

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL NO. 363

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Brochin” and substitute “, Brochin, McFadden, Forehand, Frosh, Garagiola, Giannetti, Green, and Hughes”.

AMENDMENT NO. 2

On page 1, in line 3, strike “- Extension”; strike beginning with “extending” in line 4 down through “contingency” in line 9 and substitute “altering provisions of law relating to DNA testing of certain persons convicted of certain crimes by providing that any person convicted of a felony or certain misdemeanors on or before a certain date shall submit a DNA sample to the Department of State Police under certain circumstances; authorizing a certain individual designated by the Secretary of State Police to collect DNA samples; establishing a DNA Technology Fund to assist the Department of State Police and local law enforcement agencies in acquiring DNA technology equipment needed for DNA testing; requiring the Executive Director of the Governor's Office of Crime Control and Prevention to establish application procedures and administer the grants made from the Fund; requiring the Department of State Police and local law enforcement agencies to provide certain information to the Executive Director; requiring the Executive Director to consider certain criteria in determining the amount of the grants made from the Fund; requiring the Department of State Police and local law enforcement agencies to submit proof of appropriate expenditure; altering the period of time during which the State must preserve certain evidence; defining certain terms; making stylistic changes; making conforming changes; providing for the application of this Act”.

AMENDMENT NO. 3

On page 1, strike in their entirety lines 12 through 14, inclusive, and substitute:

“BY repealing and reenacting, with amendments,

Article - Criminal Procedure

(Over)

Section 8-201(i)
Annotated Code of Maryland
(2001 Volume and 2002 Supplement)
(As enacted by Chapter 465 of the Acts of the General Assembly of 2002)

BY renumbering

Article - Public Safety
Section 2-501(e), (f), (g), (i), and (j), respectively
to be Section 2-501(d), (e), (f), (h), and (i), respectively
Annotated Code of Maryland
(As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of 2003)

BY repealing and reenacting, with amendments,

Article - Public Safety
Section 2-501(h), 2-504, 2-507, and 2-510
Annotated Code of Maryland
(As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of 2003)

BY adding to

Article - Public Safety
Section 2-513
Annotated Code of Maryland
(As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of 2003)

BY repealing

Article - Public Safety
Section 2-501(d)
Annotated Code of Maryland
(As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of 2003)”.

AMENDMENT NO. 4

On page 1, strike in their entirety lines 15 through 21, inclusive.

On pages 1 and 2, strike in their entirety the lines beginning with line 24 on page 1 through line 12 on page 2, inclusive, and substitute:

“Article - Criminal Procedure

8-201.

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

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

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

(2) The State shall preserve scientific identification evidence described in paragraph (1) of this subsection for[:] THE TIME OF THE SENTENCE, INCLUDING ANY CONSECUTIVE SENTENCE IMPOSED IN CONNECTION WITH THE OFFENSE.

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

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

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

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

Article - Public Safety

2-501.

[d) “Crime of violence” means:

(Over)

- (1) sexual abuse of a minor under § 3-602 of the Criminal Law Article;
- (2) rape in any degree;
- (3) a sexual offense in the first, second, or third degree;
- (4) murder;
- (5) robbery under § 3-402 or § 3-403 of the Criminal Law Article;
- (6) first degree assault; or
- (7) attempts to commit the offenses listed in items (1) through (6) of this subsection.]

[(h)] (G) “DNA sample” means a body fluid or tissue sample that is:

- (1) provided by an individual who is convicted of a [crime of violence as defined in this section] FELONY OR A VIOLATION OF § 6-205 OR § 6-206 OF THE CRIMINAL LAW ARTICLE; or
- (2) submitted to the Statewide DNA data base system for analysis as part of a criminal investigation.

2-504.

(a) (1) In accordance with regulations adopted under this subtitle, AND IF ADEQUATE FUNDS FOR THE COLLECTION OF DNA SAMPLES ARE APPROPRIATED IN THE STATE BUDGET, an individual who is convicted of a [crime of violence, as defined in § 2-501 of this subtitle,] FELONY OR A VIOLATION OF § 6-205 OR § 6-206 OF THE CRIMINAL LAW ARTICLE shall:

(i) have a DNA sample collected on intake to a correctional facility, if the individual is sentenced to a term of imprisonment; or

(ii) provide a DNA sample as a condition of sentence or probation, if the individual is not sentenced to a term of imprisonment.

(2) [An] IF ADEQUATE FUNDS FOR THE COLLECTION OF DNA SAMPLES ARE APPROPRIATED IN THE STATE BUDGET, AN individual who was convicted PRIOR TO OCTOBER 1, 2003, of a [crime of violence, as defined in § 2-501 of this subtitle, before October 1, 1999,] FELONY OR A VIOLATION OF § 6-205 AND § 6-206 OF THE CRIMINAL LAW ARTICLE and who remains confined in a correctional facility on or after October 1, [1999] 2003, shall submit a DNA sample to the Department.

(b) In accordance with regulations adopted under this subtitle, each DNA sample required to be collected under this section shall be collected:

(1) at the correctional facility where the individual is confined, if the individual is confined in a correctional facility on or after October 1, [1999] 2003, or is sentenced to a term of imprisonment on or after October 1, [1999] 2003; or

(2) at a facility specified by the Director, if the individual is not sentenced to a term of imprisonment.

(c) Each DNA sample shall be collected by:

(1) a correctional health nurse technician;

(2) a physician;

(3) a registered nurse;

(4) a licensed practical nurse;

(5) a laboratory technician; [or]

(6) a phlebotomist; OR

(7) AN INDIVIDUAL DESIGNATED BY THE SECRETARY WHO IS TRAINED IN THE DNA COLLECTION PROCEDURES ESTABLISHED BY THE DEPARTMENT.

(d) A second DNA sample [shall] MAY be taken if NEEDED TO OBTAIN SUFFICIENT DNA FOR THE STATEWIDE DNA DATA BASE SYSTEM OR IF ordered by the court for good cause shown.

(e) Failure of an individual who is not sentenced to a term of imprisonment to provide a DNA sample within 90 days after notice by the Director is a violation of probation.

2-507.

At regular intervals not exceeding 180 days, the Crime Laboratory and each analyst who performs DNA analyses at the Crime Laboratory shall undergo external proficiency testing, including at least one external blind test, by a DNA proficiency testing program that meets the standards issued under:

(1) § 1003 of the federal DNA Identification Act of 1994 (42 U.S.C. § 14131); or

(2) the [guidelines for a quality assurance program for DNA analysis, known as the “TWGDAM” guidelines] FEDERAL BUREAU OF INVESTIGATION’S QUALITY ASSURANCE STANDARDS FOR CONVICTED OFFENDER’S DNA DATA BASING AND FORENSIC DNA TESTING LABORATORIES.

2-510.

A match obtained between an evidence sample and a data base entry may only be used as probable cause to obtain [a blood] AN ADDITIONAL DNA sample from the subject and is not admissible at trial unless confirmed by additional testing.

2-513.

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

(2) “DNA TECHNOLOGY EQUIPMENT” MEANS ANY EQUIPMENT USED FOR DNA TESTING PURPOSES, INCLUDING THE PURPOSES LISTED IN § 2-505 OF THIS SUBTITLE.

(3) “EXECUTIVE DIRECTOR” MEANS THE EXECUTIVE DIRECTOR OF THE GOVERNOR’S OFFICE OF CRIME CONTROL AND PREVENTION.

(4) “FUND” MEANS THE DNA TECHNOLOGY FUND ESTABLISHED UNDER THIS SECTION.

(5) “LOCAL LAW ENFORCEMENT AGENCY” MEANS THE AGENCY OF ANY COUNTY OR MUNICIPAL CORPORATION, INCLUDING BALTIMORE CITY, WITHIN THE STATE THAT PERFORMS POLICE PROTECTION FUNCTIONS.

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

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

(2) THE FUND SHALL CONSIST OF MONEY APPROPRIATED IN THE STATE BUDGET OR OTHERWISE RECEIVED FROM ANY STATE, PRIVATE, OR FEDERAL AGENCY, ENTITY, OR SOURCE FOR THE PURPOSE OF COLLECTING AND TESTING DNA SAMPLES.

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

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

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

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

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

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

(E) THE EXECUTIVE DIRECTOR SHALL PROVIDE GRANTS FOR THE PURCHASE OR REPLACEMENT OF DNA TECHNOLOGY EQUIPMENT TO THE DEPARTMENT OF STATE POLICE AND LOCAL LAW ENFORCEMENT AGENCIES BASED ON THE NEEDS OF THE DEPARTMENT OF STATE POLICE AND THE COMPARATIVE NEEDS OF EACH LOCAL LAW ENFORCEMENT AGENCY, AS DETERMINED FROM THE INFORMATION PROVIDED UNDER SUBSECTION (D)(2) OF THIS SECTION.

(F) AFTER THE DEPARTMENT OF STATE POLICE OR A LOCAL LAW ENFORCEMENT AGENCY RECEIVES NOTICE OF A GRANT AWARD FROM THE EXECUTIVE DIRECTOR, THE DEPARTMENT OF STATE POLICE OR THE LOCAL LAW ENFORCEMENT AGENCY SHALL SUBMIT PROOF OF EXPENDITURES FOR DNA TECHNOLOGY EQUIPMENT TO THE EXECUTIVE DIRECTOR.

(G) ON OR BEFORE SEPTEMBER 1 OF EACH YEAR, THE EXECUTIVE DIRECTOR SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, TO THE GENERAL ASSEMBLY AS TO THE DISTRIBUTION OF AID PROVIDED UNDER THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 2-501(e), (f), (g), (i), and

(j), respectively, of Article - Public Safety of the Annotated Code of Maryland (as enacted by Chapter ____ (S.B. 1) of the Acts of the General Assembly of 2003) be renumbered to be Section(s) 2-501(d), (e), (f), (h), and (i), respectively.

SECTION 3. AND BE IT FURTHER ENACTED, That § 2-504 of the Public Safety Article, as enacted by Section 2 of this Act, shall be construed to apply retroactively and shall be applied to and interpreted to affect any person convicted of a felony or a violation of § 6-205 or § 6-206 of the Criminal Law Article before the effective date of this Act and incarcerated for a felony or a violation of § 6-205 or § 6-206 of the Criminal Law Article on or after the effective date of this Act.”.

On page 2, in line 13, strike “2.” and substitute “4.”.