

SB0187/228378/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 187
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 6, after “authorization,” insert “requiring a court to authorize the initiation of a certain forensic genetic genealogical DNA analysis and search if certain information is certified before the court;”; in line 14, after “training” insert “within a certain period of time”; in line 20, after “investigation” insert “, certain criminal sentencing;”; in the same line, after “order;” insert “requiring a certain genetic genealogist to turn over certain records to the investigator in a certain case; prohibiting a certain genetic genealogist from maintaining certain records; requiring the prosecutor in a certain case to maintain and disclose certain records and materials under certain circumstances;”; and in line 25, after “action;” insert “authorizing a prosecutor in a certain case to file a certain appeal under certain circumstances;”.

On page 2, in line 4, strike “criteria to satisfy certain requirements;” and substitute “licensing programs; requiring the Office of Health Care Quality to develop a certain training program and identify and approve one or more genetic counselors to administer certain training; requiring the Maryland Forensic Laboratory Advisory Committee to establish certain best practices and recommend certain regulations; prohibiting any restrictions from being placed on a certain laboratory or genetic genealogist prior to the establishment of a certain licensing program; requiring that certain laboratories and genetic genealogists apply for a certain license within a certain time;”; in lines 4 and 5, strike “Department of Public Safety and Correctional Services” and substitute “Governor’s Office of Crime Prevention, Youth, and Victim Services”; and in line 6, after “report” insert “and make policy recommendations”.

AMENDMENT NO. 2

(Over)

SB0187/228378/1 Judicial Proceedings Committee
Amendments to SB 187
Page 2 of 11

On page 2, in line 25, strike “CONSUMERS” and substitute “MEMBERS OF THE PUBLIC AND LAW ENFORCEMENT AGENCIES”; in line 29, strike the second “A” and substitute “AN”; in line 31, after “MEANS” insert “:

(1)”;

strike beginning with “OF” in line 31 down through “SAMPLE” in line 32; in line 33, strike the first “A” and substitute “AN”; in the same line, strike the comma and substitute “;

(2)”;

and in line 35, strike the comma.

On page 3, in line 2, strike the first “AND” and substitute “;AND

(3)”;

strike beginning with “THE” in line 3 down through “UNDER” in line 4; in line 7, strike the comma and substitute “OR”; in line 9, strike “THE” and substitute “BIOLOGICAL MATERIAL FROM”; in line 10, strike “OF A SUSPECTED HOMICIDE VICTIM”; in line 19, after “INVESTIGATORS” insert “TO HAVE COMMITTED THE CRIME UNDER INVESTIGATION AND”; in line 20, strike “DURING, OR INCIDENT TO,” and substitute “DURING OR INCIDENT TO”; in line 28, after “(K)” insert “**(1)**”; in line 30, strike “IS ALTERED AND” and substitute “VARIES.”; and in the same line, strike “THESE VARIATIONS” and substitute:

“(2) “SINGLE-NUCLEOTIDE POLYMORPHISMS” INCLUDES VARIATIONS THAT”.

**SB0187/228378/1 Judicial Proceedings Committee
Amendments to SB 187
Page 3 of 11**

On page 4, in line 4, after “(A)” insert “**(1)**”; in line 6, strike “**PROVIDED FOR UNDER**” and substitute “**SET FORTH IN**”; after line 6, insert:

“(2) IF AN FGGS IS CERTIFIED BEFORE A COURT IN ACCORDANCE WITH THIS SECTION, THE COURT SHALL AUTHORIZE THE INITIATION OF THE FGGS.”;

in line 9, strike “**THE FOLLOWING**” and substitute “**THAT**”; strike beginning with “A” in line 10 down through “**PRESENT**” in line 13 and substitute “**THE COMMISSION OF, OR THE ATTEMPT TO COMMIT, MURDER, RAPE, A FELONY SEXUAL OFFENSE, OR A CRIMINAL ACT INVOLVING CIRCUMSTANCES PRESENTING**”; in line 18, after “**FROM**” insert “**;**

(I);

in the same line, strike the first comma and substitute “**;**

(II);

in the same line, after “**ITEM,**” insert “**OR**”; in line 19, strike “**, OR**” and substitute a “**;**
OR

(III);

in line 25, after “**(4)**” insert “**UNLESS THE CRIME BEING INVESTIGATED PRESENTS AN ONGOING THREAT TO PUBLIC SAFETY OR NATIONAL SECURITY CONCERNS,**”; in the same line, strike “**TRIED**” and substitute “**PURSUED**”; in line 26, after “**FAILED**” insert “**TO IDENTIFY THE PERPETRATOR**”; in line 27, strike “**EITHER**” and substitute “**WHETHER**”; and in line 32, after “**THAT**” insert “**;**

(Over)

SB0187/228378/1 Judicial Proceedings Committee
Amendments to SB 187
Page 4 of 11

(1).

On page 5, in line 1, strike “UNIDENTIFIED”; in the same line, after “REMAINS” insert “;AND”

(2) SEEKS ACKNOWLEDGEMENT AND CONSENT FROM ITS SERVICE USERS REGARDING THE SUBSTANCE OF THE NOTICE DESCRIBED IN ITEM (1) OF THIS SUBSECTION”;

in line 3, strike the second “THE”; in line 6, strike “INFORMED” and substitute “**(I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, INFORMED**”; after line 9, insert:

“(II) IF THE USE OF INFORMED CONSENT WILL COMPROMISE THE INVESTIGATION AS DEMONSTRATED UNDER SUBSECTION (G)(1)(II) OF THIS SECTION AND THE THIRD PARTY HAS NOT ALREADY REFUSED TO CONSENT, INVESTIGATORS MAY SEEK AUTHORIZATION TO COVERTLY COLLECT A DNA SAMPLE IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION.”;

in line 11, strike “BIOETHICIST” and substitute “**GENETIC COUNSELOR**”; in line 12, after “QUALITY” insert “**UNDER § 17–104 OF THIS SUBTITLE WITHIN 1 YEAR AFTER THE OFFICE OF HEALTH CARE QUALITY HAS IDENTIFIED AND APPROVED A GENETIC COUNSELOR OR WITHIN 1 YEAR AFTER THE PERSON JOINS THE INVESTIGATIVE UNIT CONDUCTING THE INVESTIGATION, WHICHEVER IS LATER**”; in line 18, after “INVESTIGATION” insert “**AND HAS THE RIGHT TO REFUSE TO CONSENT TO THE COLLECTION OF A DNA SAMPLE**”; after line 18, insert:

“(III) THE LAW PROHIBITS THE COVERT COLLECTION OF A DNA SAMPLE IF THE THIRD PARTY REFUSES TO CONSENT TO THE COLLECTION OF A DNA SAMPLE.”;

**SB0187/228378/1 Judicial Proceedings Committee
Amendments to SB 187
Page 5 of 11**

and in lines 19, 24, and 27, strike “(III)”, “(IV)”, and “(V)”, respectively, and substitute “(IV)”, “(V)”, and “(VI)”, respectively.

On page 6, in line 5, strike “A” and substitute “AN”; in line 7, after “(G)” insert “(1)”; in the same line, strike “MAY BE” and substitute “ARE”; strike beginning with “PERSON” in line 9 down through “SATISFIED” in line 10 and substitute “PUTATIVE PERPETRATOR OR A THIRD PARTY”; in lines 11, 13, 15, 19, 22, and 27, strike “(1)”, “(2)”, “(3)”, “(4)”, “(5)”, and “(6)”, respectively, and substitute “(I)”, “(II)”, “(III)”, “(IV)”, “(V)”, and “(VI)”, respectively; in line 12, after “PERPETRATOR’S” insert “OR THE THIRD PARTY’S”; strike beginning with “A” in line 13 down through “NECESSARY” in line 14 and substitute “SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, FOR A COVERT COLLECTION OF A DNA SAMPLE OF A THIRD PARTY, INVESTIGATIVE AUTHORITIES SHALL PROVIDE AN AFFIDAVIT TO THE COURT DEMONSTRATING THAT SEEKING INFORMED CONSENT FROM A THIRD PARTY CREATES SUBSTANTIAL RISK THAT A PUTATIVE PERPETRATOR WILL FLEE, THAT ESSENTIAL EVIDENCE WILL BE DESTROYED, OR THAT OTHER IMMINENT OR IRREVERSIBLE HARM TO THE INVESTIGATION WILL OCCUR”; in line 19, before “ANY” insert “FOR A COVERT COLLECTION OF A DNA SAMPLE OF A PUTATIVE PERPETRATOR,”; in line 20, strike “A” and substitute “AN”; in line 22, after “SAMPLE” insert “, INCLUDING SNPS AND OTHER GENETIC PROFILES OR RELATED INFORMATION,”; in lines 27 and 32, strike “(I)” and “(II)”, respectively, and substitute “1.” and “2.”, respectively; in lines 28 and 33, in each instance, strike “FROM A PUTATIVE PERPETRATOR”; in line 31, strike “PARAGRAPH (3) OF THIS SUBSECTION” and substitute “ITEM (III) OF THIS PARAGRAPH”; and after line 34, insert:

“(2) THE FEAR THAT A THIRD PARTY WILL REFUSE INFORMED CONSENT MAY NOT CONSTITUTE A BASIS FOR SEEKING COVERT COLLECTION OF A DNA SAMPLE FROM THE THIRD PARTY.”.

(Over)

On page 7, in line 1, strike “ON THE COMPLETION OF THE FGGS INVESTIGATION” and substitute “(I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, ON COMPLETION OF AN FGGS INVESTIGATION THAT DOES NOT RESULT IN A PROSECUTION OR RESULTS IN AN ACQUITTAL, OR ON COMPLETION OF A SENTENCE AND POSTCONVICTION LITIGATION ASSOCIATED WITH A CONVICTION OBTAINED THROUGH THE USE OF FGGS,”; in line 5, strike “ENSURE THAT”; in the same line, after “ALL” insert “PERSONS IN POSSESSION OF”; in line 7, strike “ARE DESTROYED” and substitute “TO DESTROY THE SAMPLES AND INFORMATION”; after line 7, insert:

“(II) 1. ON THE COMPLETION OF AN FGGS INVESTIGATION, THE GENETIC GENEALOGIST PARTICIPATING IN THE FGGS SHALL TURN OVER TO THE INVESTIGATOR ALL RECORDS AND MATERIALS COLLECTED IN THE COURSE OF THE FGGS, INCLUDING MATERIAL SOURCED FROM PUBLIC RECORDS, FAMILY TREES CONSTRUCTED, AND ANY OTHER GENETIC OR NONGENETIC DATA COLLECTED IN THE FGGS.

2. THE GENETIC GENEALOGIST MAY NOT KEEP ANY RECORDS OR MATERIALS IN ANY FORM, INCLUDING DIGITAL OR HARD COPY RECORDS.

3. THE GENETIC GENEALOGIST SHALL ENSURE THAT ALL RECORDS DESCRIBED UNDER THIS SUBPARAGRAPH HAVE BEEN DELETED OR REMOVED FROM ANY FGG WEBSITE.

4. THE PROSECUTOR SHALL RETAIN AND DISCLOSE ANY RECORDS OR MATERIALS AS REQUIRED UNDER THE MARYLAND CONSTITUTION OR THE UNITED STATES CONSTITUTION AND THE RULES OF

DISCOVERY AS PROVIDED IN MARYLAND RULES 4-262 AND 4-263, BUT MAY NOT OTHERWISE USE OR SHARE THE RECORDS OR MATERIALS.”;

in lines 19 and 20, in each instance, strike “A” and substitute “AN”; strike beginning with the third comma in line 23 down through “**ARTICLE**” in line 24; in line 26, after “**SAMPLES**” insert “**THAT ARE REQUIRED TO BE DESTROYED IN ACCORDANCE WITH SUBSECTION (H) OF THIS SECTION**”; strike beginning with the second comma in line 29 down through “**ARTICLE**” in line 30; and after line 35, insert:

“(L) A PROSECUTOR IN A CRIMINAL CASE THAT INVOLVES AN FGGS INVESTIGATION MAY FILE WITH THE COURT OF SPECIAL APPEALS AN APPEAL FROM AN INTERLOCUTORY ORDER BY A COURT THAT EXCLUDES OR SUPPRESSES EVIDENCE IN THE FORM OF AN STR DNA PROFILE OBTAINED FROM THE FGGS.”.

On page 8, in line 6, strike “A” and substitute “AN”; strike beginning with “**THE**” in line 7 down through “**CRITERIA**” in line 8; in line 11, after “**FROM**” insert “**;**”

(I)”;

in the same line, strike the first comma and substitute “**;**”

(II)”;

in line 12, strike the second “, **OR**” and substitute “**;** **OR**”

(III)”;

**SB0187/228378/1 Judicial Proceedings Committee
Amendments to SB 187
Page 8 of 11**

in line 14, strike “A” and substitute “AN”; in line 19, strike “EITHER” and substitute “WHETHER”; in the same line, strike “MAY” and substitute “WILL NOT”; in line 22, strike “A” and substitute “AN”; in line 24, after “THAT” insert “:

(I);

in the same line, strike “THEIR” and substitute “ITS”; in line 25, strike “THEIR” and substitute “ITS”; in line 26, strike “UNIDENTIFIED”; in the same line, after “REMAINS;” insert “AND

(II) SEEKS ACKNOWLEDGEMENT AND CONSENT FROM ITS SERVICE USERS REGARDING THE SUBSTANCE OF THE NOTICE DESCRIBED IN ITEM (I) OF THIS PARAGRAPH;;

in line 29, strike “HAS BEEN” and substitute “ARE”; in line 31, strike “IS” and substitute “SHALL BE”; in line 32, strike “A” and substitute “AN”; and in line 33, strike “§ 17–102(F)” and substitute “§ 17–102(F)(1) THROUGH (3)”.

On page 9, in line 2, strike “A” and substitute “AN”; in line 3, strike “OR” and substitute “NOR”; in line 5, after “(B)” insert “(1)”; in line 6, strike “MAY BE” and substitute “ARE”; in line 8, strike “PERSON” and substitute “PUTATIVE PERPETRATOR OR A THIRD PARTY”; in lines 9, 11, 13, 17, 20, and 25, strike “(1)”, “(2)”, “(3)”, “(4)”, “(5)”, and “(6)”, respectively, and substitute “(I)”, “(II)”, “(III)”, “(IV)”, “(V)”, and “(VI) 1.”, respectively; in line 10, after “PERPETRATOR’S” insert “OR THE THIRD PARTY’S”; strike beginning with “A” in line 11 down through “NECESSARY” in line 12 and substitute “SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, FOR A COVERT COLLECTION OF A DNA SAMPLE OF A THIRD PARTY, INVESTIGATIVE AUTHORITIES SHALL PROVIDE AN AFFIDAVIT TO THE COURT DEMONSTRATING THAT SEEKING INFORMED CONSENT FROM A THIRD PARTY CREATES SUBSTANTIAL RISK THAT A PUTATIVE PERPETRATOR WILL FLEE, THAT

ESSENTIAL EVIDENCE WILL BE DESTROYED, OR THAT OTHER IMMINENT OR IRREVERSIBLE HARM TO THE INVESTIGATION WILL OCCUR"; in line 17, before "ANY" insert "FOR A COVERT COLLECTION OF A DNA SAMPLE OF A PUTATIVE PERPETRATOR,"; in line 20, after "SAMPLE" insert ", INCLUDING SNPS AND OTHER GENETIC PROFILES OR RELATED INFORMATION,"; in line 24, after "STATUTE;" insert "AND"; in line 30, strike "(7)" and substitute "2."; in lines 26 and 31, in each instance, strike "FROM A PUTATIVE PERPETRATOR"; in line 29, strike "§ 17-102(G)(3) OF THIS TITLE" and substitute "ITEM (III) OF THIS PARAGRAPH"; after line 32, insert:

"(2) THE FEAR THAT A THIRD PARTY WILL REFUSE INFORMED CONSENT MAY NOT CONSTITUTE A BASIS FOR SEEKING COVERT COLLECTION OF A DNA SAMPLE FROM THE THIRD PARTY.

(3) ANY INDIVIDUAL ACTING UNDER COURT SUPERVISION IN ACCORDANCE WITH THIS SUBSECTION SHALL BE TREATED AS AN AGENT OF THE STATE FOR PURPOSES OF ENFORCING STATE AND FEDERAL CONSTITUTIONAL PROTECTIONS.";

and in line 34, strike "A" and substitute "AN".

On page 10, in line 14, strike the first "A" and substitute "AN"; in line 19, strike "(K)" and substitute "(E)"; strike beginning with "THE" in line 26 down through "TO" in line 30.

On page 10 in line 31, and on page 11 in line 1, in each instance, strike "LICENSE" and substitute "A LICENSING PROGRAM FOR"; and in the same lines, in each instance, strike "MUST BEGIN".

On page 11, after line 2, insert:

(Over)

“(B) THE OFFICE OF HEALTH CARE QUALITY SHALL:

(1) DEVELOP A TRAINING PROGRAM ON OBTAINING INFORMED CONSENT UNDER §§ 17-102 AND 17-103 OF THIS SUBTITLE; AND

(2) IDENTIFY AND APPROVE ONE OR MORE GENETIC COUNSELORS TO ADMINISTER THE TRAINING.”;

strike beginning with “**IF**” in line 9 down through “**LICENSE**” in line 11 and substitute:

“(1) PROHIBITIONS MAY NOT BE PLACED ON ANY LABORATORY CONDUCTING SNP OR OTHER SEQUENCING-BASED TESTING OR ON GENETIC GENEALOGISTS PARTICIPATING IN AN FGGS BEFORE THE RELEVANT LICENSING PROGRAM IS ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION.

(2) WITHIN 1 YEAR AFTER THE OFFICE OF HEALTH CARE QUALITY ESTABLISHES THE RELEVANT LICENSING PROGRAM UNDER SUBSECTION (A) OF THIS SECTION, LABORATORIES CONDUCTING SNP OR OTHER SEQUENCING-BASED TESTING AND GENETIC GENEALOGISTS PARTICIPATING IN AN FGGS SHALL APPLY FOR THE LICENSE REQUIRED”;

strike beginning with “**IN**” in line 16 down through “**SERVICES**” in line 17 and substitute “**ON OR BEFORE JUNE 1 ANNUALLY, THE GOVERNOR’S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES**”; in line 18, strike “**ANNUAL**”; in lines 21, 23, and 26, in each instance, strike “**FGG**” and substitute “**FGGS**”; strike beginning with “**AND**” in line 21 down through “**DOCUMENTATION**” in line 22 and substitute “**MADE, BROKEN DOWN BY NUMBER OF REQUESTS MADE BY PROSECUTORS, PRE-TRIAL DEFENDANTS, AND POSTCONVICTION DEFENDANTS**”.

SB0187/228378/1 Judicial Proceedings Committee
Amendments to SB 187
Page 11 of 11

On page 12, strike beginning with “WHETHER” in line 11 down through “SEARCH” in line 13 and substitute “THE OUTCOME OF EACH AUTHORIZED SEARCH, INCLUDING WHETHER THE SEARCH RESULTED IN AN ARREST OR A CONVICTION FOR THE TARGET OFFENSE”; in line 14, after “ATTORNEYS,” insert “PUBLIC DEFENDERS,”; and in line 19, after “YEAR” insert “AND MAKE POLICY RECOMMENDATIONS”.