

**HOUSE . . . . . No. 01317**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Bradford Hill*

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to conviction DNA access.

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PETITION OF:

NAME:

*Bradford Hill*

DISTRICT/ADDRESS:

*4th Essex*

# HOUSE . . . . . No. 01317

By Mr. Bradford Hill of Ipswich, petition (accompanied by bill, House, No. 01317) of Bradford Hill relative to access to DNA information by persons convicted of certain crimes. Joint Committee on the Judiciary.

## The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to conviction DNA access.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 278 the

2 following chapter: --

3 Chapter 278A

4 Post Conviction Access to Forensic and Scientific Analysis

5 Section 1. Definitions

6 As used in this chapter, the following words shall have the following meanings, unless the

7 context clearly requires otherwise:-

8 “Analysis” shall mean the process by which a forensic or scientific technique is applied to

9 evidence or biological material to identify the perpetrator of a crime.

10 “Conviction” shall mean any verdict or finding of guilty, a plea of guilty, or a plea of nolo  
11 contendere , entered by the trial court.

12 “Criminal offender databases” shall include: the State DNA Database, G. L. c. 22E; the Sex  
13 Offender Registry, G. L. c. 6, §§ 178C-N; and the Criminal Offender Record Information  
14 System, G. L. c. 6, § 168-178A.

15 “Factually innocent” shall describe a person convicted of a criminal offense who did not commit  
16 that offense.

17 “Governmental entity” shall mean any official body of the commonwealth, or of any county,  
18 city, or town within the commonwealth.

19 “Inventory” shall mean a detailed listing, including a particularized description of each listed  
20 item.

21 “Moving party” shall mean a person who files a motion pursuant to this Chapter.

22 “Post conviction” shall indicate any time after which a conviction has been entered.

23 “Prosecuting attorney” shall mean the District Attorney for the district in which the moving party  
24 was convicted, or the Attorney General of the commonwealth.

25 “Replicate analysis” shall mean the duplication of an analysis performed on a particular item of  
26 evidence or biological material.

27 “Underlying case” shall mean the trial court proceedings that resulted in the conviction of the  
28 moving party.

29 “Victim” shall mean any natural person who suffered direct or threatened physical, emotional, or  
30 financial harm as the result of the commission or attempted commission of the crime that is the  
31 subject of the underlying case, and shall also include the parent, guardian, legal representative, or  
32 administrator or executor of the estate of such person if that person is a minor, incompetent, or  
33 deceased.

34 “Victim and witness assistance board” shall mean the entity established by section 4 of chapter  
35 258B.

36 Section 2. Any person who has been convicted of a criminal offense in a court of the  
37 commonwealth, and i) is or was in custody, or ii) whose liberty is or was restrained as the result  
38 of that conviction, or iii) has otherwise experienced any legal consequences of the potential  
39 wrongful conviction including but not limited to probation, civil commitment or mandatory  
40 registration as a sex offender, and asserts whose liberty is restrained as the result of that  
41 conviction, and asserts that he is factually innocent of that criminal offense, may file a motion  
42 pursuant to this Chapter.

43 Section 3. Requirements and procedures for filing.

44 (a) A person seeking relief pursuant to this Chapter shall file a motion in the court in which the  
45 conviction was entered, using the same caption and docket number as identified the underlying  
46 case.

47 (b) The motion shall include the following information, and when relevant, shall include  
48 specific references to the record in the underlying case, or to affidavits that are filed in support of  
49 the motion that are signed by a person with personal knowledge of the factual basis of the  
50 motion:

- 51 (1) The name and a description of the requested forensic or scientific analysis; and
- 52 (2) Information demonstrating that the requested analysis is admissible as evidence in courts of  
53 the commonwealth; and
- 54 (3) A description of the evidence or biological material on which the analysis may be  
55 conducted, including its location if known; and
- 56 (4) Information demonstrating that the evidence or biological material was obtained in relation  
57 to the underlying case; and
- 58 (5) Information demonstrating that the analysis has the potential to result in evidence that is  
59 material to the moving party's identification as the perpetrator of the crime in the underlying  
60 case; and
- 61 (6) Information demonstrating that the evidence or biological material has not been subjected to  
62 the requested analysis because:
- 63 1. The requested analysis had not yet been developed at the time of the conviction; or
- 64 2. The results of the requested analysis were not admissible in courts of the commonwealth at the  
65 time of the conviction; or
- 66 3. The moving party and his attorney were not aware of and did not have reason to be aware of  
67 the existence of the evidence or biological material at the time of the underlying case and  
68 conviction; or
- 69 4. The moving party's attorney in the underlying case was aware at the time of the conviction of  
70 the existence of the evidence or biological material, the results of the requested analysis were

71 admissible as evidence in courts of the commonwealth, and a reasonably effective attorney  
72 would have sought the analysis; or

73 5. The evidence or biological material was otherwise unavailable at the time of the conviction.

74 (c) The moving party shall file with the motion copies of all reports, documents, memoranda,  
75 and notes from forensic or scientific analysis that has been conducted on any evidence or  
76 biological material that was obtained in relation to the underlying case. The moving party shall  
77 include these reports with the motion regardless of whether the moving party has previously  
78 provided them to the prosecuting attorney, whether they were offered or admitted as evidence in  
79 the underlying case, or whether they would have been admissible as evidence in the underlying  
80 case.

81 (d) The moving party shall provide copies of those portions of the transcripts of the trial, if  
82 applicable, during which the results of forensic or scientific analysis was offered as evidence by  
83 either the moving party or prosecuting attorney.

84 (e) The moving party shall identify all court proceedings that are currently pending and that  
85 relate to the underlying case, including the name of the court, docket number, and status of each  
86 such proceeding. The moving party shall also certify that each party to those proceedings has  
87 received notice of the proceedings under this Chapter.

88 (f) If the moving party is unable to include for filing with the motion any of the items or  
89 information described in (b), (c), and (d), the moving party shall include a description of efforts  
90 made to obtain such items and information.

91 (e) A person who pleaded guilty or nolo contendere in the underlying case may file a motion  
92 under this Chapter. A judge shall not find that identity was not or could not have been a  
93 material issue in the underlying case because of the plea. A person who is alleged to have, or  
94 admits to having, made a statement that is or could be incriminating may file a motion under this  
95 Chapter. A judge shall not find that identity was not or should not have been a material issue in  
96 the underlying case because the moving party made, or is alleged to have made, an incriminating  
97 statement.

98 (f) The court may deny, without prejudice, any motion which fails to include all the information  
99 required by this Section.

#### 100 Section 4. Service of process and response to motion.

101 (a) The moving party shall file the motion with the court which adjudicated the underlying case  
102 and shall serve a copy of the motion on the prosecuting attorney.

103 (b) The prosecuting attorney shall have 60 days to file a response with the court and shall  
104 simultaneously serve the response on the moving party. The prosecuting attorney may request  
105 one 30 day extension in which to file the response, which the court shall allow only for good  
106 cause shown.

107 (c) The prosecuting attorney's response shall include:

108 (1) An inventory of all evidence or biological material that was obtained in relation to the  
109 underlying case, regardless of whether it was introduced at trial or would be admissible;

110 (2) The current location of all evidence or biological material that was obtained in relation to  
111 the underlying case; and

112 (3) A detailed chain of custody for the evidence or biological material that is the subject of the  
113 motion.

114 (d) The response shall also include copies of all reports, documents, memoranda, and notes  
115 from forensic or scientific analysis that has been conducted on any evidence or biological  
116 material that was obtained in relation to the underlying case. The prosecuting attorney shall  
117 include these documents with the response regardless of whether the prosecuting attorney has  
118 earlier provided them to the moving party or defense counsel, or whether such documents were  
119 offered or admitted as evidence in the underlying case, or whether such documents would have  
120 been admissible.

121 (e) The response shall also include any specific legal or factual objections that the prosecuting  
122 attorney has to the requested analysis.

123 (f) The response may include evidence or other information relating to the guilt of the moving  
124 party.

125 Section 5. Appointment of counsel.

126 The judge in his discretion may assign or appoint counsel to represent a moving party in the  
127 preparation and presentation of motions filed under this Chapter.

128 Section 6. Hearing.

129 (a) The court shall order a hearing on the motion if it conforms with the requirements of section  
130 3.

131 (b) The judge who conducted the trial or accepted the moving party's plea of guilty or nolo  
132 contendere in the underlying case shall conduct the hearing if possible.



133 (c) The moving party may file a motion requesting that he be present at the hearing on the  
134 motion. If the judge allows such a motion, the judge shall order the commonwealth to produce  
135 the moving party at the hearing.

136 Section 7. Ruling on the Motion.

137 (a) The judge shall state findings of fact and conclusions of law on the record, or shall make  
138 written findings of fact and conclusions of law, that support the decision to allow or deny a  
139 motion brought under this Chapter.

140 (b) The judge shall allow the motion if each of the following has been demonstrated by a  
141 preponderance of the evidence:

142 (1) that the evidence or biological material exists;

143 (2) that the evidence or biological material has been subject to a chain of custody that is  
144 sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any  
145 material respect;

146 (3) that the evidence or biological material has not been subjected to the requested analysis;

147 (4) that the requested analysis has the potential to result in evidence that is material to the  
148 moving party's identification as the perpetrator of the crime in the underlying case;

149 (5) that the purpose of the motion is not the obstruction of justice or delay;

150 (6) that the results of the particular type of analysis being requested have been found to be  
151 admissible in courts of the commonwealth; and

152 (7) that , if the results of the requested analysis are favorable to the moving party, justice may  
153 not have been done in the underlying case.

154 (c) The judge may order the production of information and materials in whatever form, from the  
155 commonwealth or any person or entity, by subpoena or other legal process.

156 Section 8. Laboratory.

157 (a) In allowing a motion under this Chapter, a judge may impose reasonable conditions on the  
158 analysis designed to protect the interests of the commonwealth in the integrity of the evidence or  
159 biological material and the analysis.

160 (b) The prosecuting attorney and the moving party shall agree on a laboratory to conduct the  
161 analysis.

162 (c) If the prosecuting attorney and the moving party are unable to agree on a laboratory, the  
163 judge shall designate a laboratory that is accredited by the American Society of Crime  
164 Laboratory Directors Laboratory Accreditation Board and has the capability to perform the  
165 requested analysis.

166 (d) The laboratory shall be provided with a copy of all of the filings relating to the motion,  
167 including all of the judge's orders. The laboratory shall also be provided with a copy of this  
168 Chapter in its entirety.

169 (e) The laboratory shall only communicate with the prosecuting attorney and the moving party  
170 simultaneously and in writing.

171 (f) Neither the prosecuting attorney nor the moving party shall communicate with the laboratory  
172 without simultaneously communicating with the other party.

173 (g) The laboratory shall endeavor to retain and maintain the integrity of a sufficient portion of  
174 the evidence or biological material for replicate analysis. If, after initial examination of the  
175 evidence or biological material, but before the actual analysis, the laboratory determines that  
176 there is insufficient material for replicate analysis, it shall simultaneously notify in writing the  
177 prosecuting attorney, the moving party, and the judge. In the event that there is insufficient  
178 material to perform replicate analysis, upon request of either party, the judge shall make such  
179 orders to ensure that representatives of the moving party and the prosecuting attorney have the  
180 opportunity to observe the analysis. Such analysis shall be subject to the rules and practices of  
181 the laboratory.

182 (h) The moving party shall cooperate with the laboratory. At the laboratory's request and upon  
183 court order, the moving party shall provide biological samples to the laboratory. If the moving  
184 party unreasonably fails to cooperate with the laboratory, the judge may deny the motion with  
185 prejudice.

186 Section 9. Timeliness of analysis.

187 Upon allowance of a motion under this Chapter, analysis shall take place as soon as practicable.

188 Section 10. Costs.

189 The costs of the analysis shall be borne:

190 (a) by the moving party if the moving party is not indigent and has sufficient means to make  
191 such payment; or

192 (b) by the commonwealth; or

193 (c) by both the moving party and the commonwealth, in shares as the court deems equitable.

194 Section 11. Effect on other proceedings.

195 (a) A motion may be filed under this Chapter even if an appeal of the conviction or other post-  
196 conviction proceedings in the underlying case are pending.

197 (b) A judge shall consider a motion filed pursuant to this Chapter even if there is an appeal or  
198 other post conviction proceedings pending.

199 (c) If the judge allows a motion filed pursuant to this Chapter, the court in which the appeal or  
200 post conviction proceedings are pending shall be notified if different from the court in which the  
201 motion was filed. When a court receives notice under this section, it shall stay any appeal or  
202 post conviction proceedings pending the final outcome of proceedings pursuant to this Chapter.

203 (d) Proceedings pursuant to this chapter shall not stay or otherwise interfere with a term of  
204 incarceration, parole, probation, or other sentence imposed.

205 Section 12. Disclosure of results of analysis.

206 (a) The results of the analysis shall be simultaneously disclosed to the moving party, the  
207 prosecuting attorney, and the judge.

208 (b) At the request of any party, or on its own initiative, the judge shall order production of the  
209 underlying laboratory data, documents, and notes.

210 Section 13. Effect of analysis.

211 (a) If the analysis confirms that the factual findings for the verdict or judgment in the  
212 underlying case were correct, and that the moving party was properly convicted and sentenced,  
213 the court shall deny the motion with prejudice. The court may also order:

214 (1) The prosecuting attorney to provide copies of the report of the analysis to the  
215 Superintendent of the Department of Correction and the Chairperson of the Parole Board;

216 (2) The prosecuting attorney to provide copies of the report of the analysis to relevant criminal  
217 offender databases; or

218 (3) The moving party to assume the cost of the analysis.

219 (b) If the analysis neither confirms nor contradicts the factual findings for the verdict or  
220 judgment in the underlying case, the court shall:

221 (1) Order any additional analysis requested if the court concludes that the requirements of §  
222 are met, or

223 (2) If no additional analysis is requested that would meet the requirements of § deny the  
224 motion with prejudice if either:

225 A. No additional analysis is requested, or

226 B. Additional analysis is requested but the requirements of § are not met.

227 (c) If the analysis demonstrates that the factual findings for the verdict or judgment in the  
228 underlying case were incorrect, and that the moving party was not properly convicted or  
229 sentenced, notwithstanding any rule or law that would bar a new trial, the court shall:

230 (1) On motion of the prosecuting attorney and good cause shown, order replicate analysis of the  
231 evidence or biological material and a stay of further proceedings pending the result of the  
232 replicate analysis, with the cost of such replicate testing to be borne by the prosecuting attorney;

233 (2) Order the release of the moving party from custody;

234 (3) On motion of the moving party, order a new trial; or

235 (4) Order any other relief that serves the interest of justice.

236 Section 14. Notice to victims.

237 (a) If a motion is filed under this Chapter, the prosecuting attorney may notify the victim of the  
238 crime in the underlying case pursuant to G. L. c. 258B.

239 (b) The prosecuting attorney shall promptly notify the victim and the victim and witness  
240 assistance board if a judge allows the motion.

241 (c) The prosecuting attorney shall promptly notify the victim and the victim and witness  
242 assistance board of the result of the analysis.

243 Section 15. Waiver of rights.

244 The right to file a motion pursuant to this Chapter shall not be waived. This prohibition of any  
245 waiver includes, but is not limited to, any stated or unstated waiver that is or is alleged to be part  
246 of any agreement or understanding related to any plea of guilty or of nolo contendere or to any  
247 sentencing or appellate proceeding or to any correctional placement or conditions.

248 Section 16. Preservation of evidence and biological material.

249 (a) Any governmental entity that is in possession of evidence or biological material that is  
250 collected for its potential evidentiary value during the investigation of a crime, the prosecution of  
251 which results in a conviction, shall retain such evidence and biological material for the period of  
252 time that any person remains in the custody of the commonwealth in connection with that crime,  
253 or otherwise experiences any legal consequences of the potential wrongful conviction including

254 but not limited to parole, probation, civil commitment or mandatory registration as a sex  
255 offender, without regard to whether the evidence or biological material was introduced at trial.  
256 Each governmental entity shall retain all such evidence and biological material in a manner that  
257 is reasonably designed to preserve the evidence and biological material and to prevent its  
258 destruction or deterioration.

259 (b) The secretary of the executive office of public safety and security shall promulgate  
260 regulations governing the retention and preservation of evidence and biological material by any  
261 governmental entity, which regulations shall include standards for maintaining the integrity of  
262 the materials over time, the designation of officials at each governmental entity with custodial  
263 responsibility, and requirements of contemporaneously recorded documentation of individuals  
264 having and obtaining custody of any evidence of biological material.

265 Section 17. Liability.

266 (a) Governmental officials and employees acting in good faith shall not be liable in a civil or  
267 criminal proceeding for any act or pursuant to the provisions of this chapter.

268 (b) If a governmental entity responsible for the preservation of evidence or biological material  
269 engages in willful or wanton misconduct or gross negligence which results in the deterioration or  
270 destruction of evidence or biological material so that a laboratory is unable to perform adequate  
271 or proper analysis, that entity shall be subject to proceedings for contempt.

272 (c) Nothing in this chapter shall create any cause of action for damages against the  
273 commonwealth or any of its subdivisions or officers, employees, agents, or subdivisions, except  
274 as provided in this Section.

275 Section 18. Appeal.

276 An order allowing a motion filed under this Chapter is not a final and appealable order. An order  
277 denying a motion filed under this Chapter is a final and appealable order. Any appeal from such  
278 an order shall be claimed by filing a notice of appeal within 30 days of the court's entry of the  
279 written order upon the docket.