

BY: House Judiciary Committee

AMENDMENTS TO SENATE BILL NO. 363

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, before “DNA” insert “Criminal Procedure -”; strike beginning with “Testing” in line 2 down through “Evidence” in line 3 and substitute “- Postconviction Review and Felony Convictions”; and strike beginning with “altering” in line 9 down through “Act” in line 26 and substitute “expanding the definition of “law enforcement agency” to include certain additional agencies; clarifying the definition of “biological evidence”; clarifying the definition of “scientific identification evidence”; clarifying under what circumstances a court may order DNA testing; requiring a court to make certain orders to certain law enforcement agencies when it orders DNA testing; authorizing a court to make certain orders regarding DNA testing when it orders DNA testing; requiring a court to hold certain hearings regarding the disposition of certain evidence under certain circumstances; authorizing appeals to be taken from certain court decisions made pursuant to certain provisions of law; requiring the collection of DNA samples from certain persons; identifying where DNA samples shall be collected; requiring the Director of the State Police Crime Laboratory to provide for liaison with certain criminal justice agencies relating to the State’s participation in certain DNA data bases; providing for the admissibility of certain evidence; altering and repealing certain definitions; repealing a certain termination date”.

On pages 1 and 2, strike beginning with the first comma in line 27 on page 1 down through “circumstances” in line 1 on page 2.

AMENDMENT NO. 2

On page 2, in line 7, strike “(i)”; strike in their entirety lines 11 through 17, inclusive; in line 20, strike “(h),” and substitute “2-502,”; in the same line, strike “2-507” and substitute “2-505”; and strike in their entirety lines 24 through 35, inclusive, and substitute:

“BY repealing and reenacting, with amendments,

Chapter 465 of the Acts of the General Assembly of 2002

(Over)

Section 5”.

AMENDMENT NO. 3

On page 3, after line 29, insert:

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

(2) “DNA” means deoxyribonucleic acid.

(3) “LAW ENFORCEMENT AGENCY” MEANS ANY OF THE FOLLOWING:

(I) A MUNICIPAL OR COUNTY POLICE DEPARTMENT;

(II) SHERIFF’S OFFICE;

(III) THE MARYLAND STATE POLICE;

(IV) ANY PROSECUTING AUTHORITY;

(V) ANY STATE, UNIVERSITY, COUNTY, OR MUNICIPAL POLICE UNIT OR POLICE FORCE; AND

(VI) ANY HOSPITAL, MEDICAL FACILITY, OR PRIVATE ENTITY THAT IS CONDUCTING FORENSIC EXAMINATIONS AND SECURING BIOLOGICAL EVIDENCE RELATED TO CRIMINAL INVESTIGATIONS.

(4) “BIOLOGICAL EVIDENCE” INCLUDES, BUT IS NOT LIMITED TO, ANY BLOOD, HAIR, SALIVA, SEMEN, EPITHELIAL CELLS, BUCCAL CELLS, OR OTHER BODILY SUBSTANCES FROM WHICH GENETIC MARKER GROUPINGS MAY BE OBTAINED.

[(3)] (5) “Scientific identification evidence” means evidence that:

(i) is related to an investigation or prosecution that resulted in a judgment of conviction;

(ii) is in the actual or constructive possession of [the State under subsection (i) of this section] A LAW ENFORCEMENT AGENCY OR AGENT OF A LAW ENFORCEMENT AGENCY; and

(iii) contains BIOLOGICAL EVIDENCE FROM WHICH DNA MAY BE RECOVERED that may produce exculpatory or mitigating evidence relevant to a claim of a convicted person of wrongful conviction or sentencing if subject to DNA testing.

(b) Notwithstanding any other law governing postconviction relief, a person who is convicted of a violation of § 2-201, § 2-204, § 2-207, or §§ 3-303 through 3-307 of the Criminal Law Article may file a petition for DNA testing of scientific identification evidence that the State possesses as provided in subsection (i) of this section and that is related to the judgment of conviction.

(c) Subject to subsection (d) of this section, a court shall order DNA testing if the court finds that:

(1) [(i) the scientific identification evidence was not previously subjected to the DNA testing that is requested for reasons beyond the control of the petitioner; or

(ii) the type of DNA test being requested is different from tests previously conducted and would have a reasonable likelihood of providing a more probative result than tests previously conducted;

(2) the scientific identification evidence was secured as provided in subsection (i) of this section, in relation to the crime for which the petitioner was convicted;

(3) the scientific identification evidence to be tested has been subject to a chain of custody as provided under subsection (i) of this section that is sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material aspect;

(4) identity was an issue in the trial that resulted in the petitioner's conviction;

(5) a reasonable probability exists that the DNA testing has the scientific potential to produce [results materially relevant to the petitioner's assertion of innocence] EXCULPATORY OR MITIGATING EVIDENCE RELEVANT TO A CLAIM OF WRONGFUL CONVICTION OR

SENTENCING; and

[(6)] (2) the requested DNA test employs a method of testing generally accepted within the relevant scientific community.

(d) (1) A petitioner shall notify the State in writing of the filing of a petition under this section.

(2) The State may file a response to the petition within 15 days after notice of the filing or within the time that the court orders.

(e) If the court orders DNA testing under subsection (c) of this section, the court in its order [shall:

(1) identify the specific scientific identification evidence to be tested;

(2) identify the method of testing to be used; and

(3) select the laboratory where the testing is to be performed from a listing of accredited laboratories to be maintained by the Office of the Attorney General.] MAY ISSUE ORDERS THE COURT CONSIDERS APPROPRIATE, INCLUDING DESIGNATION OF ANY OF THE FOLLOWING:

(1) THE SPECIFIC EVIDENCE TO BE TESTED;

(2) THE METHOD OF TESTING TO BE USED;

(3) THE PRESERVATION OF SOME OF THE SAMPLE FOR REPLICATE TESTING AND ANALYSIS;

(4) THE LABORATORY WHERE THE TESTING IS TO BE PERFORMED, PROVIDED THAT IF THE PARTIES CANNOT AGREE ON A LABORATORY, THE COURT MAY APPROVE TESTING AT ANY LABORATORY ACCREDITED BY THE AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS (ASCLAD), THE LABORATORY ACCREDITATION BOARD (LAB), OR THE NATIONAL FORENSIC SCIENCE

TECHNOLOGY CENTER; AND

(5) RELEASE OF BIOLOGICAL EVIDENCE BY A THIRD PARTY.

(f) (1) Except as provided in paragraph (2) of this subsection, DNA testing ordered under subsection (c) of this section shall be conducted as soon as practicable.

(2) Based on a finding of necessity, the court may order the DNA testing to be completed by a date that the court provides.

(g) (1) Except as provided in paragraph (2) of this subsection, the petitioner shall pay the cost of DNA testing ordered under SUBSECTION (C) OF this section.

(2) If the results of the DNA testing that the court orders under this section are favorable to the petitioner, the court shall order the State to pay the costs of the testing.

(h) (1) If the results of the postconviction DNA testing are unfavorable to the petitioner, the court shall dismiss the petition.

(2) If the results of the postconviction DNA testing are favorable to the petitioner, the court shall:

(i) if no postconviction proceeding has been previously initiated by the petitioner under § 7-102 of this article, open a postconviction proceeding under § 7-102 of this article; or

(ii) if a postconviction proceeding has been previously initiated by the petitioner under § 7-102 of this article, reopen a postconviction proceeding under § 7-104 of this article.”.

On page 4, after line 9, insert:

“(j) (1) The State may dispose of scientific identification evidence before the expiration of the time period described in subsection (i) of this section if the State notifies the

(Over)

following persons:

(i) the person who is incarcerated in connection with the case;  
(ii) any attorney of record for the person incarcerated; and  
(iii) the Office of Public Defender for the judicial district in which the judgment of conviction was entered.

(2) The notification required in paragraph (1) of this subsection shall include:

(i) a description of the scientific identification evidence;  
(ii) a statement that the State intends to dispose of the evidence;  
(iii) a statement that the State will dispose of the evidence unless a party files an objection in writing within 120 days from the date of service in the circuit court that entered the judgment; and  
(iv) the name and mailing address of the circuit court where an objection may be filed.

(3) Unless another law or court order requires the preservation of the scientific identification evidence, if no objection to the disposition of the evidence is filed within 120 days of the notice required under this subsection, the State may dispose of the evidence.

(4) If a person files written objections to the State's notice that it intends to dispose of scientific identification evidence, the court[:

(i) shall consider the reasons for and against disposition of the evidence;  
(ii) may hold a hearing on the proposed disposition of the evidence; and  
(iii) shall issue an order disposing of the matter as required by the interests of justice and the integrity of the criminal justice system.

(5) If a person objects to the disposition of the scientific identification evidence, the State shall have the burden of proving by a preponderance of the evidence that the evidence should be disposed] SHALL HOLD A HEARING ON THE PROPOSED DISPOSITION OF THE EVIDENCE AND AT THE CONCLUSION OF THE HEARING, IF THE COURT DETERMINES BY A PREPONDERANCE OF THE EVIDENCE THAT:

(I) THE EVIDENCE HAS NO SIGNIFICANT VALUE FOR FORENSIC SCIENCE ANALYSIS, THE COURT MAY ORDER THE RETURN OF THE EVIDENCE TO ITS RIGHTFUL OWNER, THE DESTRUCTION OF THE EVIDENCE, OR OTHER DISPOSITION AS PROVIDED BY LAW; OR

(II) THE EVIDENCE IS OF SUCH SIZE, BULK, OR PHYSICAL CHARACTER THAT IT CANNOT PRACTICABLY BE RETAINED BY A LAW ENFORCEMENT AGENCY, ON A SHOWING OF NEED, THE COURT SHALL ORDER THAT THE EVIDENCE BE MADE AVAILABLE TO THE PARTY OBJECTING TO THE DISPOSITION OF THE EVIDENCE FOR THE PURPOSE OF OBTAINING REPRESENTATIVE SAMPLES FROM THE EVIDENCE IN THE FORM OF CUTTINGS, SWABS, OR OTHER MEANS, PRIOR TO THE RELEASE OR DESTRUCTION OF THE EVIDENCE.

(5) IF THE COURT ORDERS THAT REPRESENTATIVE SAMPLES BE MADE AVAILABLE UNDER PARAGRAPH (4)(II) OF THIS SUBSECTION, THE COURT SHALL FURTHER ORDER THAT THE SAMPLES BE OBTAINED BY A QUALIFIED CRIME SCENE TECHNICIAN ACTING ON BEHALF OF THE PARTY SEEKING TO OBTAIN THE SAMPLES OR BY THE LAW ENFORCEMENT AGENCY IN POSSESSION OF THE EVIDENCE, WHICH ALSO SHALL PRESERVE AND STORE THE REPRESENTATIVE SAMPLES UNTIL THE REPRESENTATIVE SAMPLES ARE RELEASED TO THE CUSTODY OF A DNA TESTING FACILITY.

(6) AN APPEAL TO THE COURT OF APPEALS MAY BE TAKEN FROM AN ORDER ENTERED UNDER SUBSECTION (C), (H)(2), OR (J)(4) OF THIS SECTION.”.

On page 4, after line 11, insert:

(Over)

“(a) In this subtitle the following words have the meanings indicated.

(b) (1) “CODIS” means the Federal Bureau of Investigation’s “Combined DNA Index System” that allows the storage and exchange of DNA records submitted by FEDERAL, [state] STATE, and local forensic DNA laboratories.

(2) “CODIS” INCLUDES THE NATIONAL DNA INDEX ADMINISTERED AND OPERATED BY THE FEDERAL BUREAU OF INVESTIGATION.

(c) “Crime Laboratory” means the Crime Laboratory Division of the Department.”;

after line 20, insert:

“(e) (D) “Director” means the Director of the Crime Laboratory or the Director’s designee.

(f) (E) “DNA” means deoxyribonucleic acid.

(g) (F) (1) “DNA record” means DNA information stored in CODIS or the statewide DNA data base system.

(2) “DNA record” includes the information commonly referred to as a DNA profile.”;

after line 26, insert:

“(i) (H) “Statewide DNA data base system” means the DNA record system administered by the Department for identification purposes.

(j) (I) “Statewide DNA repository” means the State repository of DNA samples collected under this subtitle.

2-502.

(a) There is a statewide DNA data base system in the Crime Laboratory.



(b) The statewide DNA data base system is the central repository for all DNA testing information as provided in this subtitle.

(c) The Director shall:

(1) administer and manage the statewide DNA data base system;

(2) consult with the Secretary on the adoption of appropriate regulations for protocols and operations of the statewide DNA data base system;

(3) ensure compatibility with Federal Bureau of Investigation and CODIS requirements, including the use of comparable test procedures, quality assurance, laboratory equipment, and computer software; [and]

(4) ensure the security and confidentiality of all records in the statewide DNA data base system; AND

(5) PROVIDE FOR A LIAISON WITH THE FEDERAL BUREAU OF INVESTIGATION AND OTHER CRIMINAL JUSTICE AGENCIES RELATED TO THE STATE'S PARTICIPATION IN CODIS OR IN ANY DNA DATA BASE DESIGNATED BY THE DEPARTMENT.

(d) The Crime Laboratory shall:

(1) receive DNA samples for analysis, classification, [and] storage, AND DISPOSAL;

(2) file the DNA record of identification characteristic profiles of DNA samples submitted to the Crime Laboratory; and

(3) make information that relates to DNA samples and DNA records available to other agencies and individuals as authorized by this subtitle.

(e) The Director may contract with a qualified DNA laboratory to complete DNA typing analyses if the laboratory meets the guidelines established by the Director.

(f) Subject to § 2-511 of this subtitle, records of testing shall be permanently retained on file at the Crime Laboratory.”;

and strike beginning with “AND” in line 28 down through “BUDGET.” in line 30.

On page 5, in line 5, strike the brackets; strike beginning with “IF” in line 5 down through “AN” in line 6; strike beginning with “PRIOR” in line 6 down through “2003.” in line 7; in line 9, after “ARTICLE” insert “ON OR BEFORE OCTOBER 1, 2003”; in line 10, strike the brackets; in the same line, strike “2003”; in line 16, after “is” insert “ON PROBATION OR IS”; strike beginning with “Each” in line 18 down through “DEPARTMENT.” in line 26 and substitute:

“A DNA SAMPLE SHALL BE COLLECTED BY AN INDIVIDUAL WHO IS:

(1) APPOINTED BY THE DIRECTOR; AND

(2) TRAINED IN THE COLLECTION PROCEDURES THAT THE CRIME LABORATORY USES.”;

in line 27, strike the brackets; in the same line, strike “MAY”; and in line 28, strike “SYSTEM”.

On page 5, after line 32, insert:

“2-505.

(a) To the extent fiscal resources are available, DNA samples shall be COLLECTED AND tested:

(1) to analyze and type the genetic markers contained in or derived from the DNA samples;

(2) as part of an official investigation into a crime;

- (3) to help identify human remains;
  - (4) to help identify missing individuals; and
  - (5) for research and administrative purposes, including:
    - (i) development of a population data base after personal identifying information is removed;
    - (ii) support of identification research and protocol development of forensic DNA analysis methods; and
    - (iii) quality control.
- (b) (1) Only DNA records that directly relate to the identification of individuals shall be collected and stored.
- (2) DNA records may not be used for any purposes other than those specified in this subtitle.”.

On page 6, strike lines 1 through 11, inclusive.

On pages 6 through 8, strike in their entirety the lines beginning with line 16 on page 6 through line 6 on page 8, inclusive, and substitute:

“Chapter 465 of the Acts of 2002

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

On page 8, in line 7, strike “4.” and substitute “2.”.

(Over)