
By: **Senators Miller and Brochin, Brochin, McFadden, Forehand, Frosh,
Garagiola, Giannetti, Green, and Hughes**

Introduced and read first time: January 31, 2003

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2003

CHAPTER _____

1 AN ACT concerning

2 **DNA Testing - Offender Sample Collection, Technology Fund, and**
3 **Preservation of Evidence -~~Extension~~**

4 FOR the purpose of ~~extending the termination date, subject to a certain contingency,~~
5 ~~of certain provisions of law relating to the collection of certain DNA samples of~~
6 ~~certain convicted persons, the administration of a DNA Technology Fund, and~~
7 ~~the preservation of certain scientific identification evidence for a certain period;~~
8 ~~increasing the amount of a certain award of a certain grant used to implement~~
9 ~~the provisions of a certain Act as a contingency~~ altering provisions of law
10 relating to DNA testing of certain persons convicted of certain crimes by
11 providing that any person convicted of a felony or certain misdemeanors on or
12 before a certain date shall submit a DNA sample to the Department of State
13 Police under certain circumstances; authorizing a certain individual designated
14 by the Secretary of State Police to collect DNA samples; establishing a DNA
15 Technology Fund to assist the Department of State Police and local law
16 enforcement agencies in acquiring DNA technology equipment needed for DNA
17 testing; requiring the Executive Director of the Governor's Office of Crime
18 Control and Prevention to establish application procedures and administer the
19 grants made from the Fund; requiring the Department of State Police and local
20 law enforcement agencies to provide certain information to the Executive
21 Director; requiring the Executive Director to consider certain criteria in
22 determining the amount of the grants made from the Fund; requiring the
23 Department of State Police and local law enforcement agencies to submit proof
24 of appropriate expenditure; altering the period of time during which the State
25 must preserve certain evidence; defining certain terms; making stylistic
26 changes; making conforming changes; providing for the application of this Act;
27 and generally relating to DNA testing, the DNA Technology Fund, and the

1 preservation of scientific identification evidence under certain circumstances.

2 ~~BY repealing and reenacting, with amendments,~~

3 ~~Chapter 465 of the Acts of the General Assembly of 2002~~

4 ~~Section 4 and 5~~

5 BY repealing and reenacting, with amendments,

6 Article - Criminal Procedure

7 Section 8-201(i)

8 Annotated Code of Maryland

9 (2001 Volume and 2002 Supplement)

10 (As enacted by Chapter 465 of the Acts of the General Assembly of 2002)

11 BY renumbering

12 Article - Public Safety

13 Section 2-501(e), (f), (g), (i), and (j), respectively

14 to be Section 2-501(d), (e), (f), (h), and (i), respectively

15 Annotated Code of Maryland

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

17 2003)

18 BY repealing and reenacting, with amendments,

19 Article - Public Safety

20 Section 2-501(h), 2-504, 2-507, and 2-510

21 Annotated Code of Maryland

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

23 2003)

24 BY adding to

25 Article - Public Safety

26 Section 2-513

27 Annotated Code of Maryland

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

29 2003)

30 BY repealing

31 Article - Public Safety

32 Section 2-501(d)

33 Annotated Code of Maryland

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

35 2003)

1

Preamble

2 WHEREAS, It is the intent of the General Assembly to continue the collection of
 3 DNA samples of all individuals convicted of a felony or certain burglary or breaking
 4 and entering misdemeanors, the existence of the DNA Technology Fund to purchase
 5 or replace DNA technology equipment, and the preservation of scientific
 6 identification evidence during the time of sentence of an individual convicted of an
 7 offense in which scientific identification evidence is secured; now, therefore,

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

10

Chapter 465 of the Acts of 2002

11 SECTION 4. AND BE IT FURTHER ENACTED, That this Act is contingent on
 12 the receipt by the Department of State Police of a binding written award of a grant
 13 from any private entity or federal agency by September 1, [2002] 2003, of at least
 14 [\$1,500,000] \$4,500,000 to be used to implement the provisions of this Act during the
 15 period between October 1, [2002] 2003 and September 30, [2003] 2006. If the
 16 Department of State Police does not receive a binding written award by September 1,
 17 [2002] 2003 as provided in this Section, this Act, with no further action required by
 18 the General Assembly, shall be null and void and of no force and effect. If the
 19 Department of State Police receives a binding written award by September 1, [2002]
 20 2003, the Department shall forward a copy of the written award within 5 days of
 21 receipt to the Department of Legislative Services, 90 State Circle, Annapolis,
 22 Maryland 21401.

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

28

Article - Criminal Procedure29 8-201.30 (i) (1) The State shall preserve scientific identification evidence that:31 (i) the State has reason to know contains DNA material; and32 (ii) is secured in connection with an offense described in subsection
33 (b) of this section.34 (2) The State shall preserve scientific identification evidence described
35 in paragraph (1) of this subsection for[:] THE TIME OF THE SENTENCE, INCLUDING
36 ANY CONSECUTIVE SENTENCE IMPOSED IN CONNECTION WITH THE OFFENSE.37 [(i) a period of 3 years after the imposition of sentence; or

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

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

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

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

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

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

18 (c) Each DNA sample shall be collected by:

19 (1) a correctional health nurse technician;

20 (2) a physician;

21 (3) a registered nurse;

22 (4) a licensed practical nurse;

23 (5) a laboratory technician; [or]

24 (6) a phlebotomist; OR

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

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

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

1 2-507.

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

6 (1) § 1003 of the federal DNA Identification Act of 1994 (42 U.S.C. §
7 14131); or

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

12 2-510.

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

16 2-513.

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

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

22 (3) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE
23 GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION.

24 (4) "FUND" MEANS THE DNA TECHNOLOGY FUND ESTABLISHED UNDER
25 THIS SECTION.

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

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

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

34 (2) THE FUND SHALL CONSIST OF MONEY APPROPRIATED IN THE STATE
35 BUDGET OR OTHERWISE RECEIVED FROM ANY STATE, PRIVATE, OR FEDERAL

1 AGENCY, ENTITY, OR SOURCE FOR THE PURPOSE OF COLLECTING AND TESTING DNA
2 SAMPLES.

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

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

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

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

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

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

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

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

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

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

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

7 ~~SECTION 4.~~ AND BE IT FURTHER ENACTED, That this Act shall take
8 effect October 1, 2003.