

Department of Legislative Services  
Maryland General Assembly  
2003 Session

FISCAL AND POLICY NOTE  
Revised

Senate Bill 363

(Senator Miller *et. al.*)

Judicial Proceedings

Judiciary

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**Criminal Procedure - DNA - Postconviction Review and Felony Convictions**

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This bill requires the continued collection of DNA (deoxyribonucleic acid) samples from any person convicted of a felony, fourth degree burglary, or breaking and entering a motor vehicle, if adequate funds for the collection of DNA samples are appropriated. The bill also eliminates the termination date for the DNA Technology Fund and the other provisions of Chapter 465 of 2002.

In addition, the bill alters provisions of law relating to postconviction review of DNA evidence as discussed below, and requires the Director of the State Police Crime Laboratory to provide for liaison with the FBI and other criminal justice agencies relating to the State's participation in DNA databases.

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**Fiscal Summary**

**State Effect:** Special fund revenues and expenditures for the DNA Technology Fund would be maintained beyond September 30, 2003. The State Police believes that approximately \$640,000 of budgeted funds will be expended for DNA collection, analysis, and database entry in FY 2004. The bill provides new rights of appeal to the Court of Appeals, but it is anticipated that any increased workload could be handled with existing resources.

**Local Effect:** Potential revenue increase for local law enforcement agencies that are awarded grants from the DNA Technology Fund would continue, as would local expenditures for DNA-related equipment purchases. The bill could increase the workload of the circuit courts, but it is anticipated that any increased workload could be handled with existing resources.

**Small Business Effect:** Potential minimal.

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## **Analysis**

**Bill Summary:** This bill extends certain DNA collection provisions that were enacted under Chapter 465 of 2002. The bill requires the collection of DNA from persons convicted of a felony or certain burglary misdemeanors, the continuation of a DNA technology fund, and the continued preservation of DNA evidence for postconviction review for the length of the sentence imposed.

The bill provides that if adequate funds for the collection of DNA samples are appropriated in the State budget, an individual convicted of a felony or certain burglary misdemeanors must submit to the collection of a DNA sample upon intake for imprisonment or as a condition of probation.

In addition, the bill alters provisions of law relating to postconviction review of DNA evidence. A court must order DNA testing if the court finds that: (1) a reasonable probability exists that the DNA testing has the scientific potential to produce exculpatory or mitigating evidence relevant to a claim of wrongful conviction or sentencing; and (2) the requested DNA test employs a method of testing generally accepted within the relevant scientific community.

If the court orders DNA testing, it may issue orders it considers appropriate, including designation of any of the following: (1) the specific evidence to be tested; (2) the method of testing to be used; (3) preservation of some of the sample for replicate testing and analysis; (4) the laboratory where the testing is to be performed; and (5) the release of biological evidence by a third party. If the parties cannot agree on a laboratory, the court may approve testing at any laboratory accredited by the American Society of Crime Laboratory Directors, the Laboratory Accreditation Board, or the National Forensic Science Technology Center.

If a person files a written objection to the State's notice that it intends to dispose of scientific identification evidence, the court must hold a hearing on the proposed disposition. If, at the close of the hearing, the court determines by a preponderance of the evidence that the evidence has no significant value for forensic science analysis, it may order the evidence returned to the rightful owner, destroyed, or disposed of as otherwise provided by law. If the evidence is of such size, bulk, or physical character that it cannot practicably be retained by a law enforcement agency, the court may order its destruction or release, after affording the adverse party a reasonable opportunity to obtain representative samples.

The bill also requires the Director of the State Police Crime Laboratory to provide for liaison with the FBI and other criminal justice agencies relating to the State's participation in DNA databases. The State is required to preserve scientific identification evidence containing DNA material collected in certain cases for the period of the original sentence for the offense for which the evidence was secured.

**Current Law:** Any person convicted of a felony, fourth degree burglary, or breaking and entering a motor vehicle must submit a DNA sample to the State's DNA repository. This provision is part of Chapter 465 of 2002 (which sunsets September 30, 2003), as discussed below.

A person who is convicted of murder; manslaughter; rape; or first, second, or third degree sexual offense may file a petition for DNA testing of scientific identification evidence that the State possesses and that is related to the judgment of conviction.

A court is required to order DNA testing of evidence if the court finds that: (1) the scientific identification evidence was not previously subjected to the test requested for reasons beyond the control of the petitioner or the type of DNA test requested is different from tests previously conducted and would have a reasonable likelihood of providing a more probative result than tests previously conducted; (2) the evidence was secured in relation to the crime for which the petitioner was convicted; (3) the evidence to be tested has been subject to a chain of custody sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material respect; (4) identity was an issue at trial; (5) a reasonable probability exists that the DNA testing will produce results materially relevant to the petitioner's assertion of innocence; and (6) the requested DNA test employs a method of testing generally accepted within the relevant scientific community.

“Scientific identification evidence” means evidence that:

- is related to an investigation or prosecution that resulted in a judgment of conviction;
- is in the actual or constructive possession of that State; and
- contains DNA that may produce exculpatory or mitigating evidence relevant to a claim of a convicted person of wrongful conviction or sentencing if subject to DNA testing.

The court must make specific identifications in ordering DNA testing, including: (1) identifying the specific scientific identification evidence to be tested; (2) identifying the method of testing to be used; and (3) selecting the laboratory where the testing is to be

performed. The laboratory where the test is to be performed should be chosen from a list of accredited laboratories maintained by the Office of the Attorney General.

The State must preserve any scientific identification evidence that was secured in connection with a conviction for murder; manslaughter; rape; or first, second, or third degree sexual offense and that the State has reason to know contains DNA material for the length of the sentence, including any consecutive sentences imposed.

The State is required to make the scientific identification evidence available to parties in the case under mutually agreeable terms. If an agreement cannot be reached, the party requesting the testing may seek a court order setting the terms under which the evidence will be made available for testing.

The State may dispose of scientific identification evidence before the end of the sentence if the State notifies the person who was incarcerated, that person's attorney, and the Office of the Public Defender.

Unless another law or court order requires the preservation of the scientific identification evidence, and if no objection is timely filed, the State may dispose of the evidence. If a person files a timely objection, the court must consider the reasons for and against disposition of the evidence, may hold a hearing, and must issue an order disposing of the matter as required by the interests of justice and the integrity of the criminal justice system. The State has the burden of providing by a preponderance of the evidence that the evidence should be disposed.

Chapter 465 of 2002 required the State to preserve scientific identification evidence that the State has reason to know contains DNA material and is secured in connection with a murder; manslaughter; rape; or first, second, or third degree sexual offense. The State must preserve this evidence for the time of the sentence, including any consecutive sentence imposed in connection with the offense. Previously, the required period of preservation was three years.

Chapter 465 also expanded the list of persons required to submit a DNA sample for the State's DNA repository from persons convicted of specified "qualifying crimes of violence" to persons convicted of a felony and the misdemeanors of fourth degree burglary and breaking and entering of a motor vehicle. (The Crime Laboratory Division of the Department of State Police must permanently retain these records in a statewide database, subject to a request for expungement by a person with a record in the database.) In addition, Chapter 465 established a DNA Technology Fund to provide supplemental grants to local and State law enforcement agencies for acquiring DNA technology equipment needed to test DNA samples.

Chapter 465 was contingent on the receipt by the Department of State Police of a binding written award of a grant from a private entity or federal agency by September 1, 2002, of at least \$1.5 million to implement the provisions of the legislation from October 1, 2002 to September 30, 2003. If no award was granted by September 1, 2002, the legislation was to become null and void. Assuming the bill took effect on October 1, 2002, it was required to terminate on September 30, 2003.

Maryland Rule 4-331(c)(3) states that the court may grant a new trial or other appropriate relief on the ground of newly discovered evidence that could not have been discovered by due diligence in time to move for a new trial on a motion filed at any time, if the motion is based on DNA identification testing or other generally accepted scientific techniques the results of which, if proven, would show that the defendant is innocent of the crime of which convicted.

**Background:** The Department of State Police has received a binding written award of a grant from the U.S. Department of Justice for \$5,048,669 for the “No Suspect Casework DNA Backlog Reduction Program,” which is dedicated to DNA testing of evidence in “cold cases” involving homicide and/or sexual assault. Only \$325,400 of the grant is expected to be used for the purchase of DNA testing equipment.

However, the Office of the Attorney General believes that the intent of the General Assembly in passing Chapter 465 must be viewed as being aimed at “purposes significantly broader than the acquisition of DNA technology equipment.” Accordingly, the award of the aforementioned grant to the State Police has been accepted as meeting the contingency requirement of the enactment.

As of January 15, 2003, the total number of DNA samples available in the department’s DNA database totaled approximately 13,500. Since 1994, information contained in the database has resulted in 44 positive matches between crime evidence and the database. In fiscal 2004 the DNA database section of the State Police crime lab employs four technicians and supervisors.

This bill generally serves as a permanent extension of Chapter 465 relating to DNA sample collection from persons convicted of a felony or certain burglary misdemeanors, the establishment of the DNA Technology Fund, and the preservation of DNA evidence for postconviction review for the length of the sentence imposed. With minor changes, this bill permanently adopts the provisions of Chapter 465 that were subject to a funding contingency and a one-year sunset.

**State Fiscal Effect:** It is expected that the Department of State Police could handle the bill's changes with budgeted personnel and resources. The department received funding in the fiscal 2003 capital budget to construct a storage facility capable of maintaining the bulk of evidence anticipated. Funding was also provided in the fiscal 2002 and 2003 operating budgets for forensic chemists and computer tracking equipment.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Public Defender, Department of State Police, Department of Public Safety and Correctional Services (Information Technology and Communications Division), Office of the State's Attorney's Coordinator, Department of Legislative Services

**Fiscal Note History:** First Reader - February 25, 2003  
mld/cer Revised - Senate Third Reader - March 22, 2003  
Revised - Enrolled Bill - May 7, 2003

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