

HOUSE BILL 112

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2000 Regular Session  
0lr0377

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By: **Delegates Fulton, Patterson, Paige, Phillips, Oaks, Dobson, Branch, and  
C. Davis**

Introduced and read first time: January 14, 2000

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Postconviction Proceeding - DNA Testing**

3 FOR the purpose of authorizing a certain convicted person to institute a  
4 postconviction proceeding requesting an order for DNA testing of certain  
5 evidence under certain circumstances; requiring a judge to make certain  
6 findings before making a certain order for DNA testing; requiring certain  
7 notification procedures; authorizing the court to order the payment of certain  
8 costs; providing for court appointed counsel; providing for certain discovery  
9 orders; providing for certain sanctions; requiring the court to select a laboratory  
10 that meets certain testing standards; defining a certain term; providing for the  
11 application of this Act; and generally relating to authorizing a certain convicted  
12 person to institute a postconviction proceeding requesting an order for DNA  
13 testing of certain evidence under certain circumstances.

14 BY adding to  
15 Article 27 - Crimes and Punishments  
16 Section 645B  
17 Annotated Code of Maryland  
18 (1996 Replacement Volume and 1999 Supplement)

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

21 **Article 27 - Crimes and Punishments**

22 645B.

23 (A) IN THIS SECTION, "DEOXYRIBONUCLEIC ACID (DNA)" MEANS THE  
24 MOLECULES IN ALL CELLULAR FORMS THAT CONTAIN GENETIC INFORMATION IN A  
25 CHEMICAL STRUCTURE OF EACH INDIVIDUAL.

26 (B) NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW GOVERNING  
27 POSTCONVICTION RELIEF, A PERSON WHO WAS CONVICTED OF AND SENTENCED FOR  
28 A CRIME MAY INSTITUTE A PROCEEDING REQUESTING THE DNA TESTING OF

1 EVIDENCE THAT IS IN THE POSSESSION OF THE STATE AND THAT IS RELATED TO THE  
2 JUDGMENT OF CONVICTION.

3 (C) SUBJECT TO SUBSECTION (E) OF THIS SECTION, A COURT SHALL ORDER  
4 DNA TESTING IF THE COURT FINDS THAT:

5 (1) A REASONABLE PROBABILITY EXISTS THAT THE PETITIONER WOULD  
6 NOT HAVE BEEN CONVICTED IF EXCULPATORY RESULTS HAD BEEN OBTAINED  
7 THROUGH DNA TESTING;

8 (2) THE EVIDENCE CONTAINING DNA WAS SECURED IN RELATION TO  
9 THE CRIME FOR WHICH THE PETITIONER WAS CONVICTED; AND

10 (3) THE EVIDENCE WAS NEVER PREVIOUSLY SUBJECTED TO DNA  
11 TESTING OR WAS NOT SUBJECTED TO THE TESTING THAT IS NOW REQUESTED  
12 WHICH CAN RESOLVE AN ISSUE NOT RESOLVED BY PREVIOUS TESTING.

13 (D) SUBJECT TO SUBSECTION (E) OF THIS SECTION, A COURT MAY ORDER DNA  
14 TESTING IF THE COURT FINDS THAT:

15 (1) A REASONABLE PROBABILITY EXISTS THAT:

16 (I) THE PETITIONER'S VERDICT OR SENTENCE WOULD HAVE BEEN  
17 MORE FAVORABLE IF THE RESULTS OF DNA TESTING HAD BEEN AVAILABLE AT THE  
18 TRIAL LEADING TO THE JUDGMENT OF CONVICTION; OR

19 (II) TESTING WILL PRODUCE EXCULPATORY EVIDENCE;

20 (2) THE EVIDENCE CONTAINING DNA WAS SECURED IN RELATION TO  
21 THE CRIME FOR WHICH THE PETITIONER WAS CONVICTED; AND

22 (3) THE EVIDENCE WAS NEVER PREVIOUSLY SUBJECTED TO DNA  
23 TESTING OR WAS NOT SUBJECTED TO THE TESTING THAT IS NOW REQUESTED  
24 WHICH CAN RESOLVE AN ISSUE NOT RESOLVED BY PREVIOUS TESTING.

25 (E) (1) A PETITIONER SHALL NOTIFY THE STATE IN WRITING OF THE FILING  
26 OF A PETITION UNDER THIS SECTION.

27 (2) THE STATE MAY FILE A RESPONSE TO THE PETITION WITHIN 15 DAYS  
28 AFTER NOTICE OF THE FILING, OR WITHIN SUCH TIME AS THE COURT MAY ORDER.

29 (F) (1) IF THE COURT ORDERS DNA TESTING UNDER SUBSECTION (C) OF  
30 THIS SECTION, THE COURT MAY ORDER THE STATE TO PAY THE COSTS OF THE  
31 TESTING.

32 (2) IF THE COURT ORDERS DNA TESTING UNDER SUBSECTION (D) OF  
33 THIS SECTION, THE COURT MAY ORDER THE PETITIONER TO PAY THE COSTS OF THE  
34 TESTING.

35 (G) THE COURT MAY APPOINT COUNSEL FOR AN INDIGENT PETITIONER.

1 (H) (1) IF THE EVIDENCE HAD PREVIOUSLY BEEN SUBMITTED TO DNA  
2 TESTING, THE COURT MAY ORDER THE STATE OR DEFENSE TO PROVIDE ALL PARTIES  
3 AND THE COURT WITH ACCESS TO THE LABORATORY REPORTS PREPARED IN  
4 CONNECTION WITH THE DNA TESTING, INCLUDING THE UNDERLYING DATA AND  
5 LABORATORY NOTES.

6 (2) IF THE COURT ORDERS THE DNA TESTING IN CONNECTION WITH A  
7 PROCEEDING UNDER THIS SECTION, THE COURT SHALL ORDER THE PRODUCTION  
8 OF:

9 (I) ANY LABORATORY REPORTS PREPARED IN CONNECTION WITH  
10 THE DNA TESTING; AND

11 (II) THE UNDERLYING DATA AND LABORATORY NOTES.

12 (I) (1) WHEN A PROCEEDING IS INSTITUTED UNDER THIS SECTION, THE  
13 COURT SHALL ORDER ALL EVIDENCE IN THE STATE'S POSSESSION THAT COULD BE  
14 SUBJECTED TO DNA TESTING BE PRESERVED DURING THE PENDENCY OF THE  
15 PROCEEDING.

16 (2) IF THE COURT DETERMINES THAT A PARTY TO THE PROCEEDING  
17 HAS INTENTIONALLY DESTROYED EVIDENCE, THE COURT MAY ORDER APPROPRIATE  
18 SANCTIONS, INCLUDING CRIMINAL CONTEMPT FOR A KNOWING VIOLATION.

19 (J) IF THE COURT ORDERS TESTING UNDER THIS SECTION, THE COURT SHALL  
20 SELECT A LABORATORY THAT MEETS THE DNA TESTING STANDARDS ESTABLISHED  
21 BY:

22 (1) THE TECHNICAL WORKING GROUP ON DNA ANALYSIS METHODS  
23 (TWGDAM); OR

24 (2) THE DNA ADVISORY BOARD OF THE FEDERAL BUREAU OF  
25 INVESTIGATION.

26 (K) (1) IF THE RESULTS OF THE POSTCONVICTION DNA TESTING ARE  
27 UNFAVORABLE TO THE PETITIONER, THE COURT SHALL DISMISS THE PETITION.

28 (2) IF THE RESULTS OF THE POSTCONVICTION TESTING ARE  
29 FAVORABLE TO THE PETITIONER, THE COURT SHALL ORDER A HEARING,  
30 NOTWITHSTANDING ANY PROVISIONS OF LAW THAT WOULD BAR THE HEARING AS  
31 TIMELY.

32 (L) THE COURT MAY PASS ADDITIONAL ORDERS AS NECESSARY.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
34 construed retroactively and shall be applied to and interpreted to affect  
35 postconviction proceedings that arise out of offenses that were committed before the  
36 effective date of this Act.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 October 1, 2000.