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By: **Senators Kelley, Blount, Conway, Hoffman, Lawlah, McFadden,  
Mitchell, Pinsky, Ruben, and Sfikas**

Introduced and read first time: January 11, 2001

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Postconviction - DNA Testing**

3 FOR the purpose of authorizing a certain convicted person to file a petition for  
4 postconviction DNA testing of certain evidence under certain circumstances;  
5 requiring a judge to make certain findings before issuing a certain order for  
6 DNA testing; requiring certain notification procedures; requiring the court to  
7 include certain items in an order for DNA testing; requiring DNA testing to be  
8 ordered in a certain period of time; requiring the costs of DNA testing to be paid  
9 by certain persons depending on certain circumstances; requiring the court to  
10 take certain actions based on certain results of DNA testing; defining a certain  
11 term; providing for the application of this Act; and generally relating to  
12 authorizing a convicted person to file a petition for postconviction DNA testing  
13 of certain evidence under certain circumstances.

14 BY adding to

15 Article - Criminal Procedure

16 Section 8-201 to be under the new subtitle "Subtitle 2. DNA Testing"

17 Annotated Code of Maryland

18 (As enacted by Chapter \_\_\_(S.B.\_\_\_/H.B.\_\_\_) (1r0739) of the Acts of the General  
19 Assembly of 2001)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Criminal Procedure**

23 **SUBTITLE 2. DNA TESTING.**

24 8-201.

25 (A) IN THIS SECTION, "DNA" MEANS DEOXYRIBONUCLEIC ACID.

26 (B) NOTWITHSTANDING ANY OTHER LAW GOVERNING POSTCONVICTION  
27 RELIEF, A PERSON WHO WAS CONVICTED OF AND SENTENCED FOR A FELONY MAY

1 FILE A PETITION FOR DNA TESTING OF EVIDENCE THAT THE STATE POSSESSES AND  
2 THAT IS RELATED TO THE JUDGMENT OF CONVICTION.

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

5 (1) (I) THE EVIDENCE WAS NOT PREVIOUSLY SUBJECTED TO THE DNA  
6 TESTING THAT IS REQUESTED FOR REASONS BEYOND THE CONTROL OF THE  
7 PETITIONER; OR

8 (II) THE TYPE OF DNA TEST BEING REQUESTED IS DIFFERENT  
9 FROM TESTS PREVIOUSLY CONDUCTED AND WOULD HAVE A REASONABLE  
10 LIKELIHOOD OF PROVIDING A MORE PROBATIVE RESULT THAN TESTS PREVIOUSLY  
11 CONDUCTED;

12 (2) THE EVIDENCE CONTAINING DNA WAS SECURED IN RELATION TO  
13 THE CRIME FOR WHICH THE PETITIONER WAS CONVICTED;

14 (3) THE EVIDENCE TO BE TESTED HAS BEEN SUBJECT TO A CHAIN OF  
15 CUSTODY SUFFICIENT TO ESTABLISH THAT IT HAS NOT BEEN SUBSTITUTED,  
16 TAMPERED WITH, REPLACED, OR ALTERED IN ANY MATERIAL ASPECT;

17 (4) IDENTITY WAS AN ISSUE IN THE TRIAL THAT RESULTED IN THE  
18 PETITIONER'S CONVICTION;

19 (5) A REASONABLE PROBABILITY EXISTS THAT THE DNA TESTING HAS  
20 THE SCIENTIFIC POTENTIAL TO PRODUCE RESULTS MATERIALLY RELEVANT TO THE  
21 PETITIONER'S ASSERTION OF INNOCENCE; AND

22 (6) THE REQUESTED DNA TEST EMPLOYS A METHOD OF TESTING  
23 GENERALLY ACCEPTED WITHIN THE RELEVANT SCIENTIFIC COMMUNITY.

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

26 (2) THE STATE MAY FILE A RESPONSE TO THE PETITION WITHIN 15 DAYS  
27 AFTER NOTICE OF THE FILING OR WITHIN THE TIME THAT THE COURT ORDERS.

28 (E) IF THE COURT ORDERS DNA TESTING UNDER SUBSECTION (C) OF THIS  
29 SECTION, THE COURT IN ITS ORDER SHALL:

30 (1) IDENTIFY THE SPECIFIC EVIDENCE TO BE TESTED;

31 (2) IDENTIFY THE METHOD OF TESTING TO BE USED; AND

32 (3) SELECT THE LABORATORY WHERE THE TESTING IS TO BE  
33 PERFORMED FROM A LISTING OF ACCREDITED LABORATORIES TO BE MAINTAINED  
34 BY THE OFFICE OF THE ATTORNEY GENERAL.

1 (F) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, DNA  
2 TESTING ORDERED UNDER SUBSECTION (C) OF THIS SECTION SHALL BE CONDUCTED  
3 AS SOON AS PRACTICABLE.

4 (2) BASED ON A FINDING OF NECESSITY, THE COURT MAY ORDER THE  
5 DNA TESTING TO BE COMPLETED BY A DATE THAT THE COURT PROVIDES.

6 (G) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE  
7 PETITIONER SHALL PAY THE COST OF DNA TESTING ORDERED UNDER THIS SECTION.

8 (2) IF THE RESULTS OF THE DNA TESTING THAT THE COURT ORDERS  
9 UNDER THIS SECTION ARE FAVORABLE TO THE PETITIONER, THE COURT SHALL  
10 ORDER THE STATE TO PAY THE COSTS OF THE TESTING.

11 (H) (1) IF THE RESULTS OF THE POSTCONVICTION DNA TESTING ARE  
12 UNFAVORABLE TO THE PETITIONER, THE COURT SHALL DISMISS THE PETITION.

13 (2) IF THE RESULTS OF THE POSTCONVICTION DNA TESTING ARE  
14 FAVORABLE TO THE PETITIONER, THE COURT SHALL ORDER A HEARING,  
15 NOTWITHSTANDING ANY LAW BARRING THE HEARING AS UNTIMELY.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
17 construed retroactively and shall be applied to and interpreted to affect  
18 postconviction proceedings that arise out of crimes that were committed before the  
19 effective date of this Act.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2001.