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By: **Delegates Anderson and Vallario**  
Introduced and read first time: February 6, 2003  
Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - DNA Evidence - Postconviction Review**

3 FOR the purpose of expanding the definition of "law enforcement agency" to include  
4 certain additional agencies; clarifying the definition of "biological evidence";  
5 clarifying the definition of "scientific identification evidence"; clarifying under  
6 what circumstances a court may order DNA testing; requiring a court to make  
7 certain orders to certain law enforcement agencies when it orders DNA testing;  
8 authorizing a court to make certain orders regarding DNA testing when it  
9 orders DNA testing; requiring a court to hold certain hearings regarding the  
10 disposition of certain evidence under certain circumstances; authorizing appeals  
11 to be taken from certain court decisions made pursuant to this section; repealing  
12 a certain abrogation provision; and generally relating to postconviction reviews  
13 conducted by courts in the matter of DNA testing.

14 BY repealing and reenacting, with amendments,  
15 Article - Criminal Procedure  
16 Section 8-201  
17 Annotated Code of Maryland  
18 (2001 Volume and 2002 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Chapter 465 of the Acts of the General Assembly of 2002  
21 Section 5

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

24 **Article - Criminal Procedure**

25 8-201.

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

27 (2) "DNA" means deoxyribonucleic acid.

1 (3) "LAW ENFORCEMENT AGENCY" MEANS ANY OF THE FOLLOWING:

2 (I) A MUNICIPAL OR COUNTY POLICE DEPARTMENT;

3 (II) SHERIFF'S OFFICE;

4 (III) THE MARYLAND STATE POLICE;

5 (IV) ANY PROSECUTING AUTHORITY;

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

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

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

14 [(3)] (5) "Scientific identification evidence" means evidence that:

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

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

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

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

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

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

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

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

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

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

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

14 [(6)] (2) the requested DNA test employs a method of testing generally  
15 accepted within the relevant scientific community.

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

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

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

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

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

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

28 (1) THE SPECIFIC EVIDENCE TO BE TESTED;

29 (2) THE METHOD OF TESTING TO BE USED;

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

32 (4) THE LABORATORY WHERE THE TESTING IS TO BE PERFORMED,  
33 PROVIDED THAT IF THE PARTIES CANNOT AGREE ON A LABORATORY, THE COURT  
34 MAY APPROVE TESTING AT ANY LABORATORY ACCREDITED BY THE AMERICAN  
35 SOCIETY OF CRIME LABORATORY DIRECTORS (ASCLAD), THE LABORATORY

1 ACCREDITATION BOARD (LAB), OR THE NATIONAL FORENSIC SCIENCE TECHNOLOGY  
2 CENTER; AND

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

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

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

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

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

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

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

17 (i) if no postconviction proceeding has been previously initiated by  
18 the petitioner under § 7-102 of this article, open a postconviction proceeding under §  
19 7-102 of this article; or

20 (ii) if a postconviction proceeding has been previously initiated by  
21 the petitioner under § 7-102 of this article, reopen a postconviction proceeding under  
22 § 7-104 of this article.

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

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

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

27 (2) The State shall preserve scientific identification evidence described  
28 in paragraph (1) of this subsection for the time of the sentence, including any  
29 consecutive sentence imposed in connection with the offense.

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

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

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

4 (i) the person who is incarcerated in connection with the case;

5 (ii) any attorney of record for the person incarcerated; and

6 (iii) the Office of Public Defender for the judicial district in which  
7 the judgment of conviction was entered.

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

10 (i) a description of the scientific identification evidence;

11 (ii) a statement that the State intends to dispose of the evidence;

12 (iii) a statement that the State will dispose of the evidence unless a  
13 party files an objection in writing within 120 days from the date of service in the  
14 circuit court that entered the judgment; and

15 (iv) the name and mailing address of the circuit court where an  
16 objection may be filed.

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

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

23 (i) shall consider the reasons for and against disposition of the  
24 evidence;

25 (ii) may hold a hearing on the proposed disposition of the evidence;  
26 and

27 (iii) shall issue an order disposing of the matter as required by the  
28 interests of justice and the integrity of the criminal justice system.

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

35 (I) THE EVIDENCE HAS NO SIGNIFICANT VALUE FOR FORENSIC  
36 SCIENCE ANALYSIS, THE COURT MAY ORDER THE RETURN OF THE EVIDENCE TO ITS

1 RIGHTFUL OWNER, THE DESTRUCTION OF THE EVIDENCE, OR OTHER DISPOSITION  
2 AS PROVIDED BY LAW; OR

3 (II) THE EVIDENCE IS OF SUCH SIZE, BULK, OR PHYSICAL  
4 CHARACTER THAT IT CANNOT PRACTICABLY BE RETAINED BY A LAW ENFORCEMENT  
5 AGENCY, THE COURT MAY DIRECT THE RELEASE OR DESTRUCTION OF THE  
6 EVIDENCE AFTER AFFORDING THE ADVERSE PARTY A REASONABLE OPPORTUNITY  
7 TO OBTAIN REPRESENTATIVE SAMPLES OF ANY BIOLOGICAL EVIDENCE THAT CAN  
8 BE OBTAINED FROM THE ITEM BY MEANS OF TAKING CUTTINGS OR SWABS, OR  
9 OTHER MEANS OF OBTAINING REPRESENTATIVE SAMPLES.

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

12 **Chapter 465 of the Acts of 2002**

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

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2003.