
By: **Senators Miller, Colburn, Forehand, Green, Hughes, 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 - Postconviction - DNA Testing for Death Sentences**

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

15 BY adding to
16 Article - Criminal Procedure
17 Section 8-201 to be under the new subtitle "Subtitle 2. DNA Testing"
18 Annotated Code of Maryland
19 (As enacted by Chapter ___(S.B. 1) of the Acts of the General 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 IS CONFINED UNDER SENTENCE OF DEATH MAY FILE A

1 PETITION FOR DNA TESTING OF EVIDENCE THAT THE STATE POSSESSES AND THAT IS
2 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:

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

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

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

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