



State of Maryland
Department of State Police
Government Affairs Section
Annapolis Office (410) 260-6100

POSITION ON PROPOSED LEGISLATION

DATE: March 3, 2020

BILL NUMBER: House Bill 1096 **Position:** Support with Amendment

BILL TITLE: Evidence – Chain of Custody – DNA Profile

REVIEW AND ANALYSIS:

This legislation seeks to authorize the acceptance of a DNA profile without the necessity for the analyst to personally appear in court. The legislation also requires a DNA analyst to be qualified under standards approved by the Maryland Department of Health.

The Maryland Department of State Police Forensic Sciences Division (MDSP-FSD) processes DNA casework through a combination of analyzing evidence in-house and outsourcing analysis to an accredited commercial forensic laboratory. In 2019, the total number of cases where an analyst was called to Court was five times for each of the six analysts, totaling 280 work hours.

Outsourced cases are typically worked by the contract laboratory as batches in an assembly line style. These cases can, therefore, be handled by five or six analysts, only one of whom authors the final report. Testimony by the contract laboratory's personnel costs \$1700/day or \$230/hour per person, at a minimum, paid either by State's Attorney's Offices or the investigating agencies. By requiring only the reporting analyst to testify, this bill could result in a huge financial savings for State's Attorney's Offices and investigating agencies.

Regardless of which laboratory analyzes the DNA case, evidence is handled by several people who have no part in the analysis and would only be able to testify to chain of custody. These individuals include personnel at the investigating agency property rooms, personnel who transport the case to the laboratory and MDSP-FSD Forensic Inventory Control Officers (FICOs). Even when considering all case types (not exclusively DNA), FICOs testify rarely – an estimated three times in the last five years. One responsibility of the MDSP-FSD Crime Scene Technicians is to transport evidence. Historically, these personnel also testify infrequently to chain of custody, but are seeing an increase in such requests from certain jurisdictions. When chain of custody of the evidence is clearly documented, having such personnel attend court to testify to this fact is inefficient use of public resources.

House Bill 1096 creates a statutory bypass that would allow prosecutors to present DNA evidence without calling numerous live witnesses solely to establish the chain of custody. The defendant would be allowed to demand the presence of these witnesses.

However, this legislation as written, creates a number of legal issues. MDSP recommends a number of amendments that are scientifically technical and are required for this legislation to move forward. One of the key amendments is the elimination of the Maryland Department of Health (MDH) from the DNA analyst qualifications. There are no provisions in place for MDH to qualify DNA analysts.

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Amendment 1 of many: On page 2, strike lines 26 through 28 in their entirety.

In order to participate in the National DNA Index System (NDIS), the lab has to comply with the Quality Assurance Standards (QAS) issued by the FBI Director and be accredited by a nonprofit professional association of persons actively engaged in forensic science that is nationally recognized within the forensic science community. Our accrediting body is ANAB.

MDSP hopes to work with the sponsor and committee staff to work the amendments into House Bill 1096.

For these reasons, the Department of State Police urges the Committee to give House Bill 1096 as amended, a favorable report.