

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL NO. 575

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Evidence”; in the same line, after “Review” insert “and Felony Convictions”; in line 11, strike “this section” and substitute “certain provisions of law”; in the same line, after the semicolon insert “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;”; in line 12, strike “abrogation provision” and substitute “termination date”; strike beginning with “postconviction” in line 12 down through “of” in line 13; and after line 18, insert:

“BY repealing and reenacting, with amendments,

Article - Public Safety

Section 2-501, 2-502, 2-504, 2-505, and 2-510

Annotated Code of Maryland

(As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of 2003)”.

AMENDMENT NO. 2

On page 6, after line 11, insert:

“Article - Public Safety

2-501.

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

(b) (1) “CODIS” means the Federal Bureau of Investigation’s “Combined DNA Index

(Over)

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 IDENTIFICATION INDEX ADMINISTERED AND OPERATED BY THE FEDERAL BUREAU OF INVESTIGATION.

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

[(d) “Crime of violence” means:

(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.]

[(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.

[(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] WHO IS CONVICTED OF A 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.

[(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]

(Over)

(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 AN 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.

2-504.

(a) (1) In accordance with regulations adopted under this subtitle, 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 individual who was 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 ON OR before October 1, [1999] 2003, and who remains confined in a correctional facility [on or after October 1, 1999], 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 ON PROBATION OR 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.] 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.

(d) A second DNA sample shall be taken IF NEEDED TO OBTAIN SUFFICIENT DNA FOR THE STATE DATA BASE 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.

2-505.

(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.

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 sample] AN ADDITIONAL DNA SAMPLE from the subject and is not admissible at trial unless confirmed by additional testing.”.

AMENDMENT NO. 3

On page 4, in line 5, after “subsection” insert “(C)”; and in line 9, after “under” insert “SUBSECTION (C) OF”.

On page 6, strike beginning with the first “THE” in line 5 down through “SAMPLES” in line 9 and substitute “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”;

and in line 10, strike “(5)” and substitute “(6)”.