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By: **Delegates Gladden, Vallario, and Griffith**  
Introduced and read first time: January 30, 2002  
Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Evidence - Motions for New Trial, Testing, and Storage**

3 FOR the purpose of allowing a court to grant a new trial motion and other relief based  
4 on certain scientific identification evidence under certain circumstances;  
5 requiring the State to preserve certain evidence for certain crimes and to make  
6 the evidence available to certain persons under certain circumstances; allowing  
7 the State to dispose of certain evidence under certain circumstances;  
8 establishing and altering procedures relating to testing, storage, and disposition  
9 of certain evidence; repealing certain provisions relating to postconviction  
10 procedures and testing for DNA evidence; altering a certain definition; providing  
11 for the application of this Act; and generally relating to the scientific  
12 identification and storage of evidence and new trials.

13 BY repealing and reenacting, with amendments,  
14 Article - Criminal Procedure  
15 Section 8-201 to be under the amended subtitle "Subtitle 2. Evidence - Motions  
16 for New Trials and Storage"  
17 Annotated Code of Maryland  
18 (2001 Volume)

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

21 **Article - Criminal Procedure**

22 Subtitle 2. [DNA] Evidence - [Postconviction Review] MOTIONS FOR NEW TRIALS  
23 AND STORAGE.

24 8-201.

25 (a) (1) In this section [the following words have the meanings indicated.

26 (2) "DNA" means deoxyribonucleic acid.

1 (3) "Scientific], "SCIENTIFIC identification evidence" means evidence  
2 that:

3 (i) is related to an investigation or prosecution that resulted in a  
4 judgment of conviction;

5 (ii) is in the [actual or constructive] possession of the State under  
6 [subsection (i)] SUBSECTION (D) of this section; and

7 (iii) [contains DNA that] IF SUBJECT TO TESTING THAT IS  
8 GENERALLY ACCEPTED AS RELIABLE BY THE RELEVANT SCIENTIFIC COMMUNITY,  
9 may produce exculpatory or mitigating evidence relevant to a claim of a convicted  
10 person of wrongful conviction or sentencing [if subject to DNA testing].

11 (2) "SCIENTIFIC IDENTIFICATION EVIDENCE" INCLUDES  
12 DEOXYRIBONUCLEIC ACID (DNA) EVIDENCE OBTAINED IN ACCORDANCE WITH  
13 STANDARDS UNDER § 10-915 OF THE COURTS ARTICLE.

14 [(b) Notwithstanding any other law governing postconviction relief, a person  
15 who is convicted of a violation of Article 27, § 387, § 407, § 408, § 409, § 410, § 411, §  
16 462, § 463, § 464, or § 464A of the Code may file a petition for DNA testing of scientific  
17 identification evidence that the State possesses as provided in subsection (i) of this  
18 section and that is related to the judgment of conviction.

19 (c) Subject to subsection (d) of this section, a court shall order DNA testing if  
20 the court finds that:

21 (1) (i) the scientific identification evidence was not previously  
22 subjected to the DNA testing that is requested for reasons beyond the control of the  
23 petitioner; or

24 (ii) the type of DNA test being requested is different from tests  
25 previously conducted and would have a reasonable likelihood of providing a more  
26 probative result than tests previously conducted;

27 (2) the scientific identification evidence was secured as provided in  
28 subsection (i) of this section, in relation to the crime for which the petitioner was  
29 convicted;

30 (3) the scientific identification evidence to be tested has been subject to a  
31 chain of custody as provided under subsection (i) of this section that is sufficient to  
32 establish that it has not been substituted, tampered with, replaced, or altered in any  
33 material aspect;

34 (4) identity was an issue in the trial that resulted in the petitioner's  
35 conviction;

36 (5) a reasonable probability exists that the DNA testing has the scientific  
37 potential to produce results materially relevant to the petitioner's assertion of  
38 innocence; and

1 (6) the requested DNA test employs a method of testing generally  
2 accepted within the relevant scientific community.

3 (d) (1) A petitioner shall notify the State in writing of the filing of a petition  
4 under this section.

5 (2) The State may file a response to the petition within 15 days after  
6 notice of the filing or within the time that the court orders.

7 (e) If the court orders DNA testing under subsection (c) of this section, the  
8 court in its order shall:

9 (1) identify the specific scientific identification evidence to be tested;

10 (2) identify the method of testing to be used; and

11 (3) select the laboratory where the testing is to be performed from a  
12 listing of accredited laboratories to be maintained by the Office of the Attorney  
13 General.

14 (f) (1) Except as provided in paragraph (2) of this subsection, DNA testing  
15 ordered under subsection (c) of this section shall be conducted as soon as practicable.

16 (2) Based on a finding of necessity, the court may order the DNA testing  
17 to be completed by a date that the court provides.]

18 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IN A CASE IN WHICH  
19 A DEFENDANT HAS BEEN CONVICTED OF A CRIME OF VIOLENCE AS DEFINED IN §  
20 14-101 OF THE CRIMINAL LAW ARTICLE, A COURT MAY GRANT A NEW TRIAL OR  
21 OTHER APPROPRIATE RELIEF IF THE GROUNDS FOR RELIEF ARE BASED ON  
22 SCIENTIFIC IDENTIFICATION EVIDENCE TESTING, THE RESULTS OF WHICH COULD  
23 SHOW THAT THE DEFENDANT WAS WRONGLY CONVICTED OR SENTENCED.

24 [(g)] (C) (1) Except as provided in paragraph (2) of this subsection, the  
25 [petitioner] DEFENDANT shall pay the cost of [DNA] SCIENTIFIC IDENTIFICATION  
26 EVIDENCE testing [ordered under this section].

27 (2) If the results of the [DNA] SCIENTIFIC IDENTIFICATION EVIDENCE  
28 testing [that the court orders under this section] are favorable to the [petitioner]  
29 DEFENDANT, the court shall order the State to pay the costs of the testing.

30 [(h)] (1) If the results of the postconviction DNA testing are unfavorable to the  
31 petitioner, the court shall dismiss the petition.

32 (2) If the results of the postconviction DNA testing are favorable to the  
33 petitioner, the court shall:

34 (i) if no postconviction proceeding has been previously initiated by  
35 the petitioner under § 7-102 of this article, open a postconviction proceeding under §  
36 7-102 of this article; or

1 (ii) if a postconviction proceeding has been previously initiated by  
2 the petitioner under § 7-102 of this article, reopen a postconviction proceeding under  
3 § 7-104 of this article.

4 (i) (1) The State shall preserve scientific identification evidence that:

5 (i) the State has reason to know contains DNA material; and

6 (ii) is secured in connection with an offense described in subsection  
7 (b) of this section.

8 (2) The State shall preserve scientific identification evidence described  
9 in paragraph (1) of this subsection for:

10 (i) a period of 3 years after the imposition of sentence; or

11 (ii) a period beyond 3 years that is required pursuant to an order  
12 issued within 3 years after the imposition of sentence by the Court of Appeals or  
13 Court of Special Appeals that is specific to a single offense and specific scientific  
14 identification evidence relating to that offense.

15 (3) The State shall make the scientific identification evidence available  
16 to parties in the case under terms that are mutually agreed on between them.

17 (4) If an agreement cannot be reached, the party requesting the testing  
18 may file an application in the circuit court that entered the judgment for an order  
19 setting the terms under which the evidence will be made available for testing.]

20 (D) (1) THIS SUBSECTION APPLIES TO CONVICTIONS UNDER §§ 2-201, 2-204,  
21 2-205, 2-206, 2-207, 3-303, 3-304(A)(1), 3-305, 3-306(A)(1), 3-307(A)(1), 3-309, 3-310, 3-311,  
22 AND 3-312 OF THE CRIMINAL LAW ARTICLE.

23 (2) EXCEPT AS PROVIDED IN SUBSECTION (E) OF THIS SECTION, THE  
24 STATE SHALL PRESERVE ALL EVIDENCE OBTAINED IN CONNECTION WITH A  
25 CONVICTION DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION FOR AS LONG AS  
26 THE DEFENDANT IS INCARCERATED FOR THE CRIME.

27 (3) THE STATE SHALL MAKE EVIDENCE AVAILABLE TO A DEFENDANT  
28 UNDER TERMS THAT ARE MUTUALLY AGREED BETWEEN THE STATE AND THE  
29 DEFENDANT.

30 (4) IF THE STATE AND THE DEFENDANT ARE UNABLE TO AGREE ON  
31 TERMS FOR INSPECTION OR TESTING OF THE EVIDENCE, THE DEFENDANT MAY FILE  
32 A MOTION IN THE COURT THAT ENTERED THE CONVICTION REQUESTING THE COURT  
33 TO ORDER APPROPRIATE TERMS FOR INSPECTION OR TESTING OF EVIDENCE.

34 [(j)] (E) (1) The State may dispose of [scientific identification] evidence IN  
35 A CASE DESCRIBED IN SUBSECTION (D) OF THIS SECTION before the expiration of the  
36 time period described in [subsection (i)] SUBSECTION (D) of this section if the State  
37 notifies the following persons:

1 (i) the [person who is incarcerated in connection with the case]  
2 DEFENDANT; AND

3 (ii) any attorney of record for the [person incarcerated; and

4 (iii) the Office of Public Defender for the judicial district in which  
5 the judgment of conviction was entered] DEFENDANT.

6 (2) The notification required in paragraph (1) of this subsection shall  
7 include:

8 (i) a description of the [scientific identification] evidence;

9 (ii) a statement that the State intends to dispose of the evidence;

10 (iii) a statement that the State will dispose of the evidence unless a  
11 party files an objection in writing within 120 days from the date of service in the  
12 circuit court that entered the judgment; and

13 (iv) the name and mailing address of the circuit court where an  
14 objection may be filed.

15 (3) Unless another law or court order requires the preservation of the  
16 [scientific identification] evidence, if no objection to the disposition of the evidence is  
17 filed within 120 days of the notice required under this subsection, the State may  
18 dispose of the evidence.

19 (4) If a person files written objections to the State's notice that it intends  
20 to dispose of [scientific identification] evidence, the court:

21 (i) shall consider the reasons for and against disposition of the  
22 evidence;

23 (ii) may hold a hearing on the proposed disposition of the evidence;  
24 and

25 (iii) shall issue an order disposing of the matter as required by the  
26 interests of justice and the integrity of the criminal justice system.

27 (5) If a person objects to the disposition of the [scientific identification]  
28 evidence, the State shall have the burden of proving by a preponderance of the  
29 evidence that the evidence should be disposed.

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

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 October 1, 2002.