

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 641
Judiciary

(Delegate Sophocleus, *et al.*)

Judicial Proceedings

Evidence - Admissibility of DNA Profile - Definition and Validation of DNA Profile

This bill expands the definition of “DNA profile” to mean an analysis of genetic loci that has been validated according to standards established by (1) the Technical Working Group on DNA Analysis Methods (TWGDAM); (2) the DNA Advisory Board of the Federal Bureau of Investigation (FBI); (3) the FBI’s Quality Assurance Standards for Forensic DNA Testing Laboratories; or (4) the FBI’s Quality Assurance Standards for DNA Databasing Laboratories. A DNA profile is admissible as evidence in a criminal proceeding if it is accompanied by a statement from the testing laboratory setting forth that the analysis of genetic loci has been validated according to the standards described above.

The bill applies prospectively to cases involving offenses committed on or after the bill’s October 1, 2016 effective date.

Fiscal Summary

State Effect: None. The change is technical in nature and does not directly affect governmental finances.

Local Effect: Potential minimal savings for State’s Attorneys if prosecutors avoid having to engage in additional evidentiary hearings to admit DNA evidence analyzed according to current lab practices as a result of the bill.

Small Business Effect: None.

Analysis

Current Law: The evidence of a DNA profile is admissible in a criminal proceeding to prove or disprove the identity of any person, so long as the party seeking to introduce the evidence provides certain information to the opponent on request. An analysis of genetic loci qualifies as a DNA profile if it is validated according to standards established by (1) TWGDAM or (2) the DNA Advisory Board of the FBI. A statement from the testing laboratory stating that its genetic analysis has been validated using the above mentioned standards is sufficient to admit a DNA profile.

Background: TWGDAM was a group of federal, state, and local scientists convened by the FBI in the 1980s to develop standard quality assurance protocols for DNA analysis. TWGDAM's guidelines were adopted by practically all of the laboratories performing forensic DNA analysis.

The DNA Identification Act of 1994, 42 U.S.C. § 14131, required the director of the FBI to appoint an advisory board on DNA quality assurance methods. The Act specifically stated that the TWGDAM guidelines be used as national quality standards until the FBI director issued his standards. The DNA Advisory Board suggested the adoption of two sets of quality assurance standards. The FBI director approved the *Quality Assurance Standards for Forensic DNA Testing Laboratories* (effective October 1998) and *Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories* (effective April 1999). The DNA Advisory Board was terminated in December 2000. TWGDAM's name was changed to the Scientific Working Group on DNA Analysis Methods (SWGDM).

Because the FBI director has issued his DNA quality assurance standards, and TWGDAM and the DNA Advisory Board no longer exist, the current statutory terminology is obsolete and does not meet current practice and standards.

In October 2015, the Maryland Court of Special Appeals affirmed a trial court's decision that while DNA evidence tested by the Prince George's County DNA laboratory in compliance with procedures validated according to the FBI's Quality Assurance Standards for Forensic DNA Testing Laboratories was not automatically admissible under the State's DNA admissibility statute (§ 10-915 of the Criminal Procedure Article), because (after conducting an additional evidentiary hearing) the lab's methods were determined to be generally accepted in the relevant scientific community, the evidence was admissible. *Phillips v. State*, No. 456, September 2013 (filed October 27, 2015).

In its opinion, the Court of Special Appeals noted (1) the evolution/legislative history of the DNA admissibility statute; (2) the obsolete references contained in the statute; (3) amendments to the statute in 1997 that avoided referencing specific testing techniques

by name so that prosecutors could avoid expensive evidentiary hearings to justify the admissibility of scientifically accepted testing methods that were more advanced than those mentioned in statute; and (4) that while the FBI's Quality Assurance Standards are not as advanced as recommendations by SWGDAM, the successor to TWGDAM and the DNA Advisory Board, the quality assurance standards represent the minimum standards for forensic DNA laboratories.

State Fiscal Effect: The Department of State Police advises that the changes are technical in nature and reflect the standards currently being used by labs.

Additional Information

Prior Introductions: HB 274 of 2006, a similar bill, passed the House and received a hearing in the Senate Judicial Proceedings Committee. No further action was taken on the bill.

Cross File: SB 637 (Senator Cassilly) - Judicial Proceedings.

Information Source(s): Department of State Police; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Testimony of Dwight E. Adams, Assistant Director, Laboratory Division, FBI, Before the United States Senate Judiciary Committee, Subcommittee on Crime and Drugs, May 14, 2002, *The FBI's CODIS Program*; United States Department of Justice, Office of the Inspector General, *The FBI DNA Laboratory: A Review of Protocol and Practice Vulnerabilities*, May 2004; Department of Legislative Services

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