FORCED WARRANTLESS SEIZURE OF DNA FROM ARRESTEES
FACTSHEET

1. Warrantless Seizure of DNA Violates 4th Amendment

a. Warrant issued by a judge insures that DNA is being collected for a legitimate reason. If law enforcement cannot get a warrant, it means there is not a legitimate reason to collect DNA. It means there is no probable cause linking the suspect to the crime.

b. DNA information is not a fingerprint. Proponents of the bill say there is no 4th Amendment violation in collecting a fingerprint as part of booking those arrested; a mouth swab is no different. The mouth swab is not the problem. The problem is the genetic information taken.

- Our genetic information is not a fingerprint to establish identity, it contains everything about a person: race, IQ, propensity for sexual orientation, violence, whether you have or will contract many diseases, mental illness, etc.

- Genetic information of a person also contains genetic information about close family members. Seizure of a person's genetic information is also seizure of genetic information about the entire family.

- DNA databanks are used now for "familial profiling" to identify near matches.

- Fingerprints are collected based on probable cause that person committed crime for which arrested and probable cause to believe fingerprints will provide link to crime of arrest. DNA will be collected to stockpile for future reference at law enforcement convenience to round up the usual suspects.

c. Illegal arrests in Baltimore City show that arrest itself may be unsupported by probable cause.

d. There is no reason the African American community should give up its constitutional rights. No right, once surrendered, will be easily restored, if ever.

2. Warrantless Seizure of DNA Creates Permanent Racial Stigma and Genetic Surveillance of Communities of Color

a. Documented Racial Bias

• 70% of drivers stopped by Maryland State Police are African Americans; while only 17.5% of all drivers are African Americans.

• Nonwhites are arrested for violent crime at 3x rate of whites.

• Blacks are arrested for marijuana possession in Maryland at 5x rate of whites.

• 6.2 Blacks are incarcerated in Maryland for every white person incarcerated.

• 5.6% of Black adult men are incarcerated in Maryland v. 0.8% of adult white ment.

• 27.9% of Maryland's population is Black; 72.3% of Maryland's prison population is Black.

b. African Americans and Latinos will be the majority of those in DNA databanks of state and federal governments, forever identified as criminal suspects.

c. African Americans who have never even been accused of committing a crime will be in criminal databanks due to close link of genetic information of family members. Law enforcement is already using "familial searching" to identify close family members from others' DNA.

d. Legal scholars, genetic scientists and bioethicists have already drawn attention to the repugnant implications. When these racially skewed databases are used for behavioral genetics research, study results will implicitly focus on African Americans (and Latinos), confirming "scientifically" and lending scientific validity to stigmatize African Americans and Latinos as prone to criminal behavior. Karen Rothenberg & Alice Wang, *The Scarlet Gene: Behavioral Genetics, Criminal Law, and Racial and Ethnic Stigma,* 69 L.& CONTEMP. PROBS. 344, 352 (2006).

3. This is not About Exonerating the Innocent or Convicting the Guilty

Crime scene DNA exonerates the innocent. *Crime scene DNA* convicts the guilty.

Law enforcement routinely resists efforts of wrongfully convicted to obtain DNA testing that proves their innocence. In almost all cases of DNA exoneration, the DNA database played no role in proving innocence; DNA database is not used until AFTER innocence has been established by *crime scene DNA.*

In fact, mishandling of *crime scene DNA* or other biological evidence is a leading factor in the causes of wrongful conviction.

Mishandling of *crime scene DNA* hinders real crime prevention.

Maryland Case Studies

If Maryland is committed to catching and convicting rapists, why is there a rape kit backlog in Maryland? Why has there been no audit of crime scene DNA collection and analysis backlog?

• Kirk Bloodsworth
Maryland's first DNA-based exoneration. Exonerated by comparison of Mr. Bloodsworth's DNA to *crime scene DNA* over objections of law enforcement. *Decades* after his exoneration, law enforcement checked the DNA database to identify the actual perpetrator.

• Bernard Webster
Maryland's first postconviction DNA-based exoneration under statutory reform. Exonerated by comparison of Mr. Webster's DNA to *crime scene* DNA over objections of law enforcement. *After* Webster's exoneration and release, *after* pressure from the press, law enforcement checked the DNA database to identify the actual perpetrator.

• Keith Longtin
Held for 9 months in rape & murder of his wife. Crime scene DNA was available immediately, yet not tested until 3 months after the incident. This test exonerated Mr. Longtin, yet Mr. Longtin was held for 6 more months. Mr. Longtin was released two weeks *after* the real killer was arrested through a DNA match to *crime scene DNA.* In those nine months, actual perpetrator raped eight more women.

•Rape kit backlog in Maryland State Police custody is over 100 *crime scene DNA samples* unanalyzed. Over 100 rapes for which Maryland has evidence that will help solve crime and prevent additional rapes, evidence that Maryland is being ignored for lack of resources.

4. Expungement Does Not Happen and Does Not Cure 4th Amendment Violation

Maryland State Police testified at the bill hearings that they have never expunged a DNA sample from the database, despite current law requiring them to do so.

Automatic expungement will not retrieve DNA from the federal DNA database after it is uploaded.

Automatic expungement will not affect local DNA databanks.

The Fourth Amendment prevents the DNA from being collected at all without a warrant. Automatic expungement does not cure original violation. The trespass has occurred.