
*Respondent.*

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**On Petition for Writ of Certiorari  
To the Court of Appeals of Maryland**

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**BRIEF *AMICI CURIAE* MARYLAND LEGISLATORS IN  
SUPPORT OF PETITIONER**

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## INTEREST OF *AMICI CURIAE*<sup>1</sup>

Amici are Maryland legislators from both political parties.

**Kathryn L. Afzali** has been a Member of the Maryland House of Delegates since 2011. She represents District 4A (Frederick County).

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**Charles E. Barkley** has been a Member of the Maryland House of Delegates since 1999. He represents District 39 (Montgomery County).

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**John W. E. Cluster, Jr.** has been a Member of the Maryland House of Delegates since 2011, and was a Member from 2003 to 2007. He represents District 8 (Baltimore County).

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<sup>1</sup> Counsel of record for both parties were timely notified of the intention to file this brief. Letters of consent by the parties to the filing of this brief have been lodged with the Clerk of this Court. No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* made any monetary contribution to the preparation or submission of this brief.

**Richard F. Colburn** has been a Member of the Maryland Senate since 1995. He represents District 37 (Caroline, Dorchester, Talbot and Wicomico Counties).

**Steven J. DeBoy, Sr.** has been a Member of the Maryland House of Delegates since 2003. He represents District 12A (Baltimore and Howard Counties).

**Donald B. Elliott** has been a Member of the Maryland House of Delegates since 1987. He represents District 4B (Carroll and Frederick Counties).

**Brian J. Feldman** has been a Member of the Maryland House of Delegates since 2003. He represents District 15 (Montgomery County).

**Barbara A. Frush** has been a Member of the Maryland House of Delegates since 1995. She represents District 21 (Anne Arundel and Prince George's Counties).

**Jolene Ivey** has been a Member of the Maryland House of Delegates since 2007. She represents District 47 (Prince George's County).

**Kevin Kelly** has been a Member of the Maryland House of Delegates since 1999, and was a Member from 1987 to 1995. He represents District 1B (Allegany County).

**Nicholaus R. Kipke** has been a Member of the Maryland House of Delegates since 2007. He represents District 31 (Anne Arundel County).

**Michael A. McDermott** has been a Member of the Maryland House of Delegates since 2011. He represents District 38B (Wicomico and Worcester Counties).

**Joseph J. Minnick** has been a Member of the Maryland House of Delegates since 1995, and was a member from 1988 to 1991. He represents District 6 (Baltimore County).

**Frank S. Turner** has been a Member of the Maryland House of Delegates since 1995. He represents District 13 (Howard County).

**Cathleen M. Vitale** has been a Member of the Maryland House of Delegates since 2011. She represents District 33A (Anne Arundel County).

**C.T. Wilson** has been a Member of the Maryland House of Delegates since 2011. He represents District 28 (Charles County).

### SUMMARY OF ARGUMENT

The opinion of the Court of Appeals of Maryland in *Alonzo Jay King, Jr. v. State of Maryland*, 42 A.3d 549 (Md. 2012) declared unconstitutional a vitally important, and broadly supported, section of the Maryland DNA Collection Act, passed in 2008 by the Maryland General Assembly. The section at issue requires the collection of DNA samples from individuals charged with specified crimes. Md. Code Ann., Pub. Safety Art., § 2-504(a)(3) (2011 Repl. Vol.).

*Amici* agree with the arguments for certiorari set forth in the petition. For the benefit of this Court,

and based on the Maryland General Assembly's unique role as the entity responsible for the overturned law, *amici* respectfully submit this brief to highlight two points.

First, the law addresses an issue of paramount importance and received broad support from Maryland legislators, the Maryland Governor and local government executives, and Maryland law enforcement authorities.

Second, the fact that the current law contains a "sunset provision" providing for expiration after December 31, 2013 in no way undermines the importance of reviewing the Court of Appeals' decision and the issues it addresses. To the contrary, it highlights the importance of this Court's review: if this Court does not review the far-reaching, erroneous decision of the Court of Appeals (which unquestionably conflicts with other federal and state appellate decisions), the General Assembly will be unable to extend or re-enact the disputed provision in the lone legislative session that will occur before its expiration. If, as *amici* believe, the Court of Appeals' decision misconceives the governing constitutional principles, the General Assembly's ability to extend and enact this important law protecting public safety through accurate crime detection should not be wrongly foreclosed by a mistaken interpretation of what the Constitution prohibits.

**ARGUMENT****I. THE SECTION OF THE MARYLAND DNA COLLECTION ACT AT ISSUE PASSED WITH THE OVERWHELMING SUPPORT OF MARYLAND LEGISLATORS, EXECUTIVES, AND LAW ENFORCEMENT OFFICIALS**

In 1994, the Maryland General Assembly passed the DNA Collection Act. Md. Code Ann., Pub. Safety Art., § 2-504 (2011 Repl. Vol.). In 2008, acting pursuant to its fundamental obligation to provide a fair and effective criminal justice system, the General Assembly amended the Act to allow for the collection of DNA samples from persons charged with certain qualifying offenses. *Id.* § 2-504(a)(3). The 2008 amendments allow law enforcement officials to identify individuals accused of serious crimes, to resolve open criminal investigations more efficiently, and to pursue repeat offenders more effectively.

Maryland legislators overwhelmingly supported the 2008 amendments. The Maryland Senate and House of Delegates passed the amendments by sweeping margins, with bipartisan support. The Maryland Senate approved the bill by a 33 to 10 vote; it had been approved by the Judicial Proceedings Committee on a 9 to 2 vote. The House of Delegates likewise passed the bill with overwhelming support. The Delegates approved the bill on a 131 to 8 vote; the House Judiciary Committee had approved it on a 19 to 3 vote. S.B. 211/H.B. 370, 425th Leg., Legislative History (Md. 2008); S.B. 211, 425th Leg., Judicial Proceedings

Comm. Voting Record (Md. 2008); H.B. 370, 425th Leg., Judiciary Comm. Voting Record (Md. 2008).

In addition to legislators, Maryland government executives strongly supported the amendments. Governor Martin O'Malley urged the Senate and House of Delegates to pass their respective bills, stating that the "foremost responsibility of government is to protect its citizens from violent crime" and arguing that the modification of Maryland's DNA law was "necessary if we hope to significantly decrease" the occurrence of such crimes. Statement of Governor Martin O'Malley, Governor, State of Md., to the Senate Judicial Proceedings Comm. on S.B. 211 (Feb. 13, 2008) (App. 1a-5a). Local government officials throughout the state, including the Mayor of Baltimore, the Prince George's County government, and executive officials from various municipalities similarly supported the bill. *See, e.g.*, Letter from Sheila Dixon, Mayor, City of Baltimore, to Senator Brian E. Frosh (Mar. 11, 2008) (App. 6a-8a); Legislative Position of the Prince George's Cnty. Gov't on S.B. 211 to the Senate Judicial Proceedings Comm. (Feb. 13, 2008) (App. 9a-10a); *see also* Testimony of the Md. Municipal League to the Senate Judicial Proceedings Comm. on S.B. 211 (Feb. 13, 2008) (App. 11a-12a).

Moreover, Maryland law enforcement officials—those on the front lines in combating and investigating crime—also vigorously supported the 2008 amendments. City police departments, county sheriffs, state's attorneys, and various associations representing the law enforcement community advocated passage. *See, e.g.*, Letter from A. R. Smith,

City of Hagerstown Dep't of Police, Chief, to Senator Brian E. Frosh and Other Members of the Senate Judicial Proceedings Comm. (Jan. 30, 2008) (App. 13a-14a); Letter from David A. Goad, Sheriff, Allegany Cnty., to Senator Brian E. Frosh (Jan. 30, 2008) (App. 15a-16a); Letter from John J. McCarthy, State's Attorney, Montgomery Cnty., and Ike Leggett, Cnty. Exec., Montgomery Cnty., to Senator Brian E. Frosh and Delegate Joseph F. Vallario (Mar. 7, 2008) (App. 17a-19a); Letter from John "Rodney" Bartlett, Jr., President, Fraternal Order of Police, Md. State Lodge, to Senator Brian E. Frosh (Feb. 27, 2008) (App. 20a-21a). Colonel Terrence Sheridan, Superintendent of the Maryland State Police, testified in the Senate and the House of Delegates, emphasizing that it was the "body's moral obligation to allow for the expansion of a technology which has proven itself capable of providing the criminal justice system with conclusive evidence of guilt and more importantly, of innocence." Statement of Colonel Terrence Sheridan, Superintendent, Md. State Police, to the Senate Judicial Proceedings Comm. on S.B. 211 (Feb. 13, 2008) (App. 22a to 29a).

The provision found unconstitutional by the Court of Appeals thus was adopted with broad support by the Maryland legislators, government executives, and law enforcement authorities charged with the solemn duty of providing the public with a sound and responsible criminal justice system.

## II. THE LAW'S "SUNSET PROVISION" UNDERScores THE NEED FOR THIS COURT'S REVIEW

Section 2-504(a)(3) of the Maryland DNA Collection Act contains a "sunset provision" that will cause the portion of the Act to lapse after December 31, 2013. Md. Code Ann., Pub. Safety Art., § 2-504(a)(3) (2011 Repl. Vol.). The Court of Appeals' opinion, if not reviewed, will erroneously prevent the Assembly from extending and enacting the law at issue, notwithstanding its importance, its broad public support, and its constitutionality.

Each year, the Maryland General Assembly convenes annually for one ninety-day legislative session between early January and early April. *See* Md. Const. art. III, § 14. But for the Court of Appeals' opinion, the General Assembly will consider (and, in *amici's* respectful opinion, reauthorize) the section of the Act at issue in this case during the 2013 legislative session. Given the sweeping margins by which the Senate and House of Delegates passed the 2008 amendments, the strong support from Maryland executives and law enforcement officials, and the publicly beneficial results from the law's enactment, it is reasonable to assume that the General Assembly would vote to extend and reauthorize the provision if so permitted. At the very least, the Assembly would be able to give full consideration to this critical public issue.

Unfortunately, the Court of Appeals has severely and unjustifiably circumscribed the legislative authority of the General Assembly on this issue through its opinion in *King*. In so doing, the

Court of Appeals has left the General Assembly incapacitated, unable to provide Maryland's criminal justice system with a strongly supported tool found constitutional by courts throughout the country.<sup>2</sup> The Court of Appeals' decision, moreover, will undermine national law enforcement efforts—also contrary to the intent of the state legislators, the government executives, and the state and local law enforcement authorities who worked for passage—because DNA samples collected by the state are entered into the Federal Bureau of Investigation's nationwide DNA database.

By granting the State of Maryland's Petition for Writ of Certiorari, this Court can consider the important and recurring issues raised by the Court of Appeals' decision. Granting the Writ of Certiorari will allow the Court to provide essential guidance to Maryland legislators, law enforcement officials, and judges regarding the scope of the Fourth Amendment and the scope of the Assembly's permissible discretion on this important issue, which now has been sharply truncated by the Court of Appeals. Such guidance is similarly required outside Maryland, by lawmakers in the twenty-six other states that currently provide for the collection of

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<sup>2</sup> The decision in *King* conflicts with decisions of the U. S. Courts of Appeals for the Third and Ninth Circuits as well as the Virginia Supreme Court, which have upheld statutes similar to Maryland's DNA Collection Act. See *United States v. Mitchell*, 652 F.3d 387 (3d Cir. 2011), *cert. denied*, 132 S. Ct. 1741 (2012); *Haskell v. Harris*, 669 F.3d 1049, *reh'g en banc granted*, 686 F.3d 1121 (9th Cir. 2012); *Anderson v. Commonwealth*, 650 S.E.2d 702 (Va. 2007), *cert. denied sub nom. Anderson v. Virginia*, 553 U.S. 1054 (2008).

DNA samples from arrestees, and in the states currently considering adopting such legislation. Particularly given the severely restricted position in which the Maryland General Assembly now has been placed, and the urgency with which guidance is needed nationwide, this case is the proper vehicle for resolving this crucial Fourth Amendment question.

### CONCLUSION

For the foregoing reasons, and those stated in the Petition, *amici* respectfully request that the Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

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September 17, 2012

## **APPENDIX**



**STATE OF MARYLAND  
OFFICE OF THE GOVERNOR**

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GOVERNOR**

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100 STATE CIRCLE  
ANNAPOLIS, MARYLAND 21401 -1925  
410-974-3901  
TOLL FREE: 1-800-811-8336  
TTY USERS CALL VIA MD RELAY**

**Statement of Governor Martin O'Malley**

**SENATE BILL 211**

**Public Safety - Statewide DNA Data Base  
System - Crimes of  
Violence, Burglary, and Breaking and Entering  
a Motor Vehicle - Sample  
Collections on Arrest**

**Senate Judicial Proceedings Committee**

**February 13, 2008**

The foremost responsibility of government is to protect its citizens from violent crime and the predators who seek to destroy the safety and security of our communities. Swift apprehensions

and the just convictions of violent felons increase public safety throughout our State. The expanded use of forensic DNA by state and local law enforcement officials across the Country has not only led to the apprehension and conviction of many violent offenders, it has exonerated the wrongly convicted.

In order to enhance our law enforcement efforts to resolve open cases, I ask for your support of Senate Bill 211. This legislation, which was introduced last year by Senator Norman Stone, will require the collection of DNA samples from offenders charged with a crime of violence or burglary at the time of their arrest. This evolution in Maryland's DNA law is necessary if we hope to significantly decrease violent crime.

Our legislation is modeled after Virginia's successful DNA program, enabling Maryland to join 11 other states who currently collect DNA from violent crime suspects at the time of arrest. It is important to note that Virginia's statute was recently upheld as constitutional by Virginia's Supreme Court in Anderson v. Commonwealth of Virginia, 650 S.E. 2d 702 (2007). Their highest Court cited, adopted and expanded the Maryland Court of Appeals holding in State v. Raines, 383 Md. 1,857 (2004), which stated, "The purpose of [the DNA profile] is akin to that of a fingerprint. As such, appellee and other incarcerated individuals have little, if any, expectation of privacy in their identity." The Court went on to state that "(f)ingerprinting an arrested suspect has long been considered a part of the routine booking process. Similarly, the taking of a DNA sample by minimally intrusive means is justified by the legitimate

interest of the government in knowing for an absolute certainty the identity of the person arrested, in knowing whether he is wanted elsewhere, and in ensuring his identification in the event he flees prosecution.” Anderson, 706. I am confident our statute is constitutional and when reviewed by our courts, it will survive scrutiny.

By expanding Maryland’s DNA Database, law enforcement will be able to more efficiently resolve open criminal investigations, pursue repeat offenders, and save valuable time pursuing false leads by effectively eliminating suspects from ongoing investigations. It is estimated that by adding the arrestees of violent crimes and burglaries to our current DNA database, we will add approximately 31,000 samples to our database per year. DNA is a powerful tool for state and local law enforcement; the anticipated \$2.6 million per annum required to improve our efforts will pay significant dividends in saved lives.

Criminal history records reveal that repeat offenders typically have multiple violent felony arrests before a conviction is secured. Virginia has learned that approximately 40 percent of its solved violent crimes were perpetrated by those with previous property crime convictions.

In our State, the trends have been no different. For example, one need only look at the case of career criminal, John Doe who has been arrested 16 times since 1976. Under our proposed legislation, DNA could have been collected at the time of 10 of his arrests, some of which were sex offenses. Due to DNA, Baltimore County charged John Doe with a

murder and a rape in 2000 and another rape in 2004 - all crimes dating from 1986. It seems that John Doe may have left his DNA at the scenes of these crimes allegedly committed 20 years ago.

Unfortunately, since those heinous crimes were committed, the following opportunities to end John Doe's violent crime spree were missed:

- John Doe was arrested for assault with intent to murder in 1986.
- John Doe was arrested for robbery.
- John Doe was arrested for rape and robbery.
- John Doe was arrested for a 1st degree sex offense.
- John Doe was arrested for robbery with a deadly weapon.

Under the proposed legislation, law enforcement would have been able to obtain a match using DNA samples collected from John Doe, thus avoiding these above mentioned missed opportunities. Were we able to take a DNA fingerprint at the time of these five arrests, John *Doe* would have been charged with murder and rape years earlier – avoiding at least one violent crime against a Maryland citizen.

We are making progress in the utilization of DNA technology. In the past year, Maryland's DNA backlog of 2,300 offender samples has been moved from dormancy on the shelves of our State's crime lab into action in the Federal Bureau of Investigation's Combined DNA Index System. Due to the cleared backlog, access to offenders' samples is available to federal, state, and local law enforcement

officials. Through the creation of DNA Stat, our database is fully functioning as an effective crime prevention tool. Crucial positions in the crime lab that for years have been vacant and unfunded have been filled; \$800,000 has been spent to fund long term equipment needs. A total of 4,682 new samples have been obtained from convicted offenders and 97% of the Division of Corrections inmates who owed samples were collected. As a result the number of positive DNA matches or hits increased by 51% in 2007 from 2006, with a total of 287 hits.

This increase in hits has assisted local and state police in apprehending many violent criminals. In Baltimore County, 24 rape cases were cleared because of DNA leading to the arrest or charging of 15 suspects. In Montgomery County, the DNA profile of a convicted offender matched a profile of a 1995 rape, the identification of the perpetrator was verified and an arrest warrant has been issued. Howard County, Prince George's County and Baltimore City have also resolved open crimes as a result of the enhanced DNA Database. Simply put, the minimally intrusive step of swabbing DNA at the time of conviction saves lives; taking DNA at the time of arrest, will save even more lives.

In conclusion, I respectfully request your support of Senate Bill 2 11.

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SHEILA DIXON  
*Mayor*  
*250 City Hall*  
*Baltimore, Maryland 21202*

March 11,2008

Senator Brian E. Frosh  
110 College Avenue  
Annapolis, Maryland 21401-1991

Dear Senator Frosh:

We are making tremendous strides in the reduction of violent crime in Baltimore City and DNA continues to be an important tool to protect our citizens. When a violent offender is identified and taken off our streets, we have prevented future crimes and victims. I have reviewed Senate Bill 211, and I believe that the sampling of DNA of persons who are charged with crimes of violence will be a useful too that will help improve public safety.

Commissioner Frederick H. Bealefeld III informs me that as a result of Maryland's DNA backlog elimination, we have had more DNA CODIS hits on cold cases than ever before. Out of 287 total DNA CODIS hits in 2007,124 have benefited

investigations in Baltimore. Using DNA, police are quickly and accurately determining if individuals are linked to any cold cases.

Senate Bill 211 targets repeat violent offenders like Alphonso Hill, a serial rapist who attacked victims in Baltimore for thirty (30) years. Hill has been charged with over thirty (30) crimes, including murders, rapes, robberies, and burglaries. Had we been able to take his DNA upon arrest for an assault with intent to rob in 1979, it would have been matched with evidence recovered from his first rape in 1978. Mr. Hill would have been convicted much earlier in his criminal career and the victims he later attacked would have been spared.

This bill limits DNA sampling to arrests for crimes of violence and the types of property crimes offenders like Hill commit early in their criminal careers. This bill does not target those persons who are Released Without Charges (RWOC) in Baltimore. Of 3553 RWOC cases from October 2007 through January 2008, no arrestees would have qualified to give their DNA under the proposed legislation.

Fingerprints are taken from every arrestee in Baltimore City. This bill requires DNA, the fingerprint of the 21st Century, to be taken upon arrest for violent crimes and property crimes that are statistically shown to be precursors to violence. Victims will be spared, valuable investigative resources will not be wasted pursuing false suspects, and those who are wrongfully accused of serious crimes will be freed in a timely manner. In short, enacting this legislation will protect the rights of law-abiding citizens.

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Improved public safety for our constituents is a goal we share and should work toward together. I urge you to support this legislation and continue to work with me in pursuit of a safer Baltimore.

Sincerely,

[signature]

Sheila Dixon  
Mayor  
Baltimore City

SD:sg

*Visit Our Website@ [www.baltimorecity.gov](http://www.baltimorecity.gov)*



**THE PRINCE GEORGE'S COUNTY  
GOVERNMENT**

**LEGISLATIVE POSITION**

**Number:** SB 211 - Public Safety - Statewide DNA Data Base System Crimes of Violence, Burglary, and Breaking and Entering a Motor Vehicle - Sample Collections on Arrest

**Sponsor:** The President (By Request-Administration), et al.

**Issue:** This bill will require the collection of a DNA sample from anyone convicted of a felony, breaking and entering a motor vehicle, and burglary in the 4<sup>th</sup> degree. Additionally, anyone arrested for a crime of violence or an attempt to commit a crime of violence, burglary or an attempt to commit burglary, or breaking and entering a motor vehicle would be subject to the collection of a DNA sample at some time during the arrest or booking of the suspect. The DNA profile will be entered and stored in the Maryland statewide DNA data base system.

**Position:** **Support**

**Solution:** Technological advances have provided law enforcement agencies with the tools needed to more precisely analyze evidence gathered at the scenes of the

most serious crimes. Courts in all fifty states have accepted the scientific validity of DNA profiling for many years, and many “cold cases” have been solved using this technology. Having this data allows prosecutors and police officers to pursue and successfully prosecute those responsible for these crimes.

There are currently 11 states that allow for the collection of DNA samples from arrestees in certain cases, including Alaska, Arizona, North Dakota and Tennessee, who enacted laws in 2007. SB 211 will allow the Maryland law enforcement community to broaden the DNA database, aid in solving crime and increase the safety of the citizens of Maryland.

Prince George’s County supports this bill.

Fiscal Impact: Undetermined

Committee: Judicial Proceedings

Hearing Date: 13-Feb-2008 at 1:00pm

Prepared by: Prince George’s County Office of  
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MARYLAND MUNICIPAL LEAGUE  
*The Association of Cities and Towns*

T E S T I M O N Y

February 13, 2008

**Committee:** Judicial Proceedings

**Bills:** SB 211 (Public Safety Statewide  
DNA Data Base System — Crimes of  
Violence, Burglary, and Breaking  
and Entering a Motor Vehicle —  
Sample Collections on Arrest)

**Position:** Support

**Reason for Position:**

The Maryland Municipal League supports SB 211, an Administration initiative to require DNA samples to be taken from individuals arrested for crimes of violence, burglary and motor vehicle breaking and entering. The intent is to build a bank of DNA samples to be used just as fingerprints are currently used to identify and apprehend criminal suspects.

The Maryland Municipal League and its 87 member cities and towns that provide police protection are pleased to endorse efforts to better utilize DNA identification technology to help fight crime. We therefore ask that this committee provide SB 211 with a favorable report.

12a

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January 30, 2008

Chairman Brian Frosh and Other Members of the  
Senate Judicial Proceedings Committee  
Miller Senate Office Building  
2 East Wing  
11 Bladen Street  
Annapolis, Maryland 21401

Re: SB 211 – Statewide DNA Data Base System

Honorable Committee Members:

I would like to express my strong support for Governor O'Malley's current initiative to strengthen Maryland's DNA statute.

As is clear, the current law is insufficient and fails to include many of the individuals who are likely to be involved in the types of crimes in which DNA evidence is most often recovered. As a current police

chief and a former member of Baltimore's Homicide Unit, I am acutely aware of the evidentiary value of DNA evidence. It provides a scientific basis for prosecution and as we have learned from experience, it is also likely to clear an innocent suspect against whom a strong case may otherwise exist.

In terms of being overly "intrusive" to the person from whom DNA is collected, I would submit for consideration that a simple mouth swab is no more intrusive than being fingerprinted and photographed at the time of arrest.

Other states, Virginia being a nearby example, have had excellent results with their statutes.

I would finally submit that as legislators, it is your responsibility to impact positively on Maryland's consistently high ranking nationwide—5<sup>th</sup> currently—for violent crimes on a per capita basis. This is a particularly disturbing statistic when viewed in context with Maryland's number one ranking in per-capita income. This presents a unique opportunity to make a difference in the lives of Marylanders.

Respectfully,

[signature]

A.R. Smith  
Chief - HPD

15a

January 30, 2008

The Honorable Brian Frosh  
Senator  
Chairman Senate Judicial Proceedings Committee  
Miller Senate Office Building, 2 East Wing  
11 Bladen Street, Annapolis, Maryland 21401

Dear Chairman Frosh:

I write in support of Senate Bill 211 — Public Safety — Statewide DNA Data Base System — Crimes of Violence, Burglary, and Breaking and Entering a Motor Vehicle — Sample Collections on Arrest.

As a member of the law enforcement community for the past 29 years it is my belief that such legislation is vital to public safety. The current system of DNA recordation has proven to be a success in the closure of criminal cases. These new requirements will provide a critical resource tool for future criminal investigations, as most criminals are known recidivists.

My agency, as with numerous sheriffs' offices across the country, has the responsibility of maintaining the county detention centers and thereby receives those individuals charged with committing felony crimes. The collection of DNA Samples during the phase of inmate booking is truly an appropriate environment. The collection and recording of such DNA markers will ensure thorough analysis and inclusive comparisons of suspects within a specific criminal investigation.

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This Statewide DNA data base system then provides for an enhanced central repository to enable the identification of individuals accused of criminal activity.

It is my desire that this bill be given strong deliberation by your committee and ultimately returned to the full Senate for confirmation.

Your consideration of this legislation is greatly appreciated and necessary for public safety.

Sincerely,

[signature]

David A. Goad  
Sheriff  
Allegany County, Maryland

17a



State's Attorney for  
Montgomery County

50 Maryland Avenue  
Rockville, Maryland 20850

March 7, 2008

The Honorable Brian E. Frosh  
2 East Wing Miller Senate Office Building  
Annapolis, MD 21401

The Honorable Joseph F. Vallario  
101 Lowe House Office Building  
Annapolis, MD 21401

**Re: SB 211 HB 370 Public Safety —  
Statewide DNA Data Base System —  
Crimes of Violence, Burglary, and  
Breaking and Entering a Motor Vehicle  
Sample Collections on Arrest**

Dear Chairman Frosh and Chairman Vallario:

We are writing to strongly urge passage of SB 211 and HB 370. These important pieces of life saving legislation will serve to expand Maryland's DNA database system giving local law enforcement a critical tool to aid them in criminal investigations. These bills require the collection of DNA samples from persons arrested for Crimes of Violence as defined in Section 14-101(a) of the Maryland Criminal Law Article, as well as for burglaries and breaking and entering of motor vehicles. A total of 11 states, including Virginia, California, Texas and New Mexico have enacted similar legislation and an additional 26 others are considering

it. SB 211 / HB 370 will allow law enforcement to compare newly collected DNA to existing cases and older cold cases as well as those that occur in the future. The legislation will serve not only to protect the public against repeat violent offenders, but will also serve to exonerate individuals detained for offenses they did not commit.

With respect to issues of privacy and civil liberties, the procedure for collecting DNA under SB 211 / H8 370 will be no more intrusive than the taking of fingerprints. Collection will be done by swabbing the inside of the person's mouth at the time of arrest. Moreover, the scope is limited to arrests for specific violent crimes specified by statute and the property crimes indicated above. Specified property crimes have been included, based upon research in Virginia indicating that roughly 40% of violent offenders had previous property crimes convictions. In addition, the DNA samples for these investigative purposes will not test for nor reveal genetic health information. Furthermore, in the event the arrestee is acquitted or if the charges are dropped, his DNA profile can be expunged from police records.

The Maryland Court of Appeals in *State v. Reines*, 383 Md. 1 (2003), has previously addressed the issue of collecting DNA upon conviction. The Court found collection permissible, indicating that it is in the public's best interest for offenders likely to re-offend to have a lessened expectation of privacy. Moreover, in citing *Jones v. Murray*, a 1992 case from the Fourth Federal Circuit, the *Raines* Court noted, when a suspect is arrested, "his identification becomes a matter of legitimate state interest and he can hardly claim privacy in it. We

accept this proposition because the identification of suspects is relevant not only to solving the crime for which the suspect is arrested, but also for maintaining a permanent record to solve other past and future crimes.”

We believe that passage of these bills will enable law enforcement to solve crimes more quickly by using science to identify offenders earlier in the investigation, to prevent crime by linking repeat violent offenders to existing and older cases and keeping them behind bars, to free the innocent and to be used as an investigative tool that is blind to racial bias.

Thank you for your consideration of our position.

Sincerely,

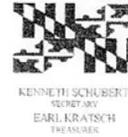
[signature]

John J. McCarthy  
State’s Attorney  
Montgomery County, Maryland

[signature]

Ike Leggett  
County Executive  
Montgomery County, Maryland

cc: Governor Martin O’Malley  
Senate Judicial Proceedings Committee  
House Judiciary Committee



MARYLAND STATE LODGE  
FRATERNAL ORDER OF POLICE  
1506 LESLIE ROAD, BALTIMORE, MD 21222

February 27, 2008

Senator Brian Frosh  
Chairman, Judicial Proceedings Committee  
Miller Senate Office Building, Ste 2E  
Annapolis, Maryland 21401-1991

RE: SB 211 – “Public Safety - Statewide  
DNA Data Base System Crimes of Violence,  
Burglary, and Breaking and Entering  
A Motor Vehicle - Sample Collections on  
Arrest”

Dear Senator Frosh & Members of the Committee:

The Maryland State Fraternal Order of Police hereby strongly supports SB 211. This bill requires the collection of a DNA sample from an individual charged with crimes of violence, burglary, or B&E of a motor vehicle upon arrest at the facility where the arrest is processed. Sample of a DNA must also be expunged from statewide system if request is granted.

This bill certainly makes it easier for law enforcement officers to do their job. Quite often, we are hindered by not having access to good DNA

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evidence and therefore, making it difficult to solve a crime and put the bad guys in jail. This bill effectively addresses that issue.

We urge a favorable report on this legislation.  
Thank you.

Respectfully,

[signature]

John "Rodney" Bartlett, Jr.  
President

*Representing the Professional Police Officers of the  
State of Maryland*

**Statement of Colonel Terrence Sheridan**

**HOUSE BILL 370/SENATE BILL 211**

**Public Safety – Statewide DNA Database  
System – Crimes of Violence, Burglary, and  
Breaking and Entering a Motor Vehicle –  
Sample Collections on Arrest**

**Senate Judicial Proceedings Committee**

**February 13, 2008**

- Good afternoon, Mr. Chairman and members of the Committee. I am Colonel Terrence Sheridan, Superintendent of the Maryland State Police. I am here today with this esteemed panel to ask for favorable consideration of House Bill 370/Senate Bill 211;
- House Bill 370/Senate Bill 211 represents a key component required to assist our state in moving forward toward adopting responsible public safety policy;
- This legislation requires the collection and subsequent entry of the DNA sample of a person who has been arrested for a crime of violence, burglary, and one misdemeanor (6-206) into Maryland's DNA database;
- By expanding our DNA database to include arrestee samples we simultaneously increase the likelihood of:

1. Solving future crimes

Chicago's Study on Preventable Crimes

- Study completed in 2005 by the City of Chicago and presented to the Illinois Legislature in support of similar legislation
- The study examined the criminal history of 8 violent offenders
- It found that the 8 offenders in Chicago accumulated 21 felony arrests before finally being identified in violent crimes
- The study identified that in aggregate, the offenders committed 22 murders, 30 rapes and a number of attempted rapes and kidnappings which would have been prevented had the offender's DNA samples been collected in their previously undetected violent crimes

2. Solving old or cold cases

The cold hits resulting from the matching in CODIS identifies approximately one offender for every 1,000 samples contained in CODIS. Christopher H. Asplen, *From Crime Scene to Courtroom: Integrating DNA Technology into the Criminal Justice System*, 83 *Judicature* 144, 147 (1999).

3. Exonerating suspects and those wrongly accused/convicted
4. Providing law enforcement with evidence more reliable than eyewitness testimony thereby decreasing the current dependence on eyewitness testimony

An article written in the Missouri Bar, September-October 2003 edition reported that the Department of Justice reviewed 28 cases of people wrongly convicted of sexual assault and later exonerated by DNA evidence. With the exception of six homicides included in the study, each case involved significant reliance on eyewitness testimony by the victim. Edward Connors et al., U.S. Department of Justice, *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*,

5. Preventing future crimes from ever occurring. Offenders and arrestees are unlikely to commit crimes knowing that a simple search of a DNA database could conclusively identify them as an offender.

Mark Schoofs, *Genetic Justice*, Village Voice, November 18, 1997, at 44 (quoting Carlos Rebren, the director of Alabama's forensic science department, who said that maintaining an individual's DNA profile might "discourage [him] from criminal misconduct").

The demonstrated success realized by other states that have expanded their DNA databases to include arrestee samples cannot be ignored. Virginia is one of those successful states and is the state we have chosen to follow with regard to our legislative proposals;

- According to FBI CODIS Statistics, as of October, 2007 Virginia's State DNA database has:

➤

➤ VIRGINIA	
➤ Offender Profiles	➤ 260,403
➤ Forensic Samples	➤ 8,063
➤ Investigations Aided	➤ 4,282

- Virginia's DNA began its offender database in 1989
- It began to enter felonious arrestee samples in 2003
- Virginia got its first hit on the arrestee database when uploading the first 80 samples
- Since 2003, Virginia has received 3,417 hits
- The database has increased by 66,081 samples since 2003

- Approximately 80% of hits would have been missed if the Databank was limited to only violent offenders.
- Approximately 40% of violent crimes solved were perpetrated by individuals with previous property crime convictions.

We know by reading the statistical success of other states that the larger the DNA database, the greater the number of hits or the greater the number of investigations will be aided by competent evidence. CODIS reports that as of October, 2007 Maryland has:

MARYLAND	
Offender Profiles	46,812
Forensic Samples	4,137
Investigations Aided	868

- Maryland began its offender database in 1994 with the collection of offenders of rape and sex offenses (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> degrees).
- In 1999 the data base was expanded to include convicted offenders of qualifying violent crimes. In 2002 the database was expanded to include all felonies and the two misdemeanors; 6-205 and 6-206.

- In 2002 we introduced the “all felon” requirement and the Crime Lab quickly became overwhelmed and realized a significant backlog.
- That backlog was just eliminated in 2007 with the completion of 24,300 samples processed which required the filling of all the vacancies within the Biology Section as well as the addition of 2 new positions granted by the Governor.
- Uploading the convicted offender profiles of the back logged samples resulted in an increase of the State’s offender profile database by 88%. Subsequently, total hits were increased by 51% over 2006.
- Crime Lab learned a valuable lesson from the backlogs of 1999-2007 and supports the gradual progression of expanding a statewide DNA database.
- We recognize and agree with the State of Virginia’s position that “DNA Databanks are most effective with inclusion of at least all felons and applied to all forms of cases” yet we are committed to developing a statewide DNA Database that is efficient, manageable, and reliable.

### Conclusion

The supporters of the American criminal justice system have long agreed that we would rather allow 100 guilty men go free than deprive one innocent man of his freedom. That being said, it is my opinion

that it is this body's moral obligation to allow for the expansion of a technology which has proven itself capable of providing the criminal justice system with conclusive evidence of guilt and more importantly, of innocence.

### Anticipated Questions

#### Why include property crimes such as misdemeanor burglary

- Approximately 80% of hits would have been missed if the Databank was limited to only violent offenders.
- Approximately 40% of violent crimes solved were perpetrated by individuals with previous property crime convictions.

#### Why not all felon arrestee

- There are approximately 800 Criminal Justice Information System felony charges. In 2006, there were approximately 80,000 filings in Maryland Circuit Courts.
- In 2006, Maryland Uniform Crime Reports indicate there were 233,590 index offenses investigated by law enforcement.
- The associated cost would be staggering. \$38.00 per sample tested x 200,000 = 7,600,000 plus additional personnel, plus additional equipment etc...

- Taking either of these numbers into account the caseloads of samples would be unmanageable and re-create a backlog.

What about those released without charges (RWOC) and/or expungement related issues:

- Crime Lab personnel currently have daily and direct access to CJIS. This access allows them to confirm the charge which has been preferred against the person for whom a sample has been received and simultaneously ensure the charge is a qualifying charge as enumerated within the legislation.

Released without charges (RWOC)

- This circumstance predominately occurs in Baltimore City. If this legislation becomes law, DPSCS, Expungement Unit, will add the Maryland State Police Crime Lab to those entities who currently received a daily list of names of persons who were processed through their facilities wherein the person was released without charge(s) (RWOC).