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

Committee Report: Favorable with amendments
House action: Adopted with floor amendments
Read second time: March 18, 2003

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure - DNA Evidence - Postconviction Review and Felony**
3 **Convictions**

4 FOR the purpose of expanding the definition of "law enforcement agency" to include
5 certain additional agencies; clarifying the definition of "biological evidence";
6 clarifying the definition of "scientific identification evidence"; clarifying under
7 what circumstances a court may order DNA testing; requiring a court to make
8 certain orders to certain law enforcement agencies when it orders DNA testing;
9 authorizing a court to make certain orders regarding DNA testing when it
10 orders DNA testing; requiring a court to hold certain hearings regarding the
11 disposition of certain evidence under certain circumstances; authorizing appeals
12 to be taken from certain court decisions made pursuant to ~~this section~~ certain
13 provisions of law; requiring the collection of DNA samples from certain persons;
14 identifying where DNA samples shall be collected; requiring the Director of the
15 State Police Crime Laboratory to provide for liaison with certain criminal justice
16 agencies relating to the State's participation in certain DNA data bases;
17 providing for the admissibility of certain evidence; altering and repealing
18 certain definitions; repealing a certain abrogation provision termination date;
19 and generally relating to ~~postconviction reviews conducted by courts in the~~
20 ~~matter of~~ DNA testing.

21 BY repealing and reenacting, with amendments,
22 Article - Criminal Procedure
23 Section 8-201
24 Annotated Code of Maryland
25 (2001 Volume and 2002 Supplement)

26 BY repealing and reenacting, with amendments,

1 Article - Public Safety
2 Section 2-501, 2-502, 2-504, 2-505, and 2-510
3 Annotated Code of Maryland
4 (As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of
5 2003)

6 BY repealing and reenacting, with amendments,
7 Chapter 465 of the Acts of the General Assembly of 2002
8 Section 5

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

11 **Article - Criminal Procedure**

12 8-201.

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

14 (2) "DNA" means deoxyribonucleic acid.

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

16 (I) A MUNICIPAL OR COUNTY POLICE DEPARTMENT;

17 (II) SHERIFF'S OFFICE;

18 (III) THE MARYLAND STATE POLICE;

19 (IV) ANY PROSECUTING AUTHORITY;

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

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

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

28 [(3)] (5) "Scientific identification evidence" means evidence that:

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

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

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

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

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

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

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

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

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

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

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

30 [(6)] (2) the requested DNA test employs a method of testing generally
31 accepted within the relevant scientific community.

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

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

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

1 (1) identify the specific scientific identification evidence to be tested;
2 (2) identify the method of testing to be used; and
3 (3) select the laboratory where the testing is to be performed from a
4 listing of accredited laboratories to be maintained by the Office of the Attorney
5 General.] MAY ISSUE ORDERS THE COURT CONSIDERS APPROPRIATE, INCLUDING
6 DESIGNATION OF ANY OF THE FOLLOWING:

7 (1) THE SPECIFIC EVIDENCE TO BE TESTED;

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

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

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

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

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

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

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

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

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

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

31 (i) if no postconviction proceeding has been previously initiated by
32 the petitioner under § 7-102 of this article, open a postconviction proceeding under §
33 7-102 of this article; or

34 (ii) if a postconviction proceeding has been previously initiated by
35 the petitioner under § 7-102 of this article, reopen a postconviction proceeding under
36 § 7-104 of this article.

- 1 (i) (1) The State shall preserve scientific identification evidence that:
- 2 (i) the State has reason to know contains DNA material; and
- 3 (ii) is secured in connection with an offense described in subsection
- 4 (b) of this section.
- 5 (2) The State shall preserve scientific identification evidence described
- 6 in paragraph (1) of this subsection for the time of the sentence, including any
- 7 consecutive sentence imposed in connection with the offense.
- 8 (3) The State shall make the scientific identification evidence available
- 9 to parties in the case under terms that are mutually agreed on between them.
- 10 (4) If an agreement cannot be reached, the party requesting the testing
- 11 may file an application in the circuit court that entered the judgment for an order
- 12 setting the terms under which the evidence will be made available for testing.
- 13 (j) (1) The State may dispose of scientific identification evidence before the
- 14 expiration of the time period described in subsection (i) of this section if the State
- 15 notifies the following persons:
- 16 (i) the person who is incarcerated in connection with the case;
- 17 (ii) any attorney of record for the person incarcerated; and
- 18 (iii) the Office of Public Defender for the judicial district in which
- 19 the judgment of conviction was entered.
- 20 (2) The notification required in paragraph (1) of this subsection shall
- 21 include:
- 22 (i) a description of the scientific identification evidence;
- 23 (ii) a statement that the State intends to dispose of the evidence;
- 24 (iii) a statement that the State will dispose of the evidence unless a
- 25 party files an objection in writing within 120 days from the date of service in the
- 26 circuit court that entered the judgment; and
- 27 (iv) the name and mailing address of the circuit court where an
- 28 objection may be filed.
- 29 (3) Unless another law or court order requires the preservation of the
- 30 scientific identification evidence, if no objection to the disposition of the evidence is
- 31 filed within 120 days of the notice required under this subsection, the State may
- 32 dispose of the evidence.
- 33 (4) If a person files written objections to the State's notice that it intends
- 34 to dispose of scientific identification evidence, the court[:

1 (i) shall consider the reasons for and against disposition of the
2 evidence;

3 (ii) may hold a hearing on the proposed disposition of the evidence;
4 and

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

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

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

17 (II) THE EVIDENCE IS OF SUCH SIZE, BULK, OR PHYSICAL
18 CHARACTER THAT IT CANNOT PRACTICABLY BE RETAINED BY A LAW ENFORCEMENT
19 AGENCY, ~~THE COURT MAY DIRECT THE RELEASE OR DESTRUCTION OF THE~~
20 ~~EVIDENCE AFTER AFFORDING THE ADVERSE PARTY A REASONABLE OPPORTUNITY~~
21 ~~TO OBTAIN REPRESENTATIVE SAMPLES OF ANY BIOLOGICAL EVIDENCE THAT CAN~~
22 ~~BE OBTAINED FROM THE ITEM BY MEANS OF TAKING CUTTINGS OR SWABS, OR~~
23 ~~OTHER MEANS OF OBTAINING REPRESENTATIVE SAMPLES ON A SHOWING OF NEED,~~
24 THE COURT SHALL ORDER THAT THE EVIDENCE BE MADE AVAILABLE TO THE PARTY
25 OBJECTING TO THE DISPOSITION OF THE EVIDENCE FOR THE PURPOSE OF
26 OBTAINING REPRESENTATIVE SAMPLES FROM THE EVIDENCE IN THE FORM OF
27 CUTTINGS, SWABS, OR OTHER MEANS, PRIOR TO THE RELEASE OR DESTRUCTION OF
28 THE EVIDENCE;

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

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

Article - Public Safety

2 2-501.

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

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

7 (2) "CODIS" INCLUDES THE NATIONAL DNA IDENTIFICATION INDEX
8 ADMINISTERED AND OPERATED BY THE FEDERAL BUREAU OF INVESTIGATION.

9 (c) "Crime Laboratory" means the Crime Laboratory Division of the
10 Department.

11 [(d) "Crime of violence" means:

12 (1) sexual abuse of a minor under § 3-602 of the Criminal Law Article;

13 (2) rape in any degree;

14 (3) a sexual offense in the first, second, or third degree;

15 (4) murder;

16 (5) robbery under § 3-402 or § 3-403 of the Criminal Law Article;

17 (6) first degree assault; or

18 (7) attempts to commit the offenses listed in items (1) through (6) of this
19 subsection.]

20 [(e) (D) "Director" means the Director of the Crime Laboratory or the
21 Director's designee.

22 [(f) (E) "DNA" means deoxyribonucleic acid.

23 [(g) (F) (1) "DNA record" means DNA information stored in CODIS or the
24 statewide DNA data base system.

25 (2) "DNA record" includes the information commonly referred to as a
26 DNA profile.

27 [(h) (G) "DNA sample" means a body fluid or tissue sample that is:

28 (1) provided by an individual [who is convicted of a crime of violence as
29 defined in this section] WHO IS CONVICTED OF A FELONY OR A VIOLATION OF § 6-205
30 OR § 6-206 OF THE CRIMINAL LAW ARTICLE; or

1 (2) submitted to the statewide DNA data base system for analysis as
2 part of a criminal investigation.

3 [(i)] (H) "Statewide DNA data base system" means the DNA record system
4 administered by the Department for identification purposes.

5 [(j)] (I) "Statewide DNA repository" means the State repository of DNA
6 samples collected under this subtitle.

7 2-502.

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

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

11 (c) The Director shall:

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

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

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

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

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

24 (d) The Crime Laboratory shall:

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

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

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

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

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

3 2-504.

4 (a) (1) In accordance with regulations adopted under this subtitle, an
5 individual who is convicted of a [crime of violence, as defined in § 2-501 of this
6 subtitle,] FELONY OR A VIOLATION OF § 6-205 OR § 6-206 OF THE CRIMINAL LAW
7 ARTICLE shall:

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

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

12 (2) An individual who was convicted of a [crime of violence, as defined in
13 § 2-501 of this subtitle,] FELONY OR A VIOLATION OF § 6-205 OR § 6-206 OF THE
14 CRIMINAL LAW ARTICLE ON OR before October 1, [1999] 2003, and who remains
15 confined in a correctional facility [on or after October 1, 1999], shall submit a DNA
16 sample to the Department.

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

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

22 (2) at a facility specified by the Director, if the individual is ON
23 PROBATION OR IS not sentenced to a term of imprisonment.

24 (c) [Each DNA sample shall be collected by:

25 (1) a correctional health nurse technician;

26 (2) a physician;

27 (3) a registered nurse;

28 (4) a licensed practical nurse;

29 (5) a laboratory technician; or

30 (6) a phlebotomist.] A DNA SAMPLE SHALL BE COLLECTED BY AN
31 INDIVIDUAL WHO IS:

32 (1) APPOINTED BY THE DIRECTOR; AND

33 (2) TRAINED IN THE COLLECTION PROCEDURES THAT THE CRIME
34 LABORATORY USES.

1 (d) A second DNA sample shall be taken IF NEEDED TO OBTAIN SUFFICIENT
2 DNA FOR THE STATE DATA BASE OR if ordered by the court for good cause shown.

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

6 2-505.

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

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

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

12 (3) to help identify human remains;

13 (4) to help identify missing individuals; and

14 (5) for research and administrative purposes, including:

15 (i) development of a population data base after personal
16 identifying information is removed;

17 (ii) support of identification research and protocol development of
18 forensic DNA analysis methods; and

19 (iii) quality control.

20 (b) (1) Only DNA records that directly relate to the identification of
21 individuals shall be collected and stored.

22 (2) DNA records may not be used for any purposes other than those
23 specified in this subtitle.

24 2-510.

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

28 **Chapter 465 of the Acts of 2002**

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

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