
By: **Chairman, Judiciary Committee (Departmental - State Police, Dept. of)**
Introduced and read first time: February 25, 1999
Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **State Police - DNA Testing**

3 FOR the purpose of specifying additional crimes in the definition of "crime of
4 violence"; requiring that certain persons convicted of certain crimes of violence
5 provide a DNA sample under certain circumstances; establishing that failure to
6 provide a DNA sample is a violation of probation; altering the date establishing,
7 upon conviction, as to who is required to submit a DNA sample; allowing the
8 Director of the Crime Laboratory Division of the Department of State Police to
9 specify which facility will collect a DNA sample from certain persons who are
10 not sentenced to a term of incarceration; and generally relating to DNA testing
11 of certain persons convicted of certain crimes.

12 BY repealing and reenacting, with amendments,
13 Article 88B - Department of State Police
14 Section 12A
15 Annotated Code of Maryland
16 (1998 Replacement Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article 88B - Department of State Police**

20 12A.

21 (a) (1) In this section the following words have the meanings indicated.

22 (2) "CODIS" means the Federal Bureau of Investigation's "Combined
23 DNA Index System" that allows the storage and exchange of DNA records submitted
24 by state and local forensic DNA laboratories.

25 (3) "Crime Laboratory" means the Crime Laboratory Division of the
26 Department of State Police.

27 (4) "Director" means the Director of the Crime Laboratory or the
28 Director's designee.

1 (5) "DNA" means deoxyribonucleic acid.

2 (6) "DNA record" means DNA information stored in the statewide DNA
3 data base system of the Department of State Police or CODIS and includes that
4 information commonly referred to as a DNA profile.

5 (7) "DNA sample" means a body fluid or tissue sample provided by any
6 person convicted of a qualifying crime of violence or any body fluid or tissue sample
7 submitted to the statewide DNA data base system for analysis pursuant to a criminal
8 investigation.

9 (8) "Qualifying crime of violence" means:

10 (i) A violation of Article 27, § 35C of the Code that involves sexual
11 abuse;

12 (ii) Rape in any degree; [or]

13 (iii) A sexual offense in the first, second, or third degree;

14 (IV) MURDER IN ANY DEGREE;

15 (V) ROBBERY IN ANY DEGREE;

16 (VI) FIRST DEGREE ASSAULT; OR

17 (VII) ATTEMPTS TO COMMIT THESE OFFENSES.

18 (9) "Statewide DNA data base system" means the DNA record system
19 administered by the Department of State Police for identification purposes.

20 (10) "Statewide DNA repository" means the State repository of DNA
21 samples collected under this section.

22 (b) (1) There is created within the Crime Laboratory a statewide DNA data
23 base system.

24 (2) The system shall be the central repository for all DNA testing
25 information as provided in this section.

26 (3) The Director shall:

27 (i) Administer and manage the system;

28 (ii) Consult with the Secretary on the adoption of appropriate
29 regulations concerning system protocols and operations;

30 (iii) Ensure compatibility with Federal Bureau of Investigation and
31 CODIS requirements, including the use of comparable test procedures, quality
32 assurance, laboratory equipment, and computer software; and

1 (iv) Ensure the security and confidentiality of all records of the
2 system.

3 (4) The Secretary, after consultation with the Director, shall adopt
4 appropriate regulations concerning system protocols and operation.

5 (c) Pursuant to regulations adopted by the Secretary after consultation with
6 the Director under this section, a person convicted of a qualifying crime of violence
7 shall:

8 (1) Have a DNA sample collected upon intake to any prison or detention
9 facility; or

10 (2) If not sentenced to a term of imprisonment, [be ordered by the court
11 to] provide a DNA sample as a condition of sentence.

12 (D) EACH PERSON CONVICTED OF A QUALIFYING CRIME OF VIOLENCE SHALL
13 BE REQUIRED TO HAVE ONE DNA SAMPLE COLLECTED, EXCEPT THAT A SECOND
14 SAMPLE SHALL BE TAKEN IF ORDERED BY THE COURT.

15 (E) FAILURE TO PROVIDE A DNA SAMPLE WITHIN 90 DAYS OF NOTICE BY THE
16 DIRECTOR SHALL BE CONSIDERED A VIOLATION OF PROBATION.

17 [(d)] (F) A person who has been convicted of a qualifying crime of violence
18 prior to October 1, [1994] 1999, and who remains incarcerated on that date shall
19 submit a DNA sample to the [Department of Public Safety and Correctional Services]
20 DEPARTMENT OF STATE POLICE.

21 [(e)] (G) (1) To the extent fiscal resources are available, DNA samples shall
22 be tested for the following purposes:

23 (i) To analyze and type the genetic markers contained in or derived
24 from DNA samples;

25 (ii) In the furtherance of an official investigation into a criminal
26 offense;

27 (iii) To assist in the identification of human remains;

28 (iv) To assist in the identification of missing persons; and

29 (v) For research and administrative purposes, including:

30 1. Development of a population data base after personal
31 identifying information is removed;

32 2. Support of identification research and protocol
33 development of forensic DNA analysis methods; and

34 3. Quality control purposes.

1 (2) (i) Only DNA records that directly relate to the identification of
2 individuals shall be collected and stored.

3 (ii) These records may not be used for any purposes other than
4 those specified in this section.

5 [(f)] (H) (1) The DNA record of identification characteristics resulting from
6 the DNA testing shall be stored and maintained by the Crime Laboratory in the
7 statewide DNA data base system.

8 (2) The DNA sample shall be stored and maintained by the Crime
9 Laboratory in the statewide DNA repository.

10 [(g)] (I) Pursuant to regulations adopted by the Secretary, after consultation
11 with the Director:

12 (1) Each DNA sample required to be collected under this section from
13 persons who are incarcerated as of October 1, [1994] 1999, or are sentenced to a term
14 of incarceration after that date shall be collected at the place of incarceration; and

15 (2) DNA samples from persons who are not sentenced to a term of
16 confinement shall be collected at a [prison or detention] facility specified by the
17 [sentencing court] DIRECTOR.

18 [(h)] (J) DNA samples to be submitted for analysis shall be collected by a:

19 (1) Correctional health nurse technician;

20 (2) Physician;

21 (3) Registered nurse;

22 (4) Licensed practical nurse;

23 (5) Laboratory technician; or

24 (6) Phlebotomist.

25 [(i)] (K) (1) The Secretary, after consultation with the Director, shall adopt
26 regulations governing the procedures to be used for:

27 (i) Collection, submission, identification, analysis, storage, and
28 disposal of DNA samples; and

29 (ii) Access to and dissemination of typing results and personal
30 identification information of samples that are submitted under this section.

31 (2) (i) DNA samples shall be securely stored in the statewide DNA
32 repository.

1 (ii) Typing results shall be securely stored in the statewide DNA
2 data base system.

3 (3) (i) Any procedure adopted by the Director shall include quality
4 assurance guidelines to ensure that DNA identification records meet standards and
5 audit requirements for laboratories that submit DNA records for inclusion in the
6 statewide DNA data base system and CODIS.

7 (ii) The Crime Laboratory and each analyst performing DNA
8 analyses at the Crime Laboratory shall undergo, at regular intervals not exceeding
9 180 days, external proficiency testing, including at least one external blind test, by a
10 DNA proficiency testing program that meets the standards issued:

11 1. Under § 1003 of the federal DNA Identification Act of
12 1994; or

13 2. Under the guidelines for a quality assurance program for
14 DNA analysis (known as the "TWGDAM" guidelines).

15 (4) Subject to subsection [(m)] (O) of this section, records of testing shall
16 be permanently retained on file at the Crime Laboratory.

17 [(j)] (L) (1) The Crime Laboratory shall:

18 (i) Receive DNA samples for analysis, classification, and storage;

19 (ii) File the DNA record of identification characteristic profiles of
20 DNA samples submitted to the laboratory; and

21 (iii) Make information relating to DNA samples and DNA records
22 available to other agencies and individuals as authorized by this section.

23 (2) The Director may contract with a qualified DNA laboratory that
24 meets the guidelines established by the Director to complete DNA typing analyses.

25 [(k)] (M) (1) The typing results and personal identification information of
26 the DNA profile of an individual in the statewide DNA data base system may be made
27 available to the following agencies or persons upon written or electronic request after
28 verification by the Director that a match has been made in the population data base
29 and the request is in the furtherance of any of the purposes set forth in subsection
30 [(e)] (G) of this section:

31 (i) Federal, State, and local law enforcement agencies;

32 (ii) Crime laboratories that serve federal, State, and local law
33 enforcement agencies that have been approved by the Director;

34 (iii) A State's Attorney's office or other prosecutorial office; and

35 (iv) Any person participating in a judicial proceeding in which the
36 data base information may be offered as evidence.

1 (2) (i) The typing results and personal identification information of
2 the DNA profile of an individual in the statewide DNA data base system shall be
3 made available to a defendant or a defendant's counsel on written order of the court in
4 which the case is pending.

5 (ii) A search of the data base shall be conducted to determine the
6 existence of a match to DNA obtained from crime scene evidence taken in relation to
7 the crime for which a defendant is charged if, upon the request of that defendant, a
8 written court order commands the data base search.

9 (iii) Nothing in this section limits a court from ordering any
10 discovery of a DNA record or other related material in a criminal case.

11 (iv) The Director shall maintain a file of all orders issued under this
12 paragraph.

13 (3) The Secretary, after consultation with the Director, shall adopt
14 regulations governing the methods of obtaining information from the statewide DNA
15 data base system and CODIS which shall include procedures for verification of the
16 identity and authority of the individual or agency requesting the information.

17 (4) (i) The Director shall create a population data base comprised of
18 DNA samples obtained under this section.

19 (ii) All personal identifiers shall be removed before the information
20 is entered into the population data base.

21 (iii) Nothing shall prohibit the sharing or disseminating of
22 population data base information with:

- 23 1. Federal, State, or local law enforcement agencies;
- 24 2. Crime laboratories that serve federal, State, and local law
25 enforcement agencies that have been approved by the Director;
- 26 3. A State's Attorney's office; or
- 27 4. Any third party that the Director deems necessary to
28 assist the Crime Laboratory with statistical analyses of the population data base.

29 (iv) The population data base may be made available to and
30 searched by any agency participating in the CODIS system.

31 [(l)] (N) Any match obtained between an evidence sample and a data base
32 entry may only be used as probable cause to obtain a blood sample from the subject
33 and is not admissible at trial unless confirmed by additional testing.

34 [(m)] (O) (1) A person whose DNA record or profile has been included in the
35 statewide DNA data base system and whose DNA sample is stored in the statewide
36 DNA repository may request that information be expunged on the grounds that the

1 conviction which resulted in the inclusion of the person's DNA record or profile in the
2 statewide DNA data base system or the inclusion of the person's DNA sample in the
3 statewide DNA repository meets the expungement criteria specified in Article 27, §
4 737 of the Code.

5 (2) Expungement proceedings shall be conducted in accordance with
6 Article 27, § 737 of the Code.

7 (3) Upon receipt of an order of expungement, the Director shall purge
8 any DNA record, DNA sample, or other identifiable information covered by the order
9 from the statewide DNA data base system and the statewide DNA repository.

10 [(n)] (P) (1) A person who, by virtue of employment or official position, has
11 possession of or access to individually identifiable DNA information contained in the
12 statewide DNA data base system or statewide DNA repository and who willfully
13 discloses that information in any manner to any person or agency not entitled to
14 receive that information is guilty of a misdemeanor and on conviction is subject to a
15 fine not exceeding \$1,000 or imprisonment not exceeding 3 years or both.

16 (2) A person who, without authorization, willfully obtains individually
17 identifiable DNA information from the statewide DNA data base system or repository
18 is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000
19 or imprisonment not exceeding 3 years or both.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
21 effect October 1, 1999.