

SENATE BILL 486

Unofficial Copy  
E4

2002 Regular Session  
(2lr1167)

**ENROLLED BILL**

-- Judicial Proceedings/Judiciary and Appropriations --

Introduced by **Senator McFadden (Baltimore City Administration) and Senator Pinsky (Prince George's County Administration) and ~~Senator Forehand~~ Senators Forehand, Kelley, Conway, Currie, Della, Dorman, Exum, Frosh, Hughes, Jacobs, Lawlah, Mitchell, Ruben, Sfikas, Stone, Teitelbaum, and Van Hollen**

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.

\_\_\_\_\_  
President.

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

1 agencies to provide certain information to the Executive Director; requiring the  
 2 Executive Director to consider certain criteria in determining the amount of the  
 3 grants; requiring the Department of State Police and local law enforcement  
 4 agencies to submit proof of appropriate expenditure; altering the period of time  
 5 that during which the State must preserve certain scientific identification  
 6 evidence; making stylistic changes; declaring that the provisions of this Act are  
 7 not severable; making this Act subject to a certain contingency; providing for the  
 8 termination of this Act; and generally relating to DNA testing, the preservation  
 9 of scientific identification evidence, and the DNA Technology Fund.

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

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

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

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

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

28 12A.

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

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

33 (3) "Crime Laboratory" means the Crime Laboratory Division of the  
 34 Department of State Police.

35 (4) "Director" means the Director of the Crime Laboratory or the  
 36 Director's designee.

1 (5) "DNA" means deoxyribonucleic acid.

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

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

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

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

14 (ii) Rape in any degree;

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

16 (iv) Murder;

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

18 (vi) First degree assault; or

19 (vii) Attempts to commit these offenses.]

20 [(9)] (8) "Statewide DNA data base system" means the DNA record  
21 system administered by the Department of State Police for identification purposes.

22 [(10)] (9) "Statewide DNA repository" means the State repository of  
23 DNA samples collected under this section.

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

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

28 (3) The Director shall:

29 (i) Administer and manage the system;

30 (ii) Consult with the Secretary on the adoption of appropriate  
31 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 OR A VIOLATION OF § 6-205 OR § 6-206 OF THE OF THE CRIMINAL LAW  
11 ARTICLE shall:

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

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

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

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

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

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

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

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

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

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

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

36 (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~~

14 ~~(i)~~ MEETS the expungement criteria specified in § 10-105 or §  
15 10-106 of the Criminal Procedure Article; ~~OR~~

16 ~~(ii)~~ IS REVERSED OR VACATED ON APPEAL.

17 (2) Expungement proceedings FOR AN EXPUNGEMENT UNDER  
18 PARAGRAPH (1)(I) OF THIS SUBSECTION shall be conducted in accordance with §  
19 10-105 or § 10-106 of the Criminal Procedure Article.

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

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

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

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

34 **SUBTITLE 3. DNA TECHNOLOGY FUND.**

35 4-301.

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

1 (2) "DNA" MEANS DEOXYRIBONUCLEIC ACID.

2 (3) "DNA TECHNOLOGY EQUIPMENT" MEANS ANY EQUIPMENT USED FOR  
3 DNA TESTING PURPOSES INCLUDING THOSE PURPOSES LISTED UNDER ARTICLE 88B,  
4 § 12A(G)(1) OF THE CODE.

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

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

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

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

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

17 (2) THE FUND SHALL CONSIST OF MONEY ~~APPROPRIATED IN THE STATE~~  
18 ~~BUDGET GRANTED BY 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 [:] ~~THE PERIOD OF THE ORIGINAL SENTENCE~~  
 28 ~~FOR THE OFFENSE FOR WHICH THE SCIENTIFIC IDENTIFICATION EVIDENCE WAS~~  
 29 ~~SECURED THE TIME OF THE SENTENCE, INCLUDING ANY CONSECUTIVE SENTENCE~~  
 30 ~~IMPOSED IN CONNECTION WITH THE OFFENSE.~~

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

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

36 (3) The State shall make the scientific identification evidence available  
 37 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. AND BE IT FURTHER ENACTED, That Article 88B, § 12A of the  
5 Code, as enacted by Section 1 of this Act, shall be construed to apply retroactively and  
6 shall be applied to and interpreted to affect any person convicted of a felony *or a*  
7 *violation of § 6-205 or § 6-206 of the Criminal Law Article* before the effective date of  
8 this Act and incarcerated for a felony *or a violation of § 6-205 or § 6-206 of the*  
9 *Criminal Law Article* on or after the effective date of this Act.

10      ~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect~~  
11 ~~July 1, 2002.~~

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

17      ~~SECTION 4. AND BE IT FURTHER ENACTED, That this Act is contingent on~~  
18 ~~the receipt by the Department of State Police of a binding written award of a grant~~  
19 ~~from any private entity or federal agency by September 1, 2002, of at least \$4,500,000~~  
20 ~~to be used to implement the provisions of this Act during the period between October~~  
21 ~~1, 2002 and September 30, 2005. If the Department of State Police does not receive a~~  
22 ~~binding written award by September 1, 2002, as provided in this Section, this Act,~~  
23 ~~with no further action required by the General Assembly, shall be null and void and of~~  
24 ~~no force and effect. If the Department of State Police receives a binding written award~~  
25 ~~by September 1, 2002, the Department shall forward a copy of the written award~~  
26 ~~within 5 days of receipt to the Department of Legislative Services, 90 State Circle,~~  
27 ~~Annapolis, Maryland 21401.~~

28      ~~SECTION 5. AND BE IT FURTHER ENACTED, That, subject to Section 4 of~~  
29 ~~this Act, this Act shall take effect October 1, 2002. It shall remain effective for a~~  
30 ~~period of 3 years and, at the end of September 30, 2005, with no further action~~  
31 ~~required by the General Assembly, this Act shall be abrogated and of no further force~~  
32 ~~and effect.~~

33      SECTION 4. AND BE IT FURTHER ENACTED, That this Act is contingent on  
34 the receipt by the Department of State Police of a binding written award of a grant  
35 from any private entity or federal agency by September 1, 2002, of at least \$1,500,000  
36 to be used to implement the provisions of this Act during the period between October 1,  
37 2002 and September 30, 2003. If the Department of State Police does not receive a  
38 binding written award by September 1, 2002 as provided in this Section, this Act, with  
39 no further action required by the General Assembly, shall be null and void and of no  
40 force and effect. If the Department of State Police receives a binding written award by  
41 September 1, 2002, the Department shall forward a copy of the written award within 5  
42 days of receipt to the Department of Legislative Services, 90 State Circle, Annapolis,  
43 Maryland 21401.

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