

SENATE BILL 486

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2002 Regular Session
2lr1167
CF 2lr1168

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**

Introduced and read first time: February 1, 2002
Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 19, 2002

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 on or before a certain date shall submit a DNA sample to the Department
7 of State Police; making conforming changes; providing for the application of this
8 Act; establishing a DNA Technology Fund to assist the Department of State
9 Police and local law enforcement agencies in acquiring DNA technology
10 equipment needed for DNA testing; defining certain terms; requiring the
11 Executive Director of the Governor's Office of Crime Control and Prevention to
12 establish application procedures and administer the grants; requiring the
13 Department of State Police and local law enforcement agencies to provide
14 certain information to the Executive Director; requiring the Executive Director
15 to consider certain criteria in determining the amount of the grants; requiring
16 the Department of State Police and local law enforcement agencies to submit
17 proof of appropriate expenditure; altering the period of time that the State must
18 preserve certain scientific identification evidence; declaring that the provisions
19 of this Act are not severable; making this Act subject to a certain contingency;
20 providing for the termination of this Act; and generally relating to DNA testing,
21 the preservation of scientific identification evidence, and the DNA Technology
22 Fund.

23 BY repealing and reenacting, with amendments,

1 Article 88B - Department of State Police
2 Section 12A
3 Annotated Code of Maryland
4 (1998 Replacement Volume and 2001 Supplement)

5 BY adding to
6 Article 41 - Governor - Executive and Administrative Departments
7 Section 4-301 to be under the new subtitle "Subtitle 3. DNA Technology Fund"
8 Annotated Code of Maryland
9 (1997 Replacement Volume and 2001 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article - Criminal Procedure
12 Section 8-201(i)
13 Annotated Code of Maryland
14 (2001 Volume)

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

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

18 12A.

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

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

23 (3) "Crime Laboratory" means the Crime Laboratory Division of the
24 Department of State Police.

25 (4) "Director" means the Director of the Crime Laboratory or the
26 Director's designee.

27 (5) "DNA" means deoxyribonucleic acid.

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

31 (7) "DNA sample" means a body fluid SAMPLE, INCLUDING BLOOD OR
32 SALIVA, or tissue sample provided by any person convicted of a [qualifying crime of
33 violence] ~~FELONY OR BREAKING AND ENTERING MISDEMEANOR~~ or any body fluid
34 SAMPLE, INCLUDING BLOOD OR SALIVA, or tissue sample submitted to the statewide
35 DNA data base system for analysis pursuant to a criminal investigation.

- 1 [(8) "Qualifying crime of violence" means:
- 2 (i) A violation of Article 27, § 35C of the Code that involves sexual
3 abuse;
- 4 (ii) Rape in any degree;
- 5 (iii) A sexual offense in the first, second, or third degree;
- 6 (iv) Murder;
- 7 (v) Robbery under Article 27, § 486 or § 487 of the Code;
- 8 (vi) First degree assault; or
- 9 (vii) Attempts to commit these offenses.]
- 10 [(9)] (8) "Statewide DNA data base system" means the DNA record
11 system administered by the Department of State Police for identification purposes.
- 12 [(10)] (9) "Statewide DNA repository" means the State repository of
13 DNA samples collected under this section.
- 14 (b) (1) There is created within the Crime Laboratory a statewide DNA data
15 base system.
- 16 (2) The system shall be the central repository for all DNA testing
17 information as provided in this section.
- 18 (3) The Director shall:
- 19 (i) Administer and manage the system;
- 20 (ii) Consult with the Secretary on the adoption of appropriate
21 regulations concerning system protocols and operations;
- 22 (iii) Ensure compatibility with Federal Bureau of Investigation and
23 CODIS requirements, including the use of comparable test procedures, quality
24 assurance, laboratory equipment, and computer software; and
- 25 (iv) Ensure the security and confidentiality of all records of the
26 system.
- 27 (4) The Secretary, after consultation with the Director, shall adopt
28 appropriate regulations concerning system protocols and operation.
- 29 (c) Pursuant to regulations adopted by the Secretary after consultation with
30 the Director under this section, a person convicted of a [qualifying crime of violence]
31 FELONY shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

26 3. Quality control purposes.

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

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

31 (h) (1) The DNA record of identification characteristics resulting from the
32 DNA testing shall be stored and maintained by the Crime Laboratory in the statewide
33 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
33 180 days, external proficiency testing, including at least one external blind test, by a
34 DNA proficiency testing program that meets the standards issued:

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

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

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

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

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

- 13 1. Federal, State, or local law enforcement agencies;
14 2. Crime laboratories that serve federal, State, and local law
15 enforcement agencies that have been approved by the Director;
16 3. A State's Attorney's office; or
17 4. Any third party that the Director deems necessary to
18 assist the Crime Laboratory with statistical analyses of the population data base.

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

21 (n) Any match obtained between an evidence sample and a data base entry
22 may only be used as probable cause to obtain a blood sample from the subject and is
23 not admissible at trial unless confirmed by additional testing.

24 (o) (1) A person whose DNA record or profile has been included in the
25 statewide DNA data base system and whose DNA sample is stored in the statewide
26 DNA repository may request that information be expunged on the grounds that the
27 conviction that resulted in the inclusion of the person's DNA record or profile in the
28 statewide DNA data base system or the inclusion of the person's DNA sample in the
29 statewide DNA repository ~~meets~~;

30 (I) MEETS the expungement criteria specified in § 10-105 or §
31 10-106 of the Criminal Procedure Article; OR

32 (II) IS REVERSED OR VACATED ON APPEAL.

33 (2) Expungement proceedings FOR AN EXPUNGEMENT UNDER
34 PARAGRAPH (1)(I) OF THIS SUBSECTION shall be conducted in accordance with §
35 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 **Article 41 - Governor - Executive and Administrative Departments**

15 SUBTITLE 3. DNA TECHNOLOGY FUND.

16 4-301.

17 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
18 INDICATED.

19 (2) "DNA" MEANS DEOXYRIBONUCLEIC ACID.

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

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

25 (5) "FUND" MEANS THE DNA TECHNOLOGY FUND ESTABLISHED UNDER
26 THIS SECTION.

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

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

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

1 (2) THE FUND SHALL CONSIST OF MONEY ~~APPROPRIATED IN THE STATE~~
2 ~~BUDGET GRANTED BY ANY PRIVATE ENTITY OR FEDERAL AGENCY FOR THE PURPOSE~~
3 ~~OF COLLECTING AND TESTING DNA SAMPLES.~~

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

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

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

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

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

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

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

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

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

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

Article - Criminal Procedure

2 8-201.

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

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

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

7 (2) The State shall preserve scientific identification evidence described
8 in paragraph (1) of this subsection for [:] THE PERIOD OF THE ORIGINAL SENTENCE
9 FOR THE OFFENSE FOR WHICH THE SCIENTIFIC IDENTIFICATION EVIDENCE WAS
10 SECURED.

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

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

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

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

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

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

28 SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding the
29 provisions of Article 1, § 23 of the Annotated Code of Maryland, the provisions of this
30 Act are not severable, and if any provision of this Act or the application thereof to any
31 person or circumstance is held invalid for any reason in a court of competent
32 jurisdiction, no other provision or application of this Act may be given 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 \$4,500,000
36 to be used to implement the provisions of this Act during the period between October
37 1, 2002 and September 30, 2005. If the Department of State Police does not receive a

1 binding written award by September 1, 2002, as provided in this Section, this Act,
2 with no further action required by the General Assembly, shall be null and void and of
3 no force and effect. If the Department of State Police receives a binding written award
4 by September 1, 2002, the Department shall forward a copy of the written award
5 within 5 days of receipt to the Department of Legislative Services, 90 State Circle,
6 Annapolis, Maryland 21401.

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