
By: **Senators Hughes, Forehand, Green, Kelley, Middleton, Mitchell, and Sfikas**

Introduced and read first time: February 2, 2001
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - DNA and Scientific Identification Evidence -**
3 **Postsentencing Procedures and Storage**

4 FOR the purpose of allowing certain criminal defendants to file motions for new trials
5 or resentencing based on certain DNA and scientific identification evidence
6 testing under certain circumstances; requiring the State to preserve certain
7 scientific identification evidence under certain circumstances; providing for the
8 testing of certain scientific identification evidence under certain circumstances;
9 allowing the disposition of certain scientific identification evidence under
10 certain circumstances; providing for certain notifications, objections,
11 procedures, and court determinations regarding disposition of certain scientific
12 identification evidence under certain circumstances; defining certain terms;
13 providing for the application of this Act; and generally relating to DNA and
14 other scientific identification evidence.

15 BY adding to
16 Article - Criminal Procedure
17 Section 8-201 to be under the new subtitle "Subtitle 2. DNA and Scientific
18 Identification Evidence Procedures"
19 Annotated Code of Maryland
20 (As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of
21 2001)

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

24 **Article - Criminal Procedure**

25 **SUBTITLE 2. DNA AND SCIENTIFIC IDENTIFICATION EVIDENCE PROCEDURES.**

26 8-201.

27 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
28 INDICATED.

1 (2) "DNA" MEANS DEOXYRIBONUCLEIC ACID.

2 (3) "DNA AND OTHER SCIENTIFIC IDENTIFICATION TESTING" MEANS
3 DNA TESTING OR OTHER FORENSIC TESTING FOR IDENTITY THAT IS GENERALLY
4 ACCEPTED AS RELIABLE BY THE RELEVANT SCIENTIFIC COMMUNITY.

5 (4) "SCIENTIFIC IDENTIFICATION EVIDENCE" MEANS EVIDENCE THAT:

6 (I) IS RELATED TO AN INVESTIGATION OR PROSECUTION THAT
7 RESULTED IN A JUDGMENT OF CONVICTION;

8 (II) IS IN THE ACTUAL OR CONSTRUCTIVE POSSESSION OF THE
9 STATE OR A COURT; AND

10 (III) MAY PRODUCE EXCULPATORY OR MITIGATING EVIDENCE
11 RELEVANT TO A CONVICTED PERSON'S CLAIM OF WRONGFUL CONVICTION OR
12 SENTENCING IF SUBJECTED TO DNA OR OTHER SCIENTIFIC IDENTIFICATION
13 TESTING.

14 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN A CASE IN WHICH
15 A DEFENDANT HAS BEEN CONVICTED IN A CIRCUIT COURT OF A CRIME PUNISHABLE
16 BY A TERM OF IMPRISONMENT OF MORE THAN 1 YEAR, THE DEFENDANT MAY FILE A
17 MOTION AT ANY TIME FOR A NEW TRIAL OR FOR RESENTENCING IF THE MOTION IS
18 BASED ON DNA OR OTHER SCIENTIFIC IDENTIFICATION TESTING THE RESULTS OF
19 WHICH COULD SHOW THAT THE DEFENDANT WAS WRONGFULLY CONVICTED OR
20 SENTENCED.

21 (C) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE STATE
22 SHALL PRESERVE ANY SCIENTIFIC IDENTIFICATION EVIDENCE SECURED IN
23 CONNECTION WITH A CRIMINAL CASE FOR THE PERIOD OF TIME THAT THE PERSON
24 IS INCARCERATED IN CONNECTION WITH THAT CASE.

25 (2) THE STATE SHALL MAKE THE SCIENTIFIC IDENTIFICATION
26 EVIDENCE AVAILABLE TO PARTIES IN THE CASE UNDER TERMS THAT ARE
27 MUTUALLY AGREED ON BETWEEN THEM.

28 (3) IF AN AGREEMENT CANNOT BE REACHED, THE PARTY REQUESTING
29 THE TESTING MAY FILE AN APPLICATION IN THE CIRCUIT COURT THAT ENTERED
30 THE JUDGMENT FOR AN ORDER SETTING THE TERMS UNDER WHICH THE EVIDENCE
31 WILL BE MADE AVAILABLE FOR TESTING.

32 (D) (1) THE STATE MAY DISPOSE OF SCIENTIFIC IDENTIFICATION
33 EVIDENCE BEFORE THE EXPIRATION OF THE TIME PERIOD DESCRIBED IN
34 SUBSECTION (C) OF THIS SECTION IF THE STATE NOTIFIES THE FOLLOWING
35 PERSONS:

36 (I) THE PERSON WHO IS INCARCERATED IN CONNECTION WITH
37 THE CASE;

1 (II) ANY ATTORNEY OF RECORD FOR THE PERSON INCARCERATED;
2 AND

3 (III) THE OFFICE OF PUBLIC DEFENDER FOR THE JUDICIAL
4 DISTRICT IN WHICH THE JUDGMENT OF CONVICTION WAS ENTERED.

5 (2) THE NOTIFICATION REQUIRED IN PARAGRAPH (1) OF THIS
6 SUBSECTION SHALL INCLUDE:

7 (I) A DESCRIPTION OF THE SCIENTIFIC IDENTIFICATION
8 EVIDENCE;

9 (II) A STATEMENT THAT THE STATE INTENDS TO DISPOSE OF THE
10 EVIDENCE;

11 (III) A STATEMENT THAT THE STATE WILL DISPOSE OF THE
12 EVIDENCE UNLESS A PARTY FILES AN OBJECTION IN WRITING WITHIN 120 DAYS
13 FROM THE DATE OF SERVICE IN THE CIRCUIT COURT THAT ENTERED THE
14 JUDGMENT; AND

15 (IV) THE NAME AND MAILING ADDRESS OF THE CIRCUIT COURT
16 WHERE AN OBJECTION MAY BE FILED.

17 (3) UNLESS ANOTHER LAW OR COURT ORDER REQUIRES THE
18 PRESERVATION OF THE SCIENTIFIC IDENTIFICATION EVIDENCE, IF NO OBJECTION
19 TO THE DISPOSITION OF THE EVIDENCE IS FILED WITHIN 120 DAYS OF THE NOTICE
20 REQUIRED UNDER THIS SUBSECTION, THE STATE MAY DISPOSE OF THE EVIDENCE.

21 (4) IF A PERSON FILES WRITTEN OBJECTIONS TO THE STATE'S NOTICE
22 THAT IT INTENDS TO DISPOSE OF SCIENTIFIC IDENTIFICATION EVIDENCE, THE
23 COURT:

24 (I) SHALL CONSIDER THE REASONS FOR AND AGAINST
25 DISPOSITION OF THE EVIDENCE;

26 (II) MAY HOLD A HEARING ON THE PROPOSED DISPOSITION OF THE
27 EVIDENCE; AND

28 (III) SHALL ISSUE AN ORDER DISPOSING OF THE MATTER AS
29 REQUIRED BY THE INTERESTS OF JUSTICE AND THE INTEGRITY OF THE CRIMINAL
30 JUSTICE SYSTEM.

31 (5) IF A PERSON OBJECTS TO THE DISPOSITION OF THE SCIENTIFIC
32 IDENTIFICATION EVIDENCE, THE STATE SHALL HAVE THE BURDEN OF PROVING BY A
33 PREPONDERANCE OF THE EVIDENCE THAT THE EVIDENCE SHOULD BE DISPOSED.

34 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this Act
35 providing for DNA and other scientific testing shall apply to any person incarcerated
36 on or after the effective date of this Act. The provisions of this Act providing for the
37 retention and disposition of scientific identification evidence shall apply to any

1 scientific identification evidence in the possession of the State on or after the effective
2 date of this Act, regardless of whether the person was convicted before or on or after
3 the effective date of this Act.

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