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Date: (Filing No. H-)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
125TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 849, L.D. 1143, Bill, “An Act To Require That Law Enforcement Officials Collect DNA Samples from Persons Arrested for Certain Crimes”

Amend the bill by striking out all of section 1 (page 1, lines 2 to 10 in L.D.)

Amend the bill in section 3 in §1574 by striking out all of subsection 7 (page 3, lines 22 to 39 and page 4, lines 1 to 9 in L.D.) and inserting the following:

7. Applicable offenses for persons arrested on or after January 1, 2013. A person arrested on or after January 1, 2013 for an offense listed in this subsection shall submit to having a DNA sample taken by a law enforcement agency as part of the booking process. For a person who is charged with an offense listed in this subsection by an indictment, information or complaint on a Class A, B or C crime on or after January 1, 2013 and who is not arrested for the offense on or after January 1, 2013 because the person's arrest occurred prior to that date or the person's appearance is procured by summons or other means rather than arrest, if the booking process occurs on or after January 1, 2013, the law enforcement agency conducting the booking process shall collect the DNA sample from the person as part of the booking process. For a person who is charged with an offense listed in this subsection by an indictment, information or complaint on a Class A, B or C crime on or after January 1, 2013 and who is not arrested for the offense on or after January 1, 2013 because the person's arrest occurred prior to that date or the person's appearance is procured by summons or other means rather than arrest and is not subject to a booking process on or after January 1, 2013, the court shall order the person to submit to having a DNA sample collected by the investigating agency of the State responsible for fingerprinting. If the collection of a DNA sample pursuant to this subsection is impractical at the time specified by this subsection, an appropriate agency may collect the sample at any other time during the person's detention or during pendency of the charges. This subsection applies to the following offenses:

- A. Murder or criminal homicide in the first or 2nd degree;
- B. Felony murder;

COMMITTEE AMENDMENT

- 1 C. Manslaughter;
- 2 D. Aggravated assault;
- 3 E. Elevated aggravated assault;
- 4 F. Gross sexual assault, including that formerly denominated as gross sexual
- 5 misconduct;
- 6 G. Rape;
- 7 H. Sexual abuse of a minor;
- 8 I. Unlawful sexual contact;
- 9 J. Visual sexual aggression against a child;
- 10 K. Sexual misconduct with a child under 14 years of age;
- 11 L. Kidnapping;
- 12 M. Criminal restraint;
- 13 N. Burglary;
- 14 O. Robbery;
- 15 P. Arson;
- 16 Q. Aggravated criminal mischief; or
- 17 R. Any lesser included offense of any crime identified in paragraphs A to Q if the
- 18 greater offense is initially charged. "Lesser included offense" has the same meaning
- 19 as in Title 17-A, section 13-A.

20 **8. Analysis and destruction of sample.** A DNA sample taken pursuant to

21 subsection 7 may not be analyzed and must be destroyed unless one of the following

22 conditions is met:

- 23 A. The arrest was made upon an arrest warrant for murder or a Class A, B or C
- 24 crime;
- 25 B. The defendant has appeared before a judge who made a finding that there was
- 26 probable cause for the arrest; or
- 27 C. The defendant posted bond or was released prior to appearing before a judge or
- 28 magistrate and then failed to appear for a scheduled hearing.'

29 Amend the bill in section 5 by striking out all of subsection 5 (page 4, lines 22 to 33

30 in L.D.) and inserting the following:

31 **'5. Expungement of profiles of persons arrested.** A person whose DNA record has

32 been stored in the state DNA data base pursuant to section 1574, subsection 7 may

33 request the Chief of the State Police for expungement of the person's DNA record from

34 the data base on the ground that the underlying charge that led to the arrest justifying the

35 inclusion of the DNA record in the data base has been resolved by the law enforcement

36 agency's not forwarding the charge to the prosecuting attorney, by the prosecuting

37 attorney's not filing a charge, by dismissal or by acquittal. The Chief of the State Police

1 shall expunge the DNA record of a person under this subsection when the person
 2 provides a written request for expungement and:

3 A. A certified copy of the dismissal or acquittal; or

4 B. A sworn affidavit that no charges listed in section 1574, subsection 7 arising from
 5 the arrest have been filed within one year.'

6 Amend the bill by striking out all of sections 6 to 9 and inserting the following:

7 **'Sec. 6. Appropriations and allocations.** The following appropriations and
 8 allocations are made.

9 **PUBLIC SAFETY, DEPARTMENT OF**

10 **State Police 0291**

11 Initiative: Provides funding for one Senior Lab Scientist position, 3 DNA Forensic
 12 Analyst positions, one Office Associate II position and related costs to collect and process
 13 DNA samples.

| | | | |
|----|-------------------------------|----------------|------------------|
| 14 | GENERAL FUND | 2011-12 | 2012-13 |
| 15 | POSITIONS - LEGISLATIVE COUNT | 0.000 | 5.000 |
| 16 | Personal Services | \$0 | \$117,299 |
| 17 | All Other | \$0 | \$48,174 |
| 18 | | | |
| 19 | GENERAL FUND TOTAL | <u>\$0</u> | <u>\$165,473</u> |

| | | | |
|----|---------------------|----------------|------------------|
| 20 | HIGHWAY FUND | 2011-12 | 2012-13 |
| 21 | Personal Services | \$0 | \$112,699 |
| 22 | All Other | \$0 | \$46,285 |
| 23 | | | |
| 24 | HIGHWAY FUND TOTAL | <u>\$0</u> | <u>\$158,984</u> |

25
 26 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
 27 section number to read consecutively.

28 **SUMMARY**

29 This amendment is the majority report of the committee. The amendment requires a
 30 person who has been arrested, charged or indicted on or after January 1, 2013 for murder
 31 or criminal homicide in the first or 2nd degree; felony murder; manslaughter; aggravated
 32 assault; elevated aggravated assault; gross sexual assault, including that formerly
 33 denominated as gross sexual misconduct; rape; sexual abuse of a minor; unlawful sexual
 34 contact; visual sexual aggression against a child; sexual misconduct with a child under 14
 35 years of age; kidnapping; criminal restraint; burglary; robbery; arson; aggravated criminal
 36 mischief; or any lesser included offense of any of these crimes if the greater offense is
 37 initially charged to submit to having a DNA sample taken by a law enforcement agency

1 as part of the booking process. "Lesser included offense" has the same meaning as in the
2 Maine Revised Statutes, Title 17-A, section 13-A.

3 The amendment specifies that the DNA sample taken pursuant to this requirement
4 may not be analyzed and must be destroyed unless one of the following conditions is met:
5 the arrest was made upon an arrest warrant for murder or a Class A, B or C crime; the
6 defendant has appeared before a judge who made a finding that there was probable cause
7 for the arrest; or the defendant posted bond or was released prior to appearing before a
8 judge or magistrate and then failed to appear for a scheduled hearing.

9 The amendment also clarifies that the Chief of the State Police shall expunge the
10 DNA record if the arresting law enforcement agency does not forward the charge to the
11 prosecuting attorney, the prosecuting attorney does not file a charge, the case is dismissed
12 or the defendant is acquitted.

13 The amendment also strikes from the bill new surcharges and the establishment of the
14 State DNA Data Base Fund.

15 The amendment also adds an appropriations and allocations section.

16 **FISCAL NOTE REQUIRED**

17 **(See attached)**