

SENATE BILL 363

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2003 Regular Session
(3lr1107)

ENROLLED BILL
-- Judicial Proceedings/Judiciary --

Introduced by **Senators Miller and Brochin, Brochin, McFadden, Forehand,
Frosh, Garagiola, Giannetti, Green, and Hughes**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure - DNA Testing - Offender Sample Collection, Technology**
3 **Fund, and Preservation of Evidence - Postconviction Review and Felony**
4 **Convictions - Extension**

5 FOR the purpose of ~~extending the termination date, subject to a certain contingency,~~
6 ~~of certain provisions of law relating to the collection of certain DNA samples of~~
7 ~~certain convicted persons, the administration of a DNA Technology Fund, and~~
8 ~~the preservation of certain scientific identification evidence for a certain period;~~
9 ~~increasing the amount of a certain award of a certain grant used to implement~~
10 ~~the provisions of a certain Act as a contingency altering provisions of law~~
11 ~~relating to DNA testing of certain persons convicted of certain crimes by~~
12 ~~providing that any person convicted of a felony or certain misdemeanors on or~~
13 ~~before a certain date shall submit a DNA sample to the Department of State~~
14 ~~Police under certain circumstances; authorizing a certain individual designated~~
15 ~~by the Secretary of State Police to collect DNA samples; establishing a DNA~~
16 ~~Technology Fund to assist the Department of State Police and local law~~

1 ~~enforcement agencies in acquiring DNA technology equipment needed for DNA~~
 2 ~~testing; requiring the Executive Director of the Governor's Office of Crime~~
 3 ~~Control and Prevention to establish application procedures and administer the~~
 4 ~~grants made from the Fund; requiring the Department of State Police and local~~
 5 ~~law enforcement agencies to provide certain information to the Executive~~
 6 ~~Director; requiring the Executive Director to consider certain criteria in~~
 7 ~~determining the amount of the grants made from the Fund; requiring the~~
 8 ~~Department of State Police and local law enforcement agencies to submit proof~~
 9 ~~of appropriate expenditure; altering the period of time during which the State~~
 10 ~~must preserve certain evidence; defining certain terms; making stylistic~~
 11 ~~changes; making conforming changes; providing for the application of this Act~~
 12 ~~expanding the definition of "law enforcement agency" to include certain~~
 13 ~~additional agencies; clarifying the definition of "biological evidence"; clarifying~~
 14 ~~the definition of "scientific identification evidence"; clarifying under what~~
 15 ~~circumstances a court may order DNA testing; requiring a court to make certain~~
 16 ~~orders to certain law enforcement agencies when it orders DNA testing;~~
 17 ~~authorizing a court to make certain orders regarding DNA testing when it orders~~
 18 ~~DNA testing; requiring a court to hold certain hearings regarding the disposition~~
 19 ~~of certain evidence under certain circumstances; authorizing appeals to be taken~~
 20 ~~from certain court decisions made pursuant to certain provisions of law;~~
 21 ~~requiring the collection of DNA samples from certain persons; identifying where~~
 22 ~~DNA samples shall be collected; requiring the Director of the State Police Crime~~
 23 ~~Laboratory to provide for liaison with certain criminal justice agencies relating~~
 24 ~~to the State's participation in certain DNA data bases; providing for the~~
 25 ~~admissibility of certain evidence; altering and repealing certain definitions;~~
 26 ~~repealing a certain termination date; and generally relating to DNA testing, the~~
 27 ~~DNA Technology Fund, and the preservation of scientific identification evidence~~
 28 ~~under certain circumstances.~~

29 ~~BY repealing and reenacting, with amendments,~~
 30 ~~Chapter 465 of the Acts of the General Assembly of 2002~~
 31 ~~Section 4 and 5~~

32 ~~BY repealing and reenacting, with amendments,~~
 33 ~~Article - Criminal Procedure~~
 34 ~~Section 8-201(i)~~
 35 ~~Annotated Code of Maryland~~
 36 ~~(2001 Volume and 2002 Supplement)~~
 37 ~~(As enacted by Chapter 465 of the Acts of the General Assembly of 2002)~~

38 ~~BY renumbering~~
 39 ~~Article Public Safety~~
 40 ~~Section 2-501(e), (f), (g), (i), and (j), respectively~~
 41 ~~to be Section 2-501(d), (e), (f), (h), and (i), respectively~~
 42 ~~Annotated Code of Maryland~~
 43 ~~(As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of~~

1 ~~2003)~~
 2 BY repealing and reenacting, with amendments,
 3 Article - Public Safety
 4 Section 2-501(h), 2-502, 2-504, 2-507 2-505, and 2-510
 5 Annotated Code of Maryland
 6 (As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of
 7 2003)

8 BY adding to
 9 Article ~~Public Safety~~
 10 Section ~~2-513~~
 11 Annotated Code of Maryland
 12 (As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of
 13 2003)

14 BY repealing
 15 Article ~~Public Safety~~
 16 Section ~~2-501(d)~~
 17 Annotated Code of Maryland
 18 (As enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly of
 19 2003)

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

23 **Preamble**

24 ~~WHEREAS, It is the intent of the General Assembly to continue the collection of~~
 25 ~~DNA samples of all individuals convicted of a felony or certain burglary or breaking~~
 26 ~~and entering misdemeanors, the existence of the DNA Technology Fund to purchase~~
 27 ~~or replace DNA technology equipment, and the preservation of scientific~~
 28 ~~identification evidence during the time of sentence of an individual convicted of an~~
 29 ~~offense in which scientific identification evidence is secured; now, therefore,~~

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

32 **Chapter 465 of the Acts of 2002**

33 ~~SECTION 4. AND BE IT FURTHER ENACTED, That this Act is contingent on~~
 34 ~~the receipt by the Department of State Police of a binding written award of a grant~~
 35 ~~from any private entity or federal agency by September 1, [2002]2003, of at least~~
 36 ~~[\$1,500,000] \$4,500,000 to be used to implement the provisions of this Act during the~~
 37 ~~period between October 1, [2002] 2003 and September 30, [2003] 2006. If the~~

1 Department of State Police does not receive a binding written award by September 1,
 2 [2002] 2003 as provided in this Section, this Act, with no further action required by
 3 the General Assembly, shall be null and void and of no force and effect. If the
 4 Department of State Police receives a binding written award by September 1, [2002]
 5 2003, the Department shall forward a copy of the written award within 5 days of
 6 receipt to the Department of Legislative Services, 90 State Circle, Annapolis,
 7 Maryland 21401.

8 SECTION 5. AND BE IT FURTHER ENACTED, That, subject to Section 4 of
 9 this Act, this Act shall take effect October 1, [2002] 2003. It shall remain effective for
 10 a period of [1 year] 3 YEARS and, at the end of September 30, [2003] 2006, with no
 11 further action required by the General Assembly, this Act shall be abrogated and of no
 12 further force and effect.

13 **Article - Criminal Procedure**

14 8-201.

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

16 (2) "DNA" means deoxyribonucleic acid.

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

18 (I) A MUNICIPAL OR COUNTY POLICE DEPARTMENT;

19 (II) SHERIFF'S OFFICE;

20 (III) THE MARYLAND STATE POLICE;

21 (IV) ANY PROSECUTING AUTHORITY;

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

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

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

31 [(3)] (5) "Scientific identification evidence" means evidence that:

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

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

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

7 (b) Notwithstanding any other law governing postconviction relief, a person
8 who is convicted of a violation of § 2-201, § 2-204, § 2-207, or §§ 3-303 through
9 3-307 of the Criminal Law Article may file a petition for DNA testing of scientific
10 identification evidence that the State possesses as provided in subsection (i) of this
11 section and that is related to the judgment of conviction.

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

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

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

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

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

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

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

33 [(6)] (2) the requested DNA test employs a method of testing generally
34 accepted within the relevant scientific community.

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

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

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

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

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

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

9 (1) THE SPECIFIC EVIDENCE TO BE TESTED;

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

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

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

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

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

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

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

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

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

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

33 (i) if no postconviction proceeding has been previously initiated by
34 the petitioner under § 7-102 of this article, open a postconviction proceeding under §
35 7-102 of this article; or

1 (ii) if a postconviction proceeding has been previously initiated by
2 the petitioner under § 7-102 of this article, reopen a postconviction proceeding under §
3 7-104 of this article.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (i) shall consider the reasons for and against disposition of the
10 evidence;

11 (ii) may hold a hearing on the proposed disposition of the evidence;
12 and

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

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

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

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

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

39 (6) AN APPEAL TO THE COURT OF APPEALS MAY BE TAKEN FROM AN
40 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 by
6 FEDERAL, [state] STATE, and local forensic DNA laboratories.

7 (2) "CODIS" INCLUDES THE NATIONAL DNA INDEX ADMINISTERED AND
8 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] FELONY OR A VIOLATION OF § 6-205 OR § 6-206 OF THE
30 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
22 STATE'S 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 Director.

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

1 2-504.

2 (a) (1) In accordance with regulations adopted under this subtitle, AND IF
 3 ADEQUATE FUNDS FOR THE COLLECTION OF DNA SAMPLES ARE APPROPRIATED IN
 4 THE STATE BUDGET, AND IF ADEQUATE FUNDS FOR THE COLLECTION OF DNA
 5 SAMPLES ARE APPROPRIATED IN THE STATE BUDGET, an individual who is convicted
 6 of a [crime of violence, as defined in § 2-501 of this subtitle,] FELONY OR A
 7 VIOLATION OF § 6-205 OR § 6-206 OF THE CRIMINAL LAW 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~~ IF ADEQUATE FUNDS FOR THE COLLECTION OF DNA SAMPLES
 13 ARE APPROPRIATED IN THE STATE BUDGET, AN IF ADEQUATE FUNDS FOR THE
 14 COLLECTION OF DNA SAMPLES ARE APPROPRIATED IN THE STATE BUDGET, AN
 15 individual who was convicted PRIOR TO OCTOBER 1, 2003, of a [crime of violence, as
 16 defined in § 2-501 of this subtitle, before October 1, 1999,] FELONY OR A VIOLATION
 17 OF § 6-205 AND § 6-206 OF THE CRIMINAL LAW ARTICLE ON OR BEFORE OCTOBER 1,
 18 2003 and who remains confined in a correctional facility on or after October 1, [1999]
 19 2003, shall submit a DNA sample to the Department.

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

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

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

27 (c) ~~Each DNA sample shall be collected by:~~

28 (1) ~~a correctional health nurse technician;~~

29 (2) ~~a physician;~~

30 (3) ~~a registered nurse;~~

31 (4) ~~a licensed practical nurse;~~

32 (5) ~~a laboratory technician; [or]~~

33 (6) ~~a phlebotomist; OR~~

34 (7) AN INDIVIDUAL DESIGNATED BY THE SECRETARY WHO IS TRAINED
 35 IN THE DNA COLLECTION PROCEDURES ESTABLISHED BY THE DEPARTMENT. A DNA
 36 SAMPLE SHALL BE COLLECTED BY AN INDIVIDUAL WHO IS:

1 (1) APPOINTED BY THE DIRECTOR; AND

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

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

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

10 2-505.

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

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

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

16 (3) to help identify human remains;

17 (4) to help identify missing individuals; and

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

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

21 (ii) support of identification research and protocol development of
22 forensic DNA analysis methods; and

23 (iii) quality control.

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

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

28 2-507.

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

1 (1) ~~§ 1003 of the federal DNA Identification Act of 1994 (42 U.S.C. §~~
2 ~~14131); or~~

3 (2) ~~the [guidelines for a quality assurance program for DNA analysis,~~
4 ~~known as the "TWGDAM" guidelines] FEDERAL BUREAU OF INVESTIGATION'S~~
5 ~~QUALITY ASSURANCE STANDARDS FOR CONVICTED OFFENDER'S DNA DATA BASING~~
6 ~~AND FORENSIC DNA TESTING LABORATORIES.~~

7 ~~2-510.~~

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

11 ~~2-513.~~

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

14 (2) ~~"DNA TECHNOLOGY EQUIPMENT" MEANS ANY EQUIPMENT USED FOR~~
15 ~~DNA TESTING PURPOSES, INCLUDING THE PURPOSES LISTED IN § 2-505 OF THIS~~
16 ~~SUBTITLE.~~

17 (3) ~~"EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE~~
18 ~~GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION.~~

19 (4) ~~"FUND" MEANS THE DNA TECHNOLOGY FUND ESTABLISHED UNDER~~
20 ~~THIS SECTION.~~

21 (5) ~~"LOCAL LAW ENFORCEMENT AGENCY" MEANS THE AGENCY OF ANY~~
22 ~~COUNTY OR MUNICIPAL CORPORATION, INCLUDING BALTIMORE CITY, WITHIN THE~~
23 ~~STATE THAT PERFORMS POLICE PROTECTION FUNCTIONS.~~

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

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

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

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

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

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

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

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

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

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

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

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

30 ~~SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 2-501(e), (f),~~
31 ~~(g), (i), and (j), respectively, of Article – Public Safety of the Annotated Code of~~
32 ~~Maryland (as enacted by Chapter _____ (S.B. 1) of the Acts of the General Assembly~~
33 ~~of 2003) be renumbered to be Section(s) 2-501(d), (e), (f), (h), and (i), respectively.~~

34 ~~SECTION 3. AND BE IT FURTHER ENACTED, That § 2-504 of the Public~~
35 ~~Safety Article, as enacted by Section 2 of this Act, shall be construed to apply~~
36 ~~retroactively and shall be applied to and interpreted to affect any person convicted of~~
37 ~~a felony or a violation of § 6-205 or § 6-206 of the Criminal Law Article before the~~
38 ~~effective date of this Act and incarcerated for a felony or a violation of § 6-205 or §~~
39 ~~6-206 of the Criminal Law Article on or after the effective date of this Act.~~

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Chapter 465 of the Acts of 2002

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

7 SECTION ~~2.~~ 4.2. AND BE IT FURTHER ENACTED, That this Act shall take
8 effect October 1, 2003.