

SENATE BILL 694

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2001 Regular Session
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By: **Senators Hughes, Forehand, Green, Kelley, Middleton, Mitchell, and Sfikas Sfikas, Blount, Colburn, Conway, Currie, Ferguson, Hoffman, Lawlah, McFadden, Miller, Pinsky, and Ruben**

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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 22, 2001

CHAPTER _____

1 AN ACT concerning

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

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 authorizing a certain person convicted of~~
15 certain offenses to file a petition for postconviction DNA testing of certain
16 evidence under certain circumstances; requiring a judge to make certain
17 findings before issuing a certain order for DNA testing; requiring certain
18 notification procedures; requiring the court to include certain items in an order
19 for DNA testing; requiring DNA testing to be ordered in a certain period of time;
20 requiring the costs of DNA testing to be paid by certain persons depending on
21 certain circumstances; requiring the court to take certain actions based on
22 certain results of DNA testing; requiring the State to preserve certain evidence
23 under certain circumstances; authorizing the disposition of certain evidence
24 under certain circumstances; establishing certain procedures for the disposition
25 of certain evidence; defining certain terms; providing for the application of this
26 Act; and generally relating to authorizing a convicted person to file a petition for

1 postconviction DNA testing of certain evidence under certain circumstances.

2 BY adding to

3 Article - Criminal Procedure

4 Section 8-201 to be under the new subtitle "Subtitle 2. DNA and Scientific

5 ~~Identification Evidence Procedures~~ Evidence - Postconviction Review"

6 Annotated Code of Maryland

7 (As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of

8 2001)

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

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

11 **Article - Criminal Procedure**

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

13 **EVIDENCE - POSTCONVICTION REVIEW.**

14 8-201.

15 ~~(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
16 ~~INDICATED:~~

17 ~~(2) "DNA" MEANS DEOXYRIBONUCLEIC ACID.~~

18 ~~(3) "DNA AND OTHER SCIENTIFIC IDENTIFICATION TESTING" MEANS~~
19 ~~DNA TESTING OR OTHER FORENSIC TESTING FOR IDENTIFY THAT IS GENERALLY~~
20 ~~ACCEPTED AS RELIABLE BY THE RELEVANT SCIENTIFIC COMMUNITY.~~

21 ~~(4) "SCIENTIFIC IDENTIFICATION EVIDENCE" MEANS EVIDENCE THAT:~~

22 ~~(I) IS RELATED TO AN INVESTIGATION OR PROSECUTION THAT~~
23 ~~RESULTED IN A JUDGMENT OF CONVICTION;~~

24 ~~(II) IS IN THE ACTUAL OR CONSTRUCTIVE POSSESSION OF THE~~
25 ~~STATE OR A COURT; AND~~

26 ~~(III) MAY PRODUCE EXCULPATORY OR MITIGATING EVIDENCE~~
27 ~~RELEVANT TO A CONVICTED PERSON'S CLAIM OF WRONGFUL CONVICTION OR~~
28 ~~SENTENCING IF SUBJECTED TO DNA OR OTHER SCIENTIFIC IDENTIFICATION~~
29 ~~TESTING.~~

30 ~~(B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN A CASE IN WHICH~~
31 ~~A DEFENDANT HAS BEEN CONVICTED IN A CIRCUIT COURT OF A CRIME PUNISHABLE~~
32 ~~BY A TERM OF IMPRISONMENT OF MORE THAN 1 YEAR, THE DEFENDANT MAY FILE A~~
33 ~~MOTION AT ANY TIME FOR A NEW TRIAL OR FOR RESENTENCING IF THE MOTION IS~~
34 ~~BASED ON DNA OR OTHER SCIENTIFIC IDENTIFICATION TESTING THE RESULTS OF~~
35 ~~WHICH COULD SHOW THAT THE DEFENDANT WAS WRONGFULLY CONVICTED OR~~
36 ~~SENTENCED.~~

1 ~~(C) (4)~~ NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE STATE
2 SHALL PRESERVE ANY SCIENTIFIC IDENTIFICATION EVIDENCE SECURED IN
3 CONNECTION WITH A CRIMINAL CASE FOR THE PERIOD OF TIME THAT THE PERSON
4 IS INCARCERATED IN CONNECTION WITH THAT CASE.

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
6 INDICATED.

7 (2) "DNA" MEANS DEOXYRIBONUCLEIC ACID.

8 (3) "SCIENTIFIC IDENTIFICATION EVIDENCE" MEANS EVIDENCE THAT:

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

11 (II) IS IN THE ACTUAL OR CONSTRUCTIVE POSSESSION OF THE
12 STATE UNDER SUBSECTION (I) OF THIS SECTION; AND

13 (III) CONTAINS DNA THAT MAY PRODUCE EXCULPATORY OR
14 MITIGATING EVIDENCE RELEVANT TO A CLAIM OF A CONVICTED PERSON OF
15 WRONGFUL CONVICTION OR SENTENCING IF SUBJECT TO DNA TESTING.

16 (B) NOTWITHSTANDING ANY OTHER LAW GOVERNING POSTCONVICTION
17 RELIEF, A PERSON WHO IS CONVICTED OF A VIOLATION OF ARTICLE 27, § 387, § 407, §
18 408, § 409, § 410, § 411, § 462, § 463, § 464, OR § 464A OF THE CODE MAY FILE A PETITION
19 FOR DNA TESTING OF SCIENTIFIC IDENTIFICATION EVIDENCE THAT THE STATE
20 POSSESSES AS PROVIDED IN SUBSECTION (I) OF THIS SECTION AND THAT IS RELATED
21 TO THE JUDGMENT OF CONVICTION.

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

24 (1) (I) THE SCIENTIFIC IDENTIFICATION EVIDENCE WAS NOT
25 PREVIOUSLY SUBJECTED TO THE DNA TESTING THAT IS REQUESTED FOR REASONS
26 BEYOND THE CONTROL OF THE PETITIONER; OR

27 (II) THE TYPE OF DNA TEST BEING REQUESTED IS DIFFERENT
28 FROM TESTS PREVIOUSLY CONDUCTED AND WOULD HAVE A REASONABLE
29 LIKELIHOOD OF PROVIDING A MORE PROBATIVE RESULT THAN TESTS PREVIOUSLY
30 CONDUCTED;

31 (2) THE SCIENTIFIC IDENTIFICATION EVIDENCE WAS SECURED AS
32 PROVIDED IN SUBSECTION (I) OF THIS SECTION, IN RELATION TO THE CRIME FOR
33 WHICH THE PETITIONER WAS CONVICTED;

34 (3) THE SCIENTIFIC IDENTIFICATION EVIDENCE TO BE TESTED HAS
35 BEEN SUBJECT TO A CHAIN OF CUSTODY AS PROVIDED UNDER SUBSECTION (I) OF
36 THIS SECTION THAT IS SUFFICIENT TO ESTABLISH THAT IT HAS NOT BEEN
37 SUBSTITUTED, TAMPERED WITH, REPLACED, OR ALTERED IN ANY MATERIAL ASPECT;

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

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

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

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

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

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

14 (1) IDENTIFY THE SPECIFIC SCIENTIFIC IDENTIFICATION EVIDENCE TO
15 BE TESTED;

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

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

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

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

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

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

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

32 (2) IF THE RESULTS OF THE POSTCONVICTION DNA TESTING ARE
33 FAVORABLE TO THE PETITIONER, THE COURT SHALL:

34 (I) IF NO POSTCONVICTION PROCEEDING HAS BEEN PREVIOUSLY
35 INITIATED BY THE PETITIONER UNDER § 7-102 OF THIS ARTICLE, OPEN A
36 POSTCONVICTION PROCEEDING UNDER § 7-102 OF THIS ARTICLE; OR

1 (II) IF A POSTCONVICTION PROCEEDING HAS BEEN PREVIOUSLY
2 INITIATED BY THE PETITIONER UNDER § 7-102 OF THIS ARTICLE, REOPEN A
3 POSTCONVICTION PROCEEDING UNDER § 7-104 OF THIS ARTICLE.

4 (I) (1) THE STATE SHALL PRESERVE SCIENTIFIC IDENTIFICATION
5 EVIDENCE THAT:

6 (I) THE STATE HAS REASON TO KNOW CONTAINS DNA MATERIAL;
7 AND

8 (II) IS SECURED IN CONNECTION WITH AN OFFENSE DESCRIBED IN
9 SUBSECTION (B) OF THIS SECTION.

10 (2) THE STATE SHALL PRESERVE SCIENTIFIC IDENTIFICATION
11 EVIDENCE DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION FOR:

12 (I) A PERIOD OF 3 YEARS AFTER THE IMPOSITION OF SENTENCE;
13 OR

14 (II) A PERIOD BEYOND 3 YEARS THAT IS REQUIRED PURSUANT TO
15 AN ORDER ISSUED WITHIN 3 YEARS AFTER THE IMPOSITION OF SENTENCE BY THE
16 COURT OF APPEALS OR COURT OF SPECIAL APPEALS THAT IS SPECIFIC TO A SINGLE
17 OFFENSE AND SPECIFIC SCIENTIFIC IDENTIFICATION EVIDENCE RELATING TO THAT
18 OFFENSE.

19 ~~(2)~~ (3) THE STATE SHALL MAKE THE SCIENTIFIC IDENTIFICATION
20 EVIDENCE AVAILABLE TO PARTIES IN THE CASE UNDER TERMS THAT ARE
21 MUTUALLY AGREED ON BETWEEN THEM.

22 ~~(3)~~ (4) IF AN AGREEMENT CANNOT BE REACHED, THE PARTY
23 REQUESTING THE TESTING MAY FILE AN APPLICATION IN THE CIRCUIT COURT THAT
24 ENTERED THE JUDGMENT FOR AN ORDER SETTING THE TERMS UNDER WHICH THE
25 EVIDENCE WILL BE MADE AVAILABLE FOR TESTING.

26 ~~(4)~~ (I) (1) THE STATE MAY DISPOSE OF SCIENTIFIC IDENTIFICATION
27 EVIDENCE BEFORE THE EXPIRATION OF THE TIME PERIOD DESCRIBED IN
28 SUBSECTION ~~(C)~~ (I) OF THIS SECTION IF THE STATE NOTIFIES THE FOLLOWING
29 PERSONS:

30 (I) THE PERSON WHO IS INCARCERATED IN CONNECTION WITH
31 THE CASE;

32 (II) ANY ATTORNEY OF RECORD FOR THE PERSON INCARCERATED;
33 AND

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

36 (2) THE NOTIFICATION REQUIRED IN PARAGRAPH (1) OF THIS
37 SUBSECTION SHALL INCLUDE:

1 (I) A DESCRIPTION OF THE SCIENTIFIC IDENTIFICATION
2 EVIDENCE;

3 (II) A STATEMENT THAT THE STATE INTENDS TO DISPOSE OF THE
4 EVIDENCE;

5 (III) A STATEMENT THAT THE STATE WILL DISPOSE OF THE
6 EVIDENCE UNLESS A PARTY FILES AN OBJECTION IN WRITING WITHIN 120 DAYS
7 FROM THE DATE OF SERVICE IN THE CIRCUIT COURT THAT ENTERED THE
8 JUDGMENT; AND

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

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

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

18 (I) SHALL CONSIDER THE REASONS FOR AND AGAINST
19 DISPOSITION OF THE EVIDENCE;

20 (II) MAY HOLD A HEARING ON THE PROPOSED DISPOSITION OF THE
21 EVIDENCE; AND

22 (III) SHALL ISSUE AN ORDER DISPOSING OF THE MATTER AS
23 REQUIRED BY THE INTERESTS OF JUSTICE AND THE INTEGRITY OF THE CRIMINAL
24 JUSTICE SYSTEM.

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

28 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this Act
29 providing for DNA and other scientific testing shall apply to any person incarcerated
30 on or after the effective date of this Act. The provisions of this Act providing for the
31 retention and disposition of scientific identification evidence shall apply to any
32 scientific identification evidence in the possession of the State on or after the effective
33 date of this Act, regardless of whether the person was convicted before or on or after
34 the effective date of this Act.

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

