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By: **Chairman, Judiciary Committee (Departmental - State Police, Dept. of)**

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 26, 1999

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CHAPTER \_\_\_\_\_

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 under certain circumstances;  
7 altering the date establishing, upon conviction, as to who is required to submit a  
8 DNA sample; allowing the Director of the Crime Laboratory Division of the  
9 Department of State Police to specify which facility will collect a DNA sample  
10 from certain persons who are not sentenced to a term of incarceration; and  
11 generally relating to DNA testing 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.

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

4 (3) "Crime Laboratory" means the Crime Laboratory Division of the  
5 Department of State Police.

6 (4) "Director" means the Director of the Crime Laboratory or the  
7 Director's designee.

8 (5) "DNA" means deoxyribonucleic acid.

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

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

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

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

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

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

21 (IV) ~~MURDER IN ANY DEGREE;~~

22 (V) ~~ROBBERY IN ANY DEGREE~~ OR ROBBERY WITH A DEADLY  
23 WEAPON;

24 (VI) FIRST DEGREE ASSAULT; OR

25 (VII) ATTEMPTS TO COMMIT THESE OFFENSES.

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

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

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

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

- 1 (3) The Director shall:
- 2 (i) Administer and manage the system;
- 3 (ii) Consult with the Secretary on the adoption of appropriate  
4 regulations concerning system protocols and operations;
- 5 (iii) Ensure compatibility with Federal Bureau of Investigation and  
6 CODIS requirements, including the use of comparable test procedures, quality  
7 assurance, laboratory equipment, and computer software; and
- 8 (iv) Ensure the security and confidentiality of all records of the  
9 system.

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

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

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

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

19 (D) ~~EACH PERSON CONVICTED OF A QUALIFYING CRIME OF VIOLENCE SHALL~~  
20 ~~BE REQUIRED TO HAVE ONE DNA SAMPLE COLLECTED, EXCEPT THAT A SECOND DNA~~  
21 ~~SAMPLE SHALL BE TAKEN IF ORDERED BY THE COURT FOR GOOD CAUSE SHOWN.~~

22 (E) IF A PERSON IS NOT SENTENCED TO A TERM OF IMPRISONMENT, FAILURE  
23 TO PROVIDE A DNA SAMPLE WITHIN 90 DAYS OF NOTICE BY THE DIRECTOR SHALL BE  
24 CONSIDERED A VIOLATION OF PROBATION.

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

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

- 31 (i) To analyze and type the genetic markers contained in or derived  
32 from DNA samples;
- 33 (ii) In the furtherance of an official investigation into a criminal  
34 offense;
- 35 (iii) To assist in the identification of human remains;

- 1 (iv) To assist in the identification of missing persons; and
- 2 (v) For research and administrative purposes, including:
- 3 1. Development of a population data base after personal  
4 identifying information is removed;
- 5 2. Support of identification research and protocol  
6 development of forensic DNA analysis methods; and
- 7 3. Quality control purposes.
- 8 (2) (i) Only DNA records that directly relate to the identification of  
9 individuals shall be collected and stored.
- 10 (ii) These records may not be used for any purposes other than  
11 those specified in this section.
- 12 [(f)] (H) (1) The DNA record of identification characteristics resulting from  
13 the DNA testing shall be stored and maintained by the Crime Laboratory in the  
14 statewide DNA data base system.
- 15 (2) The DNA sample shall be stored and maintained by the Crime  
16 Laboratory in the statewide DNA repository.
- 17 [(g)] (I) Pursuant to regulations adopted by the Secretary, after consultation  
18 with the Director:
- 19 (1) Each DNA sample required to be collected under this section from  
20 persons who are incarcerated as of October 1, [1994] 1999, or are sentenced to a term  
21 of incarceration after that date shall be collected at the place of incarceration; and
- 22 (2) DNA samples from persons who are not sentenced to a term of  
23 confinement shall be collected at a [prison or detention] facility specified by the  
24 [sentencing court] DIRECTOR.
- 25 [(h)] (J) DNA samples to be submitted for analysis shall be collected by a:
- 26 (1) Correctional health nurse technician;
- 27 (2) Physician;
- 28 (3) Registered nurse;
- 29 (4) Licensed practical nurse;
- 30 (5) Laboratory technician; or
- 31 (6) Phlebotomist.

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

3 (i) Collection, submission, identification, analysis, storage, and  
4 disposal of DNA samples; and

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

7 (2) (i) DNA samples shall be securely stored in the statewide DNA  
8 repository.

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

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

15 (ii) The Crime Laboratory and each analyst performing DNA  
16 analyses at the Crime Laboratory shall undergo, at regular intervals not exceeding  
17 180 days, external proficiency testing, including at least one external blind test, by a  
18 DNA proficiency testing program that meets the standards issued:

19 1. Under § 1003 of the federal DNA Identification Act of  
20 1994; or

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

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

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

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

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

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

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

33 [(k)] (M) (1) The typing results and personal identification information of  
34 the DNA profile of an individual in the statewide DNA data base system may be made  
35 available to the following agencies or persons upon written or electronic request after  
36 verification by the Director that a match has been made in the population data base

1 and the request is in the furtherance of any of the purposes set forth in subsection  
2 [(e)] (G) of this section:

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

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

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

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

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

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

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

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

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

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

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

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

31 1. Federal, State, or local law enforcement agencies;

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

34 3. A State's Attorney's office; or

1                                   4.       Any third party that the Director deems necessary to  
2 assist the Crime Laboratory with statistical analyses of the population data base.

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

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

8       [m]       (O)       (1)       A person whose DNA record or profile has been included in the  
9 statewide DNA data base system and whose DNA sample is stored in the statewide  
10 DNA repository may request that information be expunged on the grounds that the  
11 conviction which resulted in the inclusion of the person's DNA record or profile in the  
12 statewide DNA data base system or the inclusion of the person's DNA sample in the  
13 statewide DNA repository meets the expungement criteria specified in Article 27, §  
14 737 of the Code.

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

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

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

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

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