HOUSE DOCKET, NO. 1250 FILED ON: 1/20/2011

HOUSE . . . . . No. 1317

The Commonwealth of Massachusetts

PRESENTED BY:

Bradford Hill

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:

An Act relative to conviction DNA access.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bradford Hill	*4th Essex*

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HOUSE . . . . . No. 1317

By Mr. Hill of Ipswich, a petition (accompanied by bill, House, No. 1317) of Bradford Hill relative to access to DNA information by persons convicted of certain crimes. The Judiciary.

The Commonwealth of Massachusetts

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:

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

Chapter 278A

Post Conviction Access to Forensic and Scientific Analysis

Section 1. Definitions

As used in this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:-

"Analysis" shall mean the process by which a forensic or scientific technique is applied to evidence or biological material to identify the perpetrator of a crime.

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

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

"Factually innocent" shall describe a person convicted of a criminal offense who did not commit that offense.

"Governmental entity" shall mean any official body of the commonwealth, or of any county, city, or town within the commonwealth.

"Inventory" shall mean a detailed listing, including a particularized description of each listed 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
24 moving party was convicted, or the Attorney General of the commonwealth.

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

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

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

34 “Victim and witness assistance board” shall mean the entity established by section 4 of
35 chapter 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
45 which the conviction was entered, using the same caption and docket number as identified the
46 underlying 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
53 courts of 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
57 relation to the underlying case; and

58 (5) Information demonstrating that the analysis has the potential to result in evidence
59 that is material to the moving party's identification as the perpetrator of the crime in the
60 underlying case; and

61 (6) Information demonstrating that the evidence or biological material has not been
62 subjected to 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
65 commonwealth at the time of the conviction; or

66 3. The moving party and his attorney were not aware of and did not have reason to be
67 aware of the existence of the evidence or biological material at the time of the underlying case
68 and conviction; or

69 4. The moving party's attorney in the underlying case was aware at the time of the
70 conviction of the existence of the evidence or biological material, the results of the requested
71 analysis were admissible as evidence in courts of the commonwealth, and a reasonably effective
72 attorney would have sought the analysis; or

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

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

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

85 (e) The moving party shall identify all court proceedings that are currently pending and
86 that relate to the underlying case, including the name of the court, docket number, and status of

87 each such proceeding. The moving party shall also certify that each party to those proceedings
88 has received notice of the proceedings under this Chapter.

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

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

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

101 Section 4. Service of process and response to motion.

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

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

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

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

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

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

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

120 offered or admitted as evidence in the underlying case, or whether such documents would have
121 been admissible.

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

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

126 Section 5. Appointment of counsel.

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

129 Section 6. Hearing.

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

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

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

137 Section 7. Ruling on the Motion.

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

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

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

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

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

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

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

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

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

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

158 Section 8. Laboratory.

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

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

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

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

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

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

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

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

188 Section 9. Timeliness of analysis.

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

191 Section 10. Costs.

192 The costs of the analysis shall be borne:

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

195 (b) by the commonwealth; or

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

198 Section 11. Effect on other proceedings.

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

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

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

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

210 Section 12. Disclosure of results of analysis.

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

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

215 Section 13. Effect of analysis.

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

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

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

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

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

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

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

230 A. No additional analysis is requested, or

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

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

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

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

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

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

242 Section 14. Notice to victims.

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

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

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

249 Section 15. Waiver of rights.

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

254 Section 16. Preservation of evidence and biological material.

255 (a) Any governmental entity that is in possession of evidence or biological material that
256 is collected for its potential evidentiary value during the investigation of a crime, the prosecution
257 of which results in a conviction, shall retain such evidence and biological material for the period
258 of time that any person remains in the custody of the commonwealth in connection with that
259 crime, or otherwise experiences any legal consequences of the potential wrongful conviction
260 including but not limited to parole, probation, civil commitment or mandatory registration as a
261 sex offender, without regard to whether the evidence or biological material was introduced at
262 trial. Each governmental entity shall retain all such evidence and biological material in a
263 manner that is reasonably designed to preserve the evidence and biological material and to
264 prevent its destruction or deterioration.

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

271 Section 17. Liability.

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

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

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

281 Section 18. Appeal.

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