

HOUSE BILL 1053

Unofficial Copy
E4

2002 Regular Session
(2lr1168)

ENROLLED BILL

-- Judiciary and Appropriations/Judicial Proceedings --

Introduced by **Delegates Doory, Rosenberg, McHale, Frush, Moe, Patterson,
and ~~Vallario~~ Vallario, Kelly, Boschert, Petzold, and Dembrow**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **DNA Testing - Felony Convictions - DNA Technology Fund - Preservation of**
3 **Scientific Identification Evidence**

4 FOR the purpose of altering provisions of law relating to DNA testing of certain
5 persons convicted of certain crimes by providing that any person convicted of a
6 felony *or certain misdemeanors* on or before a certain date shall submit a DNA
7 sample to the Department of State Police; making conforming changes;
8 providing for the application of this Act; establishing a DNA Technology Fund to
9 assist the Department of State Police and local law enforcement agencies in
10 acquiring DNA technology equipment needed for DNA testing; defining certain
11 terms; requiring the Executive Director of the Governor's Office of Crime
12 Control and Prevention to establish application procedures and administer the
13 grants; requiring the Department of State Police and local law enforcement
14 agencies to provide certain information to the Executive Director; requiring the
15 Executive Director to consider certain criteria in determining the amount of the
16 grants; requiring the Department of State Police and local law enforcement

1 agencies to submit proof of appropriate expenditure; altering the period of time
 2 during which the State must preserve certain evidence; making stylistic
 3 changes; altering certain time periods and procedures relating to DNA samples
 4 and tests; providing for a certain contingency; limiting certain funding for a
 5 certain time; providing that the Department of State Police is not required to
 6 obtain DNA samples and conduct testing for a certain time if certain funding is
 7 not received under certain circumstances; making provisions of this Act
 8 severable; declaring that the provisions of this Act are not severable; making this
 9 Act subject to a certain contingency; providing for the termination of this Act; and
 10 generally relating to DNA testing, the preservation of scientific identification
 11 evidence, and the DNA Technology Fund.

12 BY repealing and reenacting, with amendments,
 13 Article 88B - Department of State Police
 14 Section 12A
 15 Annotated Code of Maryland
 16 (1998 Replacement Volume and 2001 Supplement)

17 BY adding to
 18 Article 41 - Governor - Executive and Administrative Departments
 19 Section 4-301 to be under the new subtitle "Subtitle 3. DNA Technology Fund"
 20 Annotated Code of Maryland
 21 (1997 Replacement Volume and 2001 Supplement)

22 BY repealing and reenacting, with amendments,
 23 Article - Criminal Procedure
 24 Section 8-201(i)
 25 Annotated Code of Maryland
 26 (2001 Volume)

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

29 **Article 88B - Department of State Police**

30 12A.

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

32 (2) "CODIS" means the Federal Bureau of Investigation's "Combined
 33 DNA Index System" that allows the storage and exchange of DNA records submitted
 34 by state and local forensic DNA laboratories.

35 (3) "Crime Laboratory" means the Crime Laboratory Division of the
 36 Department of State Police.

1 (4) "Director" means the Director of the Crime Laboratory or the
2 Director's designee.

3 (5) "DNA" means deoxyribonucleic acid.

4 (6) "DNA record" means DNA information stored in the statewide DNA
5 data base system of the Department of State Police or CODIS and includes that
6 information commonly referred to as a DNA profile.

7 (7) "DNA sample" means a body fluid or tissue sample provided by any
8 person convicted of a [qualifying crime of violence] FELONY OR A VIOLATION OF §
9 6-205 OR § 6-206 OF THE CRIMINAL LAW ARTICLE or any body fluid or tissue sample
10 submitted to the statewide DNA data base system for analysis pursuant to a criminal
11 investigation.

12 [(8) "Qualifying crime of violence" means:

13 (i) A violation of Article 27, § 35C of the Code that involves sexual
14 abuse;

15 (ii) Rape in any degree;

16 (iii) A sexual offense in the first, second, or third degree;

17 (iv) Murder;

18 (v) Robbery under Article 27, § 486 or § 487 of the Code;

19 (vi) First degree assault; or

20 (vii) Attempts to commit these offenses.]

21 [(9)] (8) "Statewide DNA data base system" means the DNA record
22 system administered by the Department of State Police for identification purposes.

23 [(10)] (9) "Statewide DNA repository" means the State repository of
24 DNA samples collected under this section.

25 (b) (1) There is created within the Crime Laboratory a statewide DNA data
26 base system.

27 (2) The system shall be the central repository for all DNA testing
28 information as provided in this section.

29 (3) The Director shall:

30 (i) Administer and manage the system;

31 (ii) Consult with the Secretary on the adoption of appropriate
32 regulations concerning system protocols and operations;

1 (iii) Ensure compatibility with Federal Bureau of Investigation and
2 CODIS requirements, including the use of comparable test procedures, quality
3 assurance, laboratory equipment, and computer software; and

4 (iv) Ensure the security and confidentiality of all records of the
5 system.

6 (4) The Secretary, after consultation with the Director, shall adopt
7 appropriate regulations concerning system protocols and operation.

8 (c) Pursuant to regulations adopted by the Secretary after consultation with
9 the Director under this section, a person convicted of a [qualifying crime of violence]
10 FELONY ORA VIOLATION OF § 6-205 OR § 6-206 OF THE CRIMINAL LAW ARTICLE shall:

11 (1) Have a DNA sample collected upon intake to any prison or detention
12 facility; or

13 (2) If not sentenced to a term of imprisonment, provide a DNA sample as
14 a condition of sentence or probation.

15 ~~(d) A second DNA sample shall be taken if ordered by the court for good cause~~
16 ~~shown.~~

17 (D) A SECOND DNA SAMPLE MAY BE TAKEN IF NEEDED TO OBTAIN
18 SUFFICIENT DNA FOR THE STATE DATABASE OR IF ORDERED BY THE COURT FOR
19 GOOD CAUSE SHOWN.

20 (e) If a person is not sentenced to a term of imprisonment, failure to provide a
21 DNA sample within 90 days of notice by the Director shall be considered a violation of
22 probation.

23 (f) A person who has been convicted of a [qualifying crime of violence]
24 FELONY ORA VIOLATION OF § 6-205 OR § 6-206 OF THE CRIMINAL LAW ARTICLE prior
25 to October 1, [1999] 2002, and who remains incarcerated on that date shall submit a
26 DNA sample to the Department of State Police.

27 (g) (1) To the extent fiscal resources are available, DNA samples shall be
28 tested for the following purposes:

29 (i) To analyze and type the genetic markers contained in or derived
30 from DNA samples;

31 (ii) In the furtherance of an official investigation into a criminal
32 offense;

33 (iii) To assist in the identification of human remains;

34 (iv) To assist in the identification of missing persons; and

35 (v) For research and administrative purposes, including:

1 (ii) Access to and dissemination of typing results and personal
2 identification information of samples that are submitted under this section.

3 (2) (i) DNA samples shall be securely stored in the statewide DNA
4 repository.

5 (ii) Typing results shall be securely stored in the statewide DNA
6 data base system.

7 (3) (i) Any procedure adopted by the Director shall include quality
8 assurance guidelines to ensure that DNA identification records meet standards and
9 audit requirements for laboratories that submit DNA records for inclusion in the
10 statewide DNA data base system and CODIS.

11 (ii) The Crime Laboratory and each analyst performing DNA
12 analyses at the Crime Laboratory shall undergo, at regular intervals not exceeding
13 ~~180~~ 183 days, external proficiency testing, ~~including at least one external blind test,~~
14 by a DNA proficiency testing program that meets the standards issued:

15 1. Under § 1003 of the federal DNA Identification Act of
16 1994; or

17 ~~2. Under the guidelines for a quality assurance program for~~
18 ~~DNA analysis (known as the "TWGDAM" guidelines).~~

19 2. UNDER THE FEDERAL BUREAU OF INVESTIGATION'S
20 QUALITY ASSURANCE STANDARDS FOR CONVICTED OFFENDER'S DNA DATA BASING
21 AND FORENSIC DNA TESTING LABORATORIES.

22 (4) Subject to subsection (o) of this section, records of testing shall be
23 permanently retained on file at the Crime Laboratory.

24 (l) (1) The Crime Laboratory shall:

25 (i) Receive DNA samples for analysis, classification, and storage;

26 (ii) File the DNA record of identification characteristic profiles of
27 DNA samples submitted to the laboratory; and

28 (iii) Make information relating to DNA samples and DNA records
29 available to other agencies and individuals as authorized by this section.

30 (2) The Director may contract with a qualified DNA laboratory that
31 meets the guidelines established by the Director to complete DNA typing analyses.

32 (m) (1) The typing results and personal identification information of the
33 DNA profile of an individual in the statewide DNA data base system may be made
34 available to the following agencies or persons upon written or electronic request after
35 verification by the Director that a match has been made in the population data base

1 and the request is in the furtherance of any of the purposes set forth in subsection (g)
2 of this section:

3 (i) Federal, State, and local law enforcement agencies;

4 (ii) Crime laboratories that serve federal, State, and local law
5 enforcement agencies that have been approved by the Director;

6 (iii) A State's Attorney's office or other prosecutorial office; and

7 (iv) Any person participating in a judicial proceeding in which the
8 data base information may be offered as evidence.

9 (2) (i) The typing results and personal identification information of
10 the DNA profile of an individual in the statewide DNA data base system shall be
11 made available to a defendant or a defendant's counsel on written order of the court in
12 which the case is pending.

13 (ii) A search of the data base shall be conducted to determine the
14 existence of a match to DNA obtained from crime scene evidence taken in relation to
15 the crime for which a defendant is charged if, upon the request of that defendant, a
16 written court order commands the data base search.

17 (iii) Nothing in this section limits a court from ordering any
18 discovery of a DNA record or other related material in a criminal case.

19 (iv) The Director shall maintain a file of all orders issued under this
20 paragraph.

21 (3) The Secretary, after consultation with the Director, shall adopt
22 regulations governing the methods of obtaining information from the statewide DNA
23 data base system and CODIS which shall include procedures for verification of the
24 identity and authority of the individual or agency requesting the information.

25 (4) (i) The Director shall create a population data base comprised of
26 DNA samples obtained under this section.

27 (ii) All personal identifiers shall be removed before the information
28 is entered into the population data base.

29 (iii) Nothing shall prohibit the sharing or disseminating of
30 population data base information with:

31 1. Federal, State, or local law enforcement agencies;

32 2. Crime laboratories that serve federal, State, and local law
33 enforcement agencies that have been approved by the Director;

34 3. A State's Attorney's office; or

1 4. Any third party that the Director deems necessary to
2 assist the Crime Laboratory with statistical analyses of the population data base.

3 (iv) The population data base may be made available to and
4 searched by any agency participating in the CODIS system.

5 (n) Any match obtained between an evidence sample and a data base entry
6 may only be used as probable cause to obtain ~~a blood~~ AN ADDITIONAL DNA sample
7 from the subject and is not admissible at trial unless confirmed by additional testing.

8 (o) (1) A person whose DNA record or profile has been included in the
9 statewide DNA data base system and whose DNA sample is stored in the statewide
10 DNA repository may request that information be expunged on the grounds that the
11 conviction that resulted in the inclusion of the person's DNA record or profile in the
12 statewide DNA data base system or the inclusion of the person's DNA sample in the
13 statewide DNA repository meets the expungement criteria specified in § 10-105 or §
14 10-106 of the Criminal Procedure Article.

15 (2) Expungement proceedings shall be conducted in accordance with §
16 10-105 or § 10-106 of the Criminal Procedure Article.

17 (3) Upon receipt of an order of expungement, the Director shall purge
18 any DNA record, DNA sample, or other identifiable information covered by the order
19 from the statewide DNA data base system and the statewide DNA repository.

20 (p) (1) A person who, by virtue of employment or official position, has
21 possession of or access to individually identifiable DNA information contained in the
22 statewide DNA data base system or statewide DNA repository and who willfully
23 discloses that information in any manner to any person or agency not entitled to
24 receive that information is guilty of a misdemeanor and on conviction is subject to a
25 fine not exceeding \$1,000 or imprisonment not exceeding 3 years or both.

26 (2) A person who, without authorization, willfully obtains individually
27 identifiable DNA information from the statewide DNA data base system or repository
28 is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000
29 or imprisonment not exceeding 3 years or both.

30 ~~SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland~~
31 ~~read as follows:~~

32 **Article 41 - Governor - Executive and Administrative Departments**

33 **SUBTITLE 3. DNA TECHNOLOGY FUND.**

34 4-301.

35 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
36 INDICATED.

37 (2) "DNA" MEANS DEOXYRIBONUCLEIC ACID.

1 (3) "DNA TECHNOLOGY EQUIPMENT" MEANS ANY EQUIPMENT USED FOR
2 DNA TESTING PURPOSES INCLUDING THOSE PURPOSES LISTED UNDER ARTICLE 88B,
3 § 12A(G)(1) OF THE CODE.

4 (4) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE
5 GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION.

6 (5) "FUND" MEANS THE DNA TECHNOLOGY FUND ESTABLISHED UNDER
7 THIS SECTION.

8 (6) "LOCAL LAW ENFORCEMENT AGENCY" MEANS THE AGENCY OF ANY
9 COUNTY OR MUNICIPAL CORPORATION, INCLUDING BALTIMORE CITY, WITHIN THE
10 STATE THAT PERFORMS POLICE PROTECTION FUNCTIONS.

11 (B) A DNA TECHNOLOGY FUND IS ESTABLISHED TO ASSIST THE DEPARTMENT
12 OF STATE POLICE AND LOCAL LAW ENFORCEMENT AGENCIES IN ACQUIRING DNA
13 TECHNOLOGY EQUIPMENT NEEDED TO TEST DNA SAMPLES.

14 (C) (1) THE EXECUTIVE DIRECTOR SHALL ADMINISTER THE FUND IN
15 ACCORDANCE WITH THIS SECTION AND OTHER APPLICABLE LAW.

16 (2) THE FUND SHALL CONSIST OF MONEY:

17 ~~(A) APPROPRIATED IN THE STATE BUDGET; OR AND~~

18 ~~(B) RECEIVED FROM ANY PRIVATE ENTITY OR FEDERAL AGENCY~~
19 ~~FOR THE PURPOSE OF COLLECTING AND TESTING DNA SAMPLES.~~

20 (3) PAYMENTS OUT OF THE FUND SHALL BE MADE TO THE
21 DEPARTMENT OF STATE POLICE AND A LOCAL LAW ENFORCEMENT AGENCY BY THE
22 STATE TREASURER AS AUTHORIZED BY THE EXECUTIVE DIRECTOR.

23 (4) (I) THE FUND IS A CONTINUING, NONLAPSING FUND WHICH IS
24 NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

25 (II) THE TREASURER SHALL SEPARATELY HOLD AND THE
26 COMPTROLLER SHALL ACCOUNT FOR THE FUND IN CONJUNCTION WITH THE
27 EXECUTIVE DIRECTOR.

28 (III) THE TREASURER MAY INVEST MONEYS IN THE FUND IN THE
29 SAME MANNER AS OTHER STATE MONEY MAY BE INVESTED.

30 (D) (1) THE EXECUTIVE DIRECTOR SHALL ESTABLISH APPLICATION
31 PROCEDURES FOR THE DEPARTMENT OF STATE POLICE AND LOCAL LAW
32 ENFORCEMENT AGENCIES TO APPLY FOR AID FROM THE FUND.

33 (2) THE DEPARTMENT OF STATE POLICE AND A LOCAL LAW
34 ENFORCEMENT AGENCY APPLYING FOR AID FROM THE FUND SHALL PROVIDE TO
35 THE EXECUTIVE DIRECTOR ANY INFORMATION THAT THE EXECUTIVE DIRECTOR
36 DEEMS NECESSARY IN MAKING AWARDS FOR DNA TECHNOLOGY EQUIPMENT.

1 (E) ~~TO THE EXTENT PROVIDED IN THE STATE BUDGET,~~ THE EXECUTIVE
 2 DIRECTOR SHALL PROVIDE GRANTS FOR THE PURCHASE OR REPLACEMENT OF DNA
 3 TECHNOLOGY EQUIPMENT TO THE DEPARTMENT OF STATE POLICE AND LOCAL LAW
 4 ENFORCEMENT AGENCIES BASED UPON THE NEEDS OF THE DEPARTMENT OF STATE
 5 POLICE AND THE COMPARATIVE NEEDS OF EACH LOCAL LAW ENFORCEMENT
 6 AGENCY AS DETERMINED FROM THE INFORMATION PROVIDED UNDER SUBSECTION
 7 (D)(2) OF THIS SECTION.

8 ~~(F) THE AID DISTRIBUTED UNDER THIS SECTION SHALL BE USED TO~~
 9 ~~SUPPLEMENT, NOT SUPPLANT, OTHER STATE AND LOCAL DNA TECHNOLOGY~~
 10 ~~FUNDING FOR DNA TECHNOLOGY.~~

11 ~~(G)~~ (F) AFTER THE DEPARTMENT OF STATE POLICE OR A LOCAL LAW
 12 ENFORCEMENT AGENCY RECEIVES NOTICE OF A GRANT AWARD FROM THE
 13 EXECUTIVE DIRECTOR, THE DEPARTMENT OF STATE POLICE OR THE LOCAL LAW
 14 ENFORCEMENT AGENCY SHALL SUBMIT PROOF OF EXPENDITURES ON DNA
 15 TECHNOLOGY EQUIPMENT TO THE EXECUTIVE DIRECTOR.

16 ~~(H)~~ (G) THE EXECUTIVE DIRECTOR SHALL REPORT ANNUALLY BY
 17 SEPTEMBER 1 TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE
 18 GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY AS TO THE DISTRIBUTION OF
 19 AID PROVIDED UNDER THIS SECTION.

20

Article - Criminal Procedure

21 8-201.

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

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

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

26 (2) The State shall preserve scientific identification evidence described
 27 in paragraph (1) of this subsection for]:

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

29 (ii) a period beyond 3 years that is required pursuant to an order
 30 issued within 3 years after the imposition of sentence by the Court of Appeals or
 31 Court of Special Appeals that is specific to a single offense and specific scientific
 32 identification evidence relating to that offense] THE TIME OF THE SENTENCE,
 33 INCLUDING ANY CONSECUTIVE SENTENCE IMPOSED IN CONNECTION WITH THE
 34 OFFENSE.

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

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

4 SECTION ~~2, 3, 2.~~ 2. AND BE IT FURTHER ENACTED, That Article 88B, § 12A
5 of the Code, as enacted by Section 1 of this Act, shall be construed to apply
6 retroactively and shall be applied to and interpreted to affect any person convicted of
7 a felony or a violation of § 6-205 or § 6-206 of the Criminal Law Article before the
8 effective date of this Act and incarcerated for a felony or a violation of § 6-205 or §
9 6-206 of the Criminal Law Article on or after the effective date of this Act.

10 ~~SECTION 4. AND BE IT FURTHER ENACTED, That:~~

11 ~~(a) Section 1 of this Act:~~

12 ~~(1) may not be funded during the period October 1, 2002 through~~
13 ~~September 30, 2003 with State general funds; and~~

14 ~~(2) is contingent on the receipt by the Department of State Police of at~~
15 ~~least \$1,500,000 or a binding written award of a grant from any private entity or~~
16 ~~federal agency of at least \$1,500,000 to be used to implement the provisions of Section~~
17 ~~1 of this Act during the period beginning October 1, 2002 through September 30, 2003.~~

18 ~~(b) If the Department of State Police does not receive \$1,500,000 or a binding~~
19 ~~written award on or before September 30, 2003, as provided in this Section, Section 1~~
20 ~~of this Act shall take effect October 1, 2003. If the Department of State Police receives~~
21 ~~funding or a binding written award on or before September 30, 2003, Section 1 of this~~
22 ~~Act shall take effect on the date the Department receives funding or a binding written~~
23 ~~award. The Department shall forward notice of the receipt of the funds or a copy of~~
24 ~~the written award within 5 days of receipt to the Department of Legislative Services,~~
25 ~~90 State Circle, Annapolis, Maryland 21401.~~

26 ~~SECTION 5. AND BE IT FURTHER ENACTED, That for fiscal year 2004, no~~
27 ~~more than \$200,000 from State general funds may be appropriated to the DNA~~
28 ~~Technology Fund.~~

29 ~~SECTION 6. AND BE IT FURTHER ENACTED, That for fiscal years 2004~~
30 ~~and 2005, the Department of State Police is not required to obtain or test DNA~~
31 ~~samples from all convicted felons and persons convicted of a violation of § 6-205 or §~~
32 ~~6-206 of the Criminal Law Article unless the Department receives funding in fiscal~~
33 ~~years 2004 and 2005 from the State, the federal government, or any private person to~~
34 ~~carry out the required sampling and testing. The Department of State Police, in fiscal~~
35 ~~years 2004 and 2005, shall obtain and test DNA samples from individuals convicted of~~
36 ~~child abuse involving sexual abuse under § 3-601 of the Criminal Law Article, rape in~~
37 ~~any degree, sexual offense in the first, second, or third degree, murder, robbery under~~
38 ~~§ 3-402 or § 3-403 of the Criminal Law Article, first degree assault, and attempts to~~
39 ~~commit these offenses.~~

40 ~~SECTION 7. AND BE IT FURTHER ENACTED, That if any provision of this~~
41 ~~Act or the application thereof to any person or circumstance is held invalid for any~~

1 reason in a court of competent jurisdiction, the invalidity does not affect other
2 provisions or any other application of this Act which can be given effect without the
3 invalid provision or application, and for this purpose the provisions of this Act are
4 declared severable.

5 ~~SECTION 3. 8. AND BE IT FURTHER ENACTED, That, subject to Section 4~~
6 ~~of this Act, this Act shall take effect October 1, 2002.~~

7 SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding the
8 provisions of Article 1, § 23 of the Annotated Code of Maryland, the provisions of this
9 Act are not severable, and if any provision of this Act or the application thereof to any
10 person or circumstance is held invalid for any reason in a court of competent
11 jurisdiction, no other provision or application of this Act may be given effect.

12 SECTION 4. AND BE IT FURTHER ENACTED, That this Act is contingent on
13 the receipt by the Department of State Police of a binding written award of a grant
14 from any private entity or federal agency by September 1, 2002, of at least \$1,500,000
15 to be used to implement the provisions of this Act during the period between October 1,
16 2002 and September 30, 2003. If the Department of State Police does not receive a
17 binding written award by September 1, 2002 as provided in this Section, this Act, with
18 no further action required by the General Assembly, shall be null and void and of no
19 force and effect. If the Department of State Police receives a binding written award by
20 September 1, 2002, the Department shall forward a copy of the written award within 5
21 days of receipt to the Department of Legislative Services, 90 State Circle, Annapolis,
22 Maryland 21401.

23 SECTION 5. AND BE IT FURTHER ENACTED, That, subject to Section 4 of
24 this Act, this Act shall take effect October 1, 2002. It shall remain effective for a period
25 of 1 year and, at the end of September 30, 2003, with no further action required by the
26 General Assembly, this Act shall be abrogated and of no further force and effect.