

HOUSE BILL 1053

Unofficial Copy
E4

2002 Regular Session
2lr1168
CF 2lr1167

By: **Delegates Doory, Rosenberg, McHale, Frush, Moe, Patterson, and
Vallario**

Introduced and read first time: February 8, 2002

Assigned to: Judiciary and Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **DNA Testing - Felony Convictions - DNA Technology Fund**

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

18 BY repealing and reenacting, with amendments,
19 Article 88B - Department of State Police
20 Section 12A
21 Annotated Code of Maryland
22 (1998 Replacement Volume and 2001 Supplement)

23 BY adding to
24 Article 41 - Governor - Executive and Administrative Departments
25 Section 4-301 to be under the new subtitle "Subtitle 3. DNA Technology Fund"
26 Annotated Code of Maryland
27 (1997 Replacement Volume and 2001 Supplement)

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

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

2 12A.

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

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

7 (3) "Crime Laboratory" means the Crime Laboratory Division of the
8 Department of State Police.

9 (4) "Director" means the Director of the Crime Laboratory or the
10 Director's designee.

11 (5) "DNA" means deoxyribonucleic acid.

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

15 (7) "DNA sample" means a body fluid or tissue sample provided by any
16 person convicted of a [qualifying crime of violence] FELONY or any body fluid or
17 tissue sample submitted to the statewide DNA data base system for analysis
18 pursuant to a criminal investigation.

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

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

22 (ii) Rape in any degree;

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

24 (iv) Murder;

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

26 (vi) First degree assault; or

27 (vii) Attempts to commit these offenses.]

28 [(9) (8) "Statewide DNA data base system" means the DNA record
29 system administered by the Department of State Police for identification purposes.

30 [(10) (9) "Statewide DNA repository" means the State repository of
31 DNA samples collected under this section.

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

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

5 (3) The Director shall:

6 (i) Administer and manage the system;

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

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

12 (iv) Ensure the security and confidentiality of all records of the
13 system.

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

16 (c) Pursuant to regulations adopted by the Secretary after consultation with
17 the Director under this section, a person convicted of a [qualifying crime of violence]
18 FELONY shall:

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

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

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

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

28 (f) A person who has been convicted of a [qualifying crime of violence]
29 FELONY prior to October 1, [1999] 2002, and who remains incarcerated on that date
30 shall submit a DNA sample to the Department of State Police.

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

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

- 1 (ii) In the furtherance of an official investigation into a criminal
2 offense;
- 3 (iii) To assist in the identification of human remains;
- 4 (iv) To assist in the identification of missing persons; and
- 5 (v) For research and administrative purposes, including:
- 6 1. Development of a population data base after personal
7 identifying information is removed;
- 8 2. Support of identification research and protocol
9 development of forensic DNA analysis methods; and
- 10 3. Quality control purposes.
- 11 (2) (i) Only DNA records that directly relate to the identification of
12 individuals shall be collected and stored.
- 13 (ii) These records may not be used for any purposes other than
14 those specified in this section.
- 15 (h) (1) The DNA record of identification characteristics resulting from the
16 DNA testing shall be stored and maintained by the Crime Laboratory in the statewide
17 DNA data base system.
- 18 (2) The DNA sample shall be stored and maintained by the Crime
19 Laboratory in the statewide DNA repository.
- 20 (i) Pursuant to regulations adopted by the Secretary, after consultation with
21 the Director:
- 22 (1) Each DNA sample required to be collected under this section from
23 persons who are incarcerated as of October 1, [1999] 2002, or are sentenced to a term
24 of incarceration after that date shall be collected at the place of incarceration; and
- 25 (2) DNA samples from persons who are not sentenced to a term of
26 confinement shall be collected at a facility specified by the Director.
- 27 (j) DNA samples to be submitted for analysis shall be collected by a:
- 28 (1) Correctional health nurse technician;
- 29 (2) Physician;
- 30 (3) Registered nurse;
- 31 (4) Licensed practical nurse;
- 32 (5) Laboratory technician; or

1 (6) Phlebotomist.

2 (k) (1) The Secretary, after consultation with the Director, shall adopt
3 regulations governing the procedures to be used for:

4 (i) Collection, submission, identification, analysis, storage, and
5 disposal of DNA samples; and

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

8 (2) (i) DNA samples shall be securely stored in the statewide DNA
9 repository.

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

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

16 (ii) The Crime Laboratory and each analyst performing DNA
17 analyses at the Crime Laboratory shall undergo, at regular intervals not exceeding
18 180 days, external proficiency testing, including at least one external blind test, by a
19 DNA proficiency testing program that meets the standards issued:

20 1. Under § 1003 of the federal DNA Identification Act of
21 1994; or

22 2. Under the guidelines for a quality assurance program for
23 DNA analysis (known as the "TWGDAM" guidelines).

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

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

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

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

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

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

34 (m) (1) The typing results and personal identification information of the
35 DNA profile of an individual in the statewide DNA data base system may be made

1 available to the following agencies or persons upon written or electronic request after
2 verification by the Director that a match has been made in the population data base
3 and the request is in the furtherance of any of the purposes set forth in subsection (g)
4 of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 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 sample from the subject and is
 7 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 **Article 41 - Governor - Executive and Administrative Departments**

31 **SUBTITLE 3. DNA TECHNOLOGY FUND.**

32 4-301.

33 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 34 INDICATED.

35 (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 APPROPRIATED IN THE STATE
17 BUDGET.

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

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

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

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

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

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

35 (E) TO THE EXTENT PROVIDED IN THE STATE BUDGET, THE EXECUTIVE
36 DIRECTOR SHALL PROVIDE GRANTS FOR THE PURCHASE OR REPLACEMENT OF DNA
37 TECHNOLOGY EQUIPMENT TO THE DEPARTMENT OF STATE POLICE AND LOCAL LAW

1 ENFORCEMENT AGENCIES BASED UPON THE NEEDS OF THE DEPARTMENT OF STATE
2 POLICE AND THE COMPARATIVE NEEDS OF EACH LOCAL LAW ENFORCEMENT
3 AGENCY AS DETERMINED FROM THE INFORMATION PROVIDED UNDER SUBSECTION
4 (D)(2) OF THIS SECTION.

5 (F) THE AID DISTRIBUTED UNDER THIS SECTION SHALL BE USED TO
6 SUPPLEMENT, NOT SUPPLANT, OTHER STATE AND LOCAL DNA TECHNOLOGY
7 FUNDING FOR DNA TECHNOLOGY.

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

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

17 SECTION 2. AND BE IT FURTHER ENACTED, That Article 88B, § 12A of the
18 Code, as enacted by Section 1 of this Act, shall be construed to apply retroactively and
19 shall be applied to and interpreted to affect any person convicted of a felony before the
20 effective date of this Act and incarcerated for a felony on or after the effective date of
21 this Act.

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