

HOUSE BILL 1053

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By: **Delegates Doory, Rosenberg, McHale, Frush, Moe, Patterson, and  
Vallario Vallario, Kelly, Boschert, Petzold, and Dembrow**

Introduced and read first time: February 8, 2002  
Assigned to: Judiciary and Appropriations

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Committee Report: Favorable with amendments  
House action: Adopted with floor amendments  
Read second time: March 23, 2002

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CHAPTER \_\_\_\_\_

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; altering the period of time during which the  
17 State must preserve certain evidence; making stylistic changes; altering certain  
18 time periods and procedures relating to DNA samples and tests; providing for a  
19 certain contingency; limiting certain funding for a certain time; providing that  
20 the Department of State Police is not required to obtain DNA samples and  
21 conduct testing for a certain time if certain funding is not received under certain  
22 circumstances; making provisions of this Act severable; and generally relating to  
23 DNA testing and the DNA Technology Fund.

24 BY repealing and reenacting, with amendments,  
25 Article 88B - Department of State Police  
26 Section 12A

1 Annotated Code of Maryland  
2 (1998 Replacement Volume and 2001 Supplement)

3 BY adding to  
4 Article 41 - Governor - Executive and Administrative Departments  
5 Section 4-301 to be under the new subtitle "Subtitle 3. DNA Technology Fund"  
6 Annotated Code of Maryland  
7 (1997 Replacement Volume and 2001 Supplement)

8 BY repealing and reenacting, with amendments,  
9 Article - Criminal Procedure  
10 Section 8-201(i)  
11 Annotated Code of Maryland  
12 (2001 Volume)

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

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

16 12A.

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

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

21 (3) "Crime Laboratory" means the Crime Laboratory Division of the  
22 Department of State Police.

23 (4) "Director" means the Director of the Crime Laboratory or the  
24 Director's designee.

25 (5) "DNA" means deoxyribonucleic acid.

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

29 (7) "DNA sample" means a body fluid or tissue sample provided by any  
30 person convicted of a [qualifying crime of violence] FELONY OR A VIOLATION OF §  
31 6-205 OR § 6-206 OF THE CRIMINAL LAW ARTICLE or any body fluid or tissue sample  
32 submitted to the statewide DNA data base system for analysis pursuant to a criminal  
33 investigation.

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

- 1 (i) A violation of Article 27, § 35C of the Code that involves sexual  
2 abuse;
- 3 (ii) Rape in any degree;
- 4 (iii) A sexual offense in the first, second, or third degree;
- 5 (iv) Murder;
- 6 (v) Robbery under Article 27, § 486 or § 487 of the Code;
- 7 (vi) First degree assault; or
- 8 (vii) Attempts to commit these offenses.]

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

11 [(10)] (9) "Statewide DNA repository" means the State repository of  
12 DNA samples collected under this section.

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

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

17 (3) The Director shall:

18 (i) Administer and manage the system;

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

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

24 (iv) Ensure the security and confidentiality of all records of the  
25 system.

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

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

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

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

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

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

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

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

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

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

18 (ii) In the furtherance of an official investigation into a criminal  
19 offense;

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

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

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

23 1. Development of a population data base after personal  
24 identifying information is removed;

25 2. Support of identification research and protocol  
26 development of forensic DNA analysis methods; and

27 3. Quality control purposes.

28 (2) (i) Only DNA records that directly relate to the identification of  
29 individuals shall be collected and stored.

30 (ii) These records may not be used for any purposes other than  
31 those specified in this section.

32 (h) (1) The DNA record of identification characteristics resulting from the  
33 DNA testing shall be stored and maintained by the Crime Laboratory in the statewide  
34 DNA data base system.

1           (2)     The DNA sample shall be stored and maintained by the Crime  
2 Laboratory in the statewide DNA repository.

3     (i)     Pursuant to regulations adopted by the Secretary, after consultation with  
4 the Director:

5           (1)     Each DNA sample required to be collected under this section from  
6 persons who are incarcerated as of October 1, [1999] 2002, or are sentenced to a term  
7 of incarceration after that date shall be collected at the place of incarceration; and

8           (2)     DNA samples from persons who are not sentenced to a term of  
9 confinement shall be collected at a facility specified by the Director.

10    (j)     DNA samples to be submitted for analysis shall be collected by a:

11           (1)     Correctional health nurse technician;

12           (2)     Physician;

13           (3)     Registered nurse;

14           (4)     Licensed practical nurse;

15           (5)     Laboratory technician; or

16           (6)     Phlebotomist.

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

19           (i)     Collection, submission, identification, analysis, storage, and  
20 disposal of DNA samples; and

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

23           (2)     (i)     DNA samples shall be securely stored in the statewide DNA  
24 repository.

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

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

31           (ii)    The Crime Laboratory and each analyst performing DNA  
32 analyses at the Crime Laboratory shall undergo, at regular intervals not exceeding  
33 ~~480~~ 183 days, external proficiency testing, ~~including at least one external blind test,~~  
34 by a DNA proficiency testing program that meets the standards issued:



1 the crime for which a defendant is charged if, upon the request of that defendant, a  
2 written court order commands the data base search.

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

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

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

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

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

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

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

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

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

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

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

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

28 (o) (1) A person whose DNA record or profile has been included in the  
29 statewide DNA data base system and whose DNA sample is stored in the statewide  
30 DNA repository may request that information be expunged on the grounds that the  
31 conviction that resulted in the inclusion of the person's DNA record or profile in the  
32 statewide DNA data base system or the inclusion of the person's DNA sample in the  
33 statewide DNA repository meets the expungement criteria specified in § 10-105 or §  
34 10-106 of the Criminal Procedure Article.

35 (2) Expungement proceedings shall be conducted in accordance with §  
36 10-105 or § 10-106 of the Criminal Procedure Article.

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

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

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

14 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
15 read as follows:

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

17 **SUBTITLE 3. DNA TECHNOLOGY FUND.**

18 4-301.

19 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
20 INDICATED.

21 (2) "DNA" MEANS DEOXYRIBONUCLEIC ACID.

22 (3) "DNA TECHNOLOGY EQUIPMENT" MEANS ANY EQUIPMENT USED FOR  
23 DNA TESTING PURPOSES INCLUDING THOSE PURPOSES LISTED UNDER ARTICLE 88B,  
24 § 12A(G)(1) OF THE CODE.

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

27 (5) "FUND" MEANS THE DNA TECHNOLOGY FUND ESTABLISHED UNDER  
28 THIS SECTION.

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

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

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

1 (2) THE FUND SHALL CONSIST OF MONEY;

2 (I) APPROPRIATED IN THE STATE BUDGET; ~~OR AND~~

3 (II) RECEIVED FROM ANY PRIVATE ENTITY OR FEDERAL AGENCY  
4 FOR THE PURPOSE OF COLLECTING AND TESTING DNA SAMPLES.

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

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

10 (II) THE TREASURER SHALL SEPARATELY HOLD AND THE  
11 COMPTROLLER SHALL ACCOUNT FOR THE FUND IN CONJUNCTION WITH THE  
12 EXECUTIVE DIRECTOR.

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

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

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

22 (E) ~~TO THE EXTENT PROVIDED IN THE STATE BUDGET,~~ THE EXECUTIVE  
23 DIRECTOR SHALL PROVIDE GRANTS FOR THE PURCHASE OR REPLACEMENT OF DNA  
24 TECHNOLOGY EQUIPMENT TO THE DEPARTMENT OF STATE POLICE AND LOCAL LAW  
25 ENFORCEMENT AGENCIES BASED UPON THE NEEDS OF THE DEPARTMENT OF STATE  
26 POLICE AND THE COMPARATIVE NEEDS OF EACH LOCAL LAW ENFORCEMENT  
27 AGENCY AS DETERMINED FROM THE INFORMATION PROVIDED UNDER SUBSECTION  
28 (D)(2) OF THIS SECTION.

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

32 (G) AFTER THE DEPARTMENT OF STATE POLICE OR A LOCAL LAW  
33 ENFORCEMENT AGENCY RECEIVES NOTICE OF A GRANT AWARD FROM THE  
34 EXECUTIVE DIRECTOR, THE DEPARTMENT OF STATE POLICE OR THE LOCAL LAW  
35 ENFORCEMENT AGENCY SHALL SUBMIT PROOF OF EXPENDITURES ON DNA  
36 TECHNOLOGY EQUIPMENT TO THE EXECUTIVE DIRECTOR.

37 (H) THE EXECUTIVE DIRECTOR SHALL REPORT ANNUALLY BY SEPTEMBER 1  
38 TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE

1 GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY AS TO THE DISTRIBUTION OF  
2 AID PROVIDED UNDER THIS SECTION.

3

**Article - Criminal Procedure**

4 8-201.5 (i) (1) The State shall preserve scientific identification evidence that:6 (i) the State has reason to know contains DNA material; and7 (ii) is secured in connection with an offense described in subsection8 (b) of this section.9 (2) The State shall preserve scientific identification evidence described10 in paragraph (1) of this subsection for[:11 (i) a period of 3 years after the imposition of sentence; or12 (ii) a period beyond 3 years that is required pursuant to an order13 issued within 3 years after the imposition of sentence by the Court of Appeals or14 Court of Special Appeals that is specific to a single offense and specific scientific15 identification evidence relating to that offense] THE TIME OF THE SENTENCE.16 INCLUDING ANY CONSECUTIVE SENTENCE IMPOSED IN CONNECTION WITH THE17 OFFENSE.18 (3) The State shall make the scientific identification evidence available19 to parties in the case under terms that are mutually agreed on between them.20 (4) If an agreement cannot be reached, the party requesting the testing21 may file an application in the circuit court that entered the judgment for an order22 setting the terms under which the evidence will be made available for testing.23 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That Article 88B, § 12A of

24 the Code, as enacted by Section 1 of this Act, shall be construed to apply retroactively

25 and shall be applied to and interpreted to affect any person convicted of a felony

26 before the effective date of this Act and incarcerated for a felony on or after the

27 effective date of this Act.

28 SECTION 4. AND BE IT FURTHER ENACTED, That:

29 (a) Section 1 of this Act:30 (1) may not be funded during the period October 1, 2002 through31 September 30, 2003 with State general funds; and32 (2) is contingent on the receipt by the Department of State Police of at33 least \$1,500,000 or a binding written award of a grant from any private entity or34 federal agency of at least \$1,500,000 to be used to implement the provisions of Section35 1 of this Act during the period beginning October 1, 2002 through September 30, 2003.

1 (b) If the Department of State Police does not receive \$1,500,000 or a binding  
2 written award on or before September 30, 2003, as provided in this Section, Section 1  
3 of this Act shall take effect October 1, 2003. If the Department of State Police receives  
4 funding or a binding written award on or before September 30, 2003, Section 1 of this  
5 Act shall take effect on the date the Department receives funding or a binding written  
6 award. The Department shall forward notice of the receipt of the funds or a copy of  
7 the written award within 5 days of receipt to the Department of Legislative Services,  
8 90 State Circle, Annapolis, Maryland 21401.

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

12 SECTION 6. AND BE IT FURTHER ENACTED, That for fiscal years 2004  
13 and 2005, the Department of State Police is not required to obtain or test DNA  
14 samples from all convicted felons and persons convicted of a violation of § 6-205 or §  
15 6-206 of the Criminal Law Article unless the Department receives funding in fiscal  
16 years 2004 and 2005 from the State, the federal government, or any private person to  
17 carry out the required sampling and testing. The Department of State Police, in fiscal  
18 years 2004 and 2005, shall obtain and test DNA samples from individuals convicted of  
19 child abuse involving sexual abuse under § 3-601 of the Criminal Law Article, rape in  
20 any degree, sexual offense in the first, second, or third degree, murder, robbery under  
21 § 3-402 or § 3-403 of the Criminal Law Article, first degree assault, and attempts to  
22 commit these offenses.

23 SECTION 7. AND BE IT FURTHER ENACTED, That if any provision of this  
24 Act or the application thereof to any person or circumstance is held invalid for any  
25 reason in a court of competent jurisdiction, the invalidity does not affect other  
26 provisions or any other application of this Act which can be given effect without the  
27 invalid provision or application, and for this purpose the provisions of this Act are  
28 declared severable.

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