

HOUSE BILL 240

E2

(PRE-FILED)

1lr1436
CF SB 187

By: **Delegate Shetty**

Requested: October 30, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Forensic Genetic Genealogical DNA Analysis, Searching,**
3 **Regulation, and Oversight**

4 FOR the purpose of establishing that a certain forensic genetic genealogical DNA analysis
5 and search may not be initiated without certifying certain information before a court
6 and obtaining a certain authorization; prohibiting certain biological samples
7 subjected to certain forensic genetic genealogical profile analysis to be used to
8 determine certain information about a certain donor; providing that a certain
9 forensic genetic genealogical DNA analysis and search shall only be conducted under
10 certain circumstances; requiring that the laboratory conducting certain
11 single-nucleotide polymorphisms or other sequencing-based testing has a certain
12 license; requiring certain informed consent in writing to be obtained from a certain
13 third party under certain circumstances; requiring that a person obtaining a certain
14 informed consent have certain training; requiring that a third party be informed of
15 certain information before giving certain informed consent; prohibiting law
16 enforcement from collecting a certain DNA sample if a third party does not consent
17 to providing the DNA sample; providing that if investigators determine that certain
18 persons may be certain putative perpetrators then a certain DNA sample shall be
19 collected under certain circumstances; providing that on the completion of a certain
20 investigation or certain prosecution the court shall issue a certain order; prohibiting
21 the disclosure of certain data, profiles, and samples under certain circumstances;
22 establishing penalties for certain violations of this Act; prohibiting a person from
23 willfully failing to destroy certain data, profiles, or samples; providing that if certain
24 information, profiles, or samples relating to a person are wrongfully disclosed,
25 collected, or maintained a person may bring a certain cause of action; providing that
26 a certain defendant may seek judicial authorization for a certain forensic genetic
27 genealogical DNA analysis and search by filing a certain affidavit; providing that
28 certain provisions of this Act apply to any forensic genetic genealogical DNA analysis
29 and search conducted under certain circumstances; providing that a court
30 considering an application for a certain forensic genetic genealogical DNA analysis

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 and search from a certain defendant shall issue a certain order under certain
2 circumstances; providing that a certain court order issued under this Act shall
3 contain certain information; requiring the Office of Health Care Quality to establish
4 certain criteria to satisfy certain requirements; requiring the Department of Public
5 Safety and Correctional Services to produce a certain annual report; requiring a
6 certain panel with certain members to review a certain annual report; defining
7 certain terms; and generally relating to forensic genetic genealogical DNA.

8 BY adding to

9 Article – Criminal Procedure

10 Section 17–101 through 17–105 to be under the new title “Title 17. Forensic
11 Genealogy”

12 Annotated Code of Maryland

13 (2018 Replacement Volume and 2020 Supplement)

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

16 **Article – Criminal Procedure**

17 **TITLE 17. FORENSIC GENEALOGY.**

18 **17–101.**

19 (A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS
20 INDICATED.

21 (B) “CODIS” HAS THE MEANING STATED IN § 2–501 OF THE PUBLIC SAFETY
22 ARTICLE.

23 (C) “DIRECT-TO-CONSUMER GENETIC GENEALOGY SERVICES” MEANS
24 GENETIC GENEALOGY SERVICES THAT ARE OFFERED BY PRIVATE COMPANIES
25 DIRECTLY TO CONSUMERS RATHER THAN THROUGH CLINICAL HEALTH CARE
26 PROVIDERS, TYPICALLY VIA CUSTOMER ACCESS TO SECURE ONLINE WEBSITES.

27 (D) “FGG PROFILE” MEANS A GENETIC PROFILE USING SNPs OR OTHER
28 SEQUENCING METHODS GENERATED FROM A FORENSIC OR REFERENCE SAMPLE BY
29 A LABORATORY FOR THE PURPOSE OF CONDUCTING A FGGS.

30 (E) “FORENSIC GENETIC GENEALOGICAL DNA ANALYSIS AND SEARCH” OR
31 “FGGS” MEANS THE FORENSIC GENETIC GENEALOGICAL DNA ANALYSIS OF A
32 FORENSIC OR REFERENCE SAMPLE OF BIOLOGICAL MATERIAL USING SNP OR
33 OTHER SEQUENCING TECHNIQUES TO DEVELOP A FGG PROFILE, A SUBSEQUENT
34 SEARCH USING THE FGG PROFILE IN A PUBLICLY AVAILABLE OPEN-DATA
35 PERSONAL GENOMICS DATABASE, OR A DIRECT-TO-CONSUMER GENETIC

1 GENEALOGY SERVICE TO FIND INDIVIDUALS RELATED TO THE SOURCE OF THE FGG
2 PROFILE AND A GENEALOGICAL SEARCH USING PUBLIC RECORDS AND OTHER
3 LAWFUL MEANS TO OBTAIN INFORMATION IN ACCORDANCE WITH THE REGULATIONS
4 UNDER THIS TITLE.

5 (F) (1) "FORENSIC SAMPLE" MEANS BIOLOGICAL MATERIAL
6 REASONABLY BELIEVED BY INVESTIGATORS TO HAVE BEEN DEPOSITED BY A
7 PUTATIVE PERPETRATOR AND THAT WAS COLLECTED FROM A CRIME SCENE, A
8 PERSON, AN ITEM, OR A LOCATION CONNECTED TO THE CRIMINAL EVENT.

9 (2) "FORENSIC SAMPLE" INCLUDES THE UNIDENTIFIED HUMAN
10 REMAINS OF A SUSPECTED HOMICIDE VICTIM.

11 (G) "PUBLICLY AVAILABLE OPEN-DATA PERSONAL GENOMICS DATABASE"
12 MEANS A DATABASE IN WHICH PERSONS VOLUNTARILY SUBMIT THEIR GENOMICS
13 DATA OR GENETIC PROFILES, TYPICALLY PROCESSED THROUGH
14 DIRECT-TO-CONSUMER GENETIC GENEALOGY SERVICES, FOR THE PURPOSES OF
15 COMPARISON OR SEARCHING AGAINST THE GENETIC PROFILES OF OTHER
16 INDIVIDUALS TO EVALUATE POTENTIAL FAMILIAL RELATIONSHIPS BETWEEN THE
17 REFERENCE SAMPLE AND OTHER SERVICE USER SAMPLES.

18 (H) "PUTATIVE PERPETRATOR" MEANS ONE OR MORE CRIMINAL ACTORS
19 REASONABLY BELIEVED BY INVESTIGATORS TO BE THE SOURCE OF, OR A
20 CONTRIBUTOR TO, A FORENSIC SAMPLE DEPOSITED DURING, OR INCIDENT TO, THE
21 COMMISSION OF A CRIME.

22 (I) "REASONABLE INVESTIGATIVE LEADS" MEANS CREDIBLE,
23 CASE-SPECIFIC FACTS, INFORMATION, OR CIRCUMSTANCES THAT WOULD LEAD A
24 REASONABLY CAUTIOUS INVESTIGATOR TO BELIEVE THAT THE PURSUIT WOULD
25 HAVE A FAIR PROBABILITY OF IDENTIFYING A PUTATIVE PERPETRATOR.

26 (J) "REFERENCE SAMPLE" MEANS BIOLOGICAL MATERIAL FROM A KNOWN
27 SOURCE.

28 (K) "SINGLE-NUCLEOTIDE POLYMORPHISMS" OR "SNPs" MEANS DNA
29 SEQUENCE VARIATIONS THAT OCCUR WHEN A SINGLE NUCLEOTIDE (A, T, G, OR C)
30 IN A GENOMIC SEQUENCE IS ALTERED AND THESE VARIATIONS MAY BE USED TO
31 DISTINGUISH PEOPLE FOR PURPOSES OF BIOLOGICAL RELATIONSHIP TESTING.

32 (L) "STR DNA PROFILE" MEANS A GENETIC PROFILE THAT EXAMINES
33 GENETIC LOCATIONS ON THE NON-SEX CHROMOSOMES THAT ARE USED FOR THE
34 STATEWIDE DNA DATA BASE SYSTEM OR THE NATIONAL DNA DATA BASE SYSTEM.

1 (M) "THIRD PARTY" MEANS A PERSON WHO IS NOT A SUSPECT IN THE
2 INVESTIGATION.

3 17-102.

4 (A) FGGS MAY NOT BE INITIATED WITHOUT JUDICIAL AUTHORIZATION AND
5 WITHOUT CERTIFYING BEFORE THE COURT THAT THE FORENSIC SAMPLE AND THE
6 CRIMINAL CASE SATISFY THE CRITERIA PROVIDED FOR UNDER THIS SECTION.

7 (B) A SWORN AFFIDAVIT SHALL BE SUBMITTED BY A LAW ENFORCEMENT
8 AGENT WITH APPROVAL OF A PROSECUTOR FROM THE RELEVANT JURISDICTION
9 ASSERTING THE FOLLOWING:

10 (1) THE CRIME IS A MURDER, FELONY SEXUAL ASSAULT, OR AN
11 ATTEMPT TO COMMIT A VIOLENT CRIME OTHER THAN HOMICIDE OR SEXUAL
12 ASSAULT AND THE CIRCUMSTANCES SURROUNDING THE CRIMINAL ACT OR ACTS
13 PRESENT A SUBSTANTIAL AND ONGOING THREAT TO PUBLIC SAFETY OR NATIONAL
14 SECURITY;

15 (2) THE FORENSIC SAMPLE TO BE SUBJECTED TO THE FGGS IS
16 BIOLOGICAL MATERIAL REASONABLY BELIEVED BY INVESTIGATORS TO HAVE BEEN
17 DEPOSITED BY A PUTATIVE PERPETRATOR AND THAT THE FORENSIC SAMPLE WAS
18 COLLECTED FROM A CRIME SCENE, A PERSON, AN ITEM, A LOCATION CONNECTED
19 TO THE CRIMINAL EVENT, OR THE UNIDENTIFIED HUMAN REMAINS OF A SUSPECTED
20 HOMICIDE VICTIM;

21 (3) AN STR DNA PROFILE HAS ALREADY BEEN DEVELOPED FROM
22 THE FORENSIC SAMPLE, WAS ENTERED INTO THE STATEWIDE DNA DATA BASE
23 SYSTEM AND THE NATIONAL DNA DATA BASE SYSTEM, AND FAILED TO IDENTIFY A
24 KNOWN INDIVIDUAL; AND

25 (4) REASONABLE INVESTIGATIVE LEADS HAVE BEEN TRIED AND
26 FAILED.

27 (C) BIOLOGICAL SAMPLES SUBJECTED TO FGG DNA ANALYSIS, EITHER
28 THE FORENSIC SAMPLE OR THIRD PARTY REFERENCE SAMPLES, MAY NOT BE USED
29 TO DETERMINE THE SAMPLE DONOR'S GENETIC PREDISPOSITION FOR DISEASE OR
30 ANY OTHER MEDICAL CONDITION OR PSYCHOLOGICAL TRAIT.

31 (D) FGGS MAY ONLY BE CONDUCTED USING A DIRECT-TO-CONSUMER OR
32 PUBLICLY AVAILABLE OPEN-DATA PERSONAL GENOMICS DATABASE THAT
33 PROVIDES EXPLICIT NOTICE TO ITS SERVICE USERS AND THE PUBLIC THAT LAW
34 ENFORCEMENT MAY USE ITS SERVICE SITES TO INVESTIGATE CRIMES OR TO

1 IDENTIFY UNIDENTIFIED HUMAN REMAINS.

2 (E) THE LABORATORY CONDUCTING SNP OR OTHER SEQUENCING-BASED
3 TESTING AND THE GENETIC GENEALOGIST PARTICIPATING IN THE FGGS SHALL BE
4 LICENSED BY THE OFFICE OF HEALTH CARE QUALITY IN ACCORDANCE WITH §
5 17-104 OF THIS SUBTITLE.

6 (F) (1) INFORMED CONSENT IN WRITING SHALL BE OBTAINED FROM ANY
7 THIRD PARTY WHOSE DNA SAMPLE IS SOUGHT FOR THE PURPOSE OF ASSISTING A
8 FGGS AND ALL STATEMENTS MADE IN OBTAINING THE INFORMED CONSENT SHALL
9 BE DOCUMENTED FROM BEGINNING TO END BY VIDEO OR AUDIO RECORDING.

10 (2) THE PERSON OBTAINING THE INFORMED CONSENT SHALL HAVE
11 TRAINING FROM A BIOETHICIST APPROVED BY THE OFFICE OF HEALTH CARE
12 QUALITY.

13 (3) THE THIRD PARTY SHALL BE INFORMED, AT A MINIMUM, OF THE
14 FOLLOWING BEFORE GIVING INFORMED CONSENT IN WRITING:

15 (I) THE INVESTIGATION INVOLVES A CRIME SPECIFIED UNDER
16 SUBSECTION (B)(1) OF THIS SECTION;

17 (II) THE THIRD PARTY IS NOT A SUSPECT IN THE
18 INVESTIGATION;

19 (III) THE THIRD PARTY HAS BEEN IDENTIFIED THROUGH A
20 SEARCH OF A DIRECT-TO-CONSUMER OR PUBLICLY AVAILABLE OPEN-DATA
21 PERSONAL GENOMICS DATABASE AS A POTENTIAL RELATIVE OF AN INDIVIDUAL
22 BELIEVED TO HAVE COMMITTED A CRIME SPECIFIED UNDER SUBSECTION (B)(1) OF
23 THIS SECTION;

24 (IV) INVESTIGATORS ARE SEEKING THE THIRD PARTY'S DNA TO
25 ASSIST IN IDENTIFYING THE PERSON OR PERSONS WHO COMMITTED THE CRIME, OR
26 TO IDENTIFY THE VICTIM OF A HOMICIDE, AND FOR NO OTHER PURPOSE; AND

27 (V) 1. THE THIRD PARTY'S DNA SAMPLE AND ANY
28 INFORMATION OBTAINED FROM ITS ANALYSIS WILL BE KEPT CONFIDENTIAL IN
29 ACCORDANCE WITH A COURT ORDER DURING THE COURSE OF THE INVESTIGATION;

30 2. THE DNA SAMPLE AND ANY DATA OBTAINED FROM IT
31 WILL BE DESTROYED WHEN THE INVESTIGATION OR ANY CRIMINAL CASE ARISING
32 FROM THE INVESTIGATION ENDS; AND

1 **3. IN ACCORDANCE WITH A COURT ORDER, THE THIRD**
2 **PARTY WILL RECEIVE NOTICE BY CERTIFIED DELIVERY THAT THE DESTRUCTION**
3 **HAS OCCURRED.**

4 **(4) IF THE THIRD PARTY DOES NOT CONSENT TO PROVIDING A**
5 **REFERENCE SAMPLE FOR A FGGS INVESTIGATION, LAW ENFORCEMENT MAY NOT**
6 **COLLECT A COVERT REFERENCE SAMPLE FROM THE INDIVIDUAL.**

7 **(G) IF INVESTIGATORS DETERMINE THAT ONE OR MORE PERSONS MAY BE**
8 **PUTATIVE PERPETRATORS OF THE CRIME UNDER INVESTIGATION AND IT IS**
9 **NECESSARY TO COLLECT A COVERT DNA SAMPLE FROM THE PERSON, THE**
10 **FOLLOWING CRITERIA SHALL BE SATISFIED:**

11 **(1) THE AUTHORIZING COURT SHALL BE NOTIFIED PRIOR TO THE**
12 **COVERT COLLECTION OF THE PUTATIVE PERPETRATOR'S REFERENCE SAMPLE;**

13 **(2) A SHOWING SHALL BE MADE TO THE SATISFACTION OF THE COURT**
14 **TO DEMONSTRATE WHY A COVERT COLLECTION IS NECESSARY;**

15 **(3) INVESTIGATIVE AUTHORITIES SHALL MAKE A PROFFER TO THE**
16 **COURT EXPLAINING HOW THEY PLAN TO CONDUCT THE COVERT COLLECTION IN A**
17 **MANNER THAT AVOIDS UNDULY INTRUSIVE SURVEILLANCE OF INDIVIDUALS OR**
18 **INVASIONS TO THEIR PRIVACY AND FOLLOWS THE LAWS OF THE STATE;**

19 **(4) ANY PUTATIVE PERPETRATOR DNA SAMPLE THAT IS COLLECTED**
20 **COVERTLY MAY ONLY BE SUBJECTED TO AN STR TEST TO SEE IF IT MATCHES A STR**
21 **DNA PROFILE OBTAINED FROM A FORENSIC SAMPLE;**

22 **(5) ANY COVERTLY COLLECTED DNA SAMPLE THAT DOES NOT MATCH**
23 **THE STR DNA PROFILE OBTAINED FROM A FORENSIC SAMPLE SHALL BE**
24 **DESTROYED AND MAY NOT BE UPLOADED TO ANY DNA DATABASE, INCLUDING**
25 **LOCAL, STATE, OR FEDERAL DNA DATABASES WITHIN CODIS, OR ANY DNA**
26 **DATABASE NOT AUTHORIZED BY LOCAL, STATE, OR FEDERAL STATUTE; AND**

27 **(6) (I) THE LAW ENFORCEMENT OFFICER CONDUCTING THE**
28 **COVERT COLLECTION FROM A PUTATIVE PERPETRATOR SHALL REPORT BACK TO**
29 **THE AUTHORIZING COURT EVERY 30 DAYS ABOUT THE PROGRESS OF THE COVERT**
30 **COLLECTION AND SHALL MAKE A PROFFER ABOUT FUTURE PLANS IN ACCORDANCE**
31 **WITH PARAGRAPH (3) OF THIS SUBSECTION; AND**

32 **(II) WITHOUT GOOD CAUSE SHOWN, COVERT COLLECTION**
33 **EFFORTS TO OBTAIN A SAMPLE FROM A PUTATIVE PERPETRATOR SHALL CEASE**
34 **AFTER 6 MONTHS.**

1 **(H) (1) ON THE COMPLETION OF THE FGGS INVESTIGATION OR ON**
2 **COMPLETION OF ANY CRIMINAL PROSECUTION THAT MAY ARISE FROM THE FGGS,**
3 **THE AUTHORIZING COURT, OR ANY COURT THAT ULTIMATELY HAS JURISDICTION**
4 **OVER ANY CRIMINAL CASE THAT AROSE FROM THE FGGS, SHALL ISSUE ORDERS TO**
5 **ENSURE THAT ALL DNA SAMPLES GATHERED IN THE FGGS AND ALL GENETIC**
6 **GENEALOGY INFORMATION DERIVED FROM THE FGG ANALYSIS OF THOSE SAMPLES**
7 **ARE DESTROYED.**

8 **(2) THE COURT ORDERS SHALL INCLUDE THE REMOVAL AND**
9 **DESTRUCTION OF ANY FGG PROFILES PREVIOUSLY UPLOADED TO**
10 **DIRECT-TO-CONSUMER OR PUBLICLY AVAILABLE OPEN-DATA PERSONAL**
11 **GENOMICS DATABASES.**

12 **(3) ALL INDIVIDUALS WHO WERE NOT THE SOURCE OF THE STR DNA**
13 **PROFILE OBTAINED FROM THE FORENSIC SAMPLE AND WHOSE DNA WAS**
14 **COLLECTED THROUGH INFORMED CONSENT OR COVERTLY DURING THE COURSE OF**
15 **THE FGGS SHALL RECEIVE NOTICE OF THAT DESTRUCTION BY CERTIFIED**
16 **DELIVERY.**

17 **(I) (1) A PERSON MAY NOT DISCLOSE GENETIC GENEALOGY DATA, FGG**
18 **PROFILES, OR DNA SAMPLES NOT AUTHORIZED BY A COURT ORDER IN THE COURSE**
19 **OF A FGGS, OR IN THE COURSE OF ANY CRIMINAL PROCEEDING THAT ARISES FROM**
20 **A FGGS.**

21 **(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A**
22 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT**
23 **EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$5,000, OR BOTH, IN ACCORDANCE**
24 **WITH § 2-512 OF THE PUBLIC SAFETY ARTICLE.**

25 **(J) (1) A PERSON MAY NOT WILLFULLY FAIL TO DESTROY GENETIC**
26 **GENEALOGY INFORMATION, FGG PROFILES, OR DNA SAMPLES.**

27 **(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A**
28 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT**
29 **EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$ 1,000 OR BOTH, IN ACCORDANCE**
30 **WITH § 2-512 OF THE PUBLIC SAFETY ARTICLE.**

31 **(K) A PERSON WHOSE GENETIC GENEALOGY INFORMATION, FGG PROFILE,**
32 **OR DNA SAMPLE IS WRONGFULLY DISCLOSED, COLLECTED, OR MAINTAINED IN**
33 **VIOLATION OF THIS SUBTITLE HAS A PRIVATE RIGHT OF ACTION UNDER RELEVANT**
34 **STATE LAW GUIDING TORT CLAIMS, AND IS ENTITLED TO MINIMUM LIQUIDATED**
35 **DAMAGES OF \$5,000 FOR A VIOLATION.**

1 17-103.

2 (A) A DEFENDANT IN A CRIMINAL CASE CHARGED WITH A CRIME OF
3 VIOLENCE UNDER § 14-101 OF THE CRIMINAL LAW ARTICLE OR A DEFENDANT
4 CONVICTED OF A CRIME OF VIOLENCE UNDER § 14-101 OF THE CRIMINAL LAW
5 ARTICLE AND SEEKING POSTCONVICTION DNA TESTING IS ENTITLED TO SEEK
6 JUDICIAL AUTHORIZATION FOR A FGGS BY FILING AN AFFIDAVIT WITH A TRIAL
7 COURT OR POSTCONVICTION COURT CERTIFYING THAT THE FORENSIC SAMPLE AND
8 THE CRIMINAL CASE SATISFY THE FOLLOWING CRITERIA:

9 (1) THE FORENSIC SAMPLE TO BE SUBJECTED TO THE FGGS IS
10 BIOLOGICAL MATERIAL REASONABLY BELIEVED TO HAVE BEEN DEPOSITED BY A
11 PUTATIVE PERPETRATOR AND COLLECTED FROM A CRIME SCENE, A PERSON, AN
12 ITEM, OR A LOCATION CONNECTED TO THE CRIMINAL EVENT, OR THE UNIDENTIFIED
13 HUMAN REMAINS OF A SUSPECTED HOMICIDE VICTIM;

14 (2) A STR DNA PROFILE HAS ALREADY BEEN DEVELOPED FROM THE
15 FORENSIC SAMPLE, WAS ENTERED INTO THE STATE DNA DATA BASE SYSTEM AND
16 THE NATIONAL DNA DATA BASE SYSTEM, AND FAILED TO IDENTIFY A KNOWN
17 INDIVIDUAL;

18 (3) BIOLOGICAL SAMPLES SUBJECTED TO FGG DNA ANALYSIS,
19 EITHER THE FORENSIC SAMPLE OR THIRD PARTY REFERENCE SAMPLES, MAY BE
20 USED TO DETERMINE THE SAMPLE DONOR'S GENETIC PREDISPOSITION FOR
21 DISEASE OR ANY OTHER MEDICAL CONDITION OR PSYCHOLOGICAL TRAIT:

22 (4) A FGGS SHALL ONLY BE CONDUCTED USING A
23 DIRECT-TO-CONSUMER OR PUBLICLY AVAILABLE OPEN-DATA PERSONAL
24 GENOMICS DATABASE THAT PROVIDES EXPLICIT NOTICE TO THEIR SERVICE USERS
25 AND THE PUBLIC THAT LAW ENFORCEMENT MAY USE THEIR SERVICE SITES TO
26 INVESTIGATE CRIMES OR TO IDENTIFY UNIDENTIFIED HUMAN REMAINS;

27 (5) THE LABORATORY CONDUCTING SNP OR OTHER
28 SEQUENCING-BASED TESTING, AND THE GENETIC GENEALOGIST PARTICIPATING IN
29 THE FGGS, HAS BEEN LICENSED BY THE OFFICE OF HEALTH CARE QUALITY IN
30 ACCORDANCE WITH § 17-104 OF THIS TITLE; AND

31 (6) (I) INFORMED CONSENT IN WRITING IS OBTAINED FROM ANY
32 THIRD PARTY WHOSE DNA SAMPLE IS SOUGHT FOR THE PURPOSE OF ASSISTING A
33 FGGS AND ALL REQUIREMENTS DESCRIBED IN § 17-102(F) OF THIS TITLE ARE
34 SATISFIED; AND

1 **(II) IF THE THIRD PARTY DOES NOT CONSENT TO PROVIDING A**
2 **REFERENCE SAMPLE FOR A FGGS INVESTIGATION, NEITHER DEFENSE NOR**
3 **POSTCONVICTION COUNSEL, OR ANYONE ACTING ON THEIR BEHALF, MAY COVERTLY**
4 **COLLECT A REFERENCE SAMPLE FROM THE THIRD PARTY.**

5 **(B) IF DEFENSE OR POSTCONVICTION COUNSEL DETERMINES THAT ONE OR**
6 **MORE PERSONS MAY BE PUTATIVE PERPETRATORS OF THE CRIME UNDER**
7 **INVESTIGATION AND IT IS NECESSARY TO COLLECT A COVERT DNA SAMPLE FROM**
8 **THE PERSON:**

9 **(1) THE AUTHORIZING COURT SHALL BE NOTIFIED PRIOR TO THE**
10 **COVERT COLLECTION OF THE PUTATIVE PERPETRATOR'S REFERENCE SAMPLE;**

11 **(2) A SHOWING SHALL BE MADE TO THE SATISFACTION OF THE COURT**
12 **TO DEMONSTRATE WHY A COVERT COLLECTION IS NECESSARY;**

13 **(3) COUNSEL SHALL MAKE A PROFFER TO THE COURT EXPLAINING**
14 **HOW COUNSEL PLANS TO CONDUCT THE COVERT COLLECTION IN A MANNER THAT**
15 **AVOIDS UNDULY INTRUSIVE SURVEILLANCE OF INDIVIDUALS OR INVASIONS TO**
16 **THEIR PRIVACY AND FOLLOWS THE LAWS OF THE STATE;**

17 **(4) ANY PUTATIVE PERPETRATOR DNA SAMPLE THAT IS COLLECTED**
18 **COVERTLY MAY ONLY BE SUBJECTED TO AN STR TEST TO SEE IF IT MATCHES AN**
19 **STR DNA PROFILE OBTAINED FROM A FORENSIC SAMPLE;**

20 **(5) ANY COVERTLY COLLECTED DNA SAMPLE THAT DOES NOT MATCH**
21 **THE STR DNA PROFILE OBTAINED FROM A FORENSIC SAMPLE SHALL BE**
22 **DESTROYED AND MAY NOT BE UPLOADED TO ANY DNA DATABASE, INCLUDING**
23 **LOCAL, STATE, OR FEDERAL DNA DATABASES WITHIN CODIS, OR ANY DNA**
24 **DATABASE NOT AUTHORIZED BY LOCAL, STATE, OR FEDERAL STATUTE;**

25 **(6) DEFENSE OR POSTCONVICTION COUNSEL CONDUCTING THE**
26 **COVERT COLLECTION FROM A PUTATIVE PERPETRATOR SHALL REPORT BACK TO**
27 **THE AUTHORIZING COURT EVERY 30 DAYS ABOUT THE PROGRESS OF THE COVERT**
28 **COLLECTION AND SHALL MAKE A PROFFER ABOUT FUTURE PLANS IN ACCORDANCE**
29 **WITH § 17-102(G)(3) OF THIS TITLE; AND**

30 **(7) WITHOUT GOOD CAUSE SHOWN, COVERT COLLECTION EFFORTS**
31 **TO OBTAIN A SAMPLE FROM A PUTATIVE PERPETRATOR SHALL CEASE AFTER 6**
32 **MONTHS.**

33 **(C) (1) THE STATE SHALL BE NOTIFIED THAT AN APPLICATION FOR**
34 **JUDICIAL AUTHORIZATION TO CONDUCT A FGGS HAS BEEN MADE BY DEFENSE OR**

1 POSTCONVICTION COUNSEL AND A COPY OF THE APPLICATION SHALL BE SERVED ON
2 THE STATE AT THE TIME THE APPLICATION IS FILED UNLESS THE APPLICANT IS
3 ALSO REQUESTING PERMISSION FROM THE COURT TO REDACT CERTAIN PORTIONS
4 OF THE APPLICATION.

5 (2) ONCE A COURT HAS RULED ON THE MOTION FOR REDACTIONS, A
6 COPY OF THE APPLICATION SHALL BE SERVED ON THE STATE WITHIN 5 DAYS OF
7 RECEIPT OF THE COURT ORDER.

8 (3) THE AUTHORIZING COURT SHALL ENSURE THAT THE STATE IS
9 INFORMED OF THE PROGRESS OF THE FGGS UNLESS DEFENSE COUNSEL OR
10 POSTCONVICTION COUNSEL CAN SHOW GOOD CAUSE AS TO WHY THAT INFORMATION
11 MAY NOT BE DISCLOSED.

12 (D) THE PROVISIONS OF § 17-102(H) THROUGH (K) OF THIS TITLE APPLY TO
13 ANY FGGS CONDUCTED BY DEFENSE OR POSTCONVICTION COUNSEL.

14 (E) A COURT CONSIDERING AN APPLICATION FOR A FGGS FROM A
15 CRIMINAL DEFENDANT SHALL ISSUE THE ORDER ON A SHOWING THAT TESTING HAS
16 THE SCIENTIFIC POTENTIAL TO PRODUCE EXCULPATORY OR MITIGATING EVIDENCE
17 AND THE DEFENDANT HAS COMPLIED WITH ALL OTHER REQUIREMENTS OF THIS
18 SECTION.

19 (F) A COURT ORDER ISSUED IN ACCORDANCE WITH SUBSECTION (K) OF
20 THIS SECTION SHALL INCORPORATE ALL CERTIFICATIONS MADE IN SUBSECTIONS
21 (A) THROUGH (C) OF THIS SECTION AND MAY DESCRIBE THE SPECIFIC ITEMS OF
22 EVIDENCE TO BE TESTED, DESIGNATE THE SPECIFIC LABORATORY FACILITY TO BE
23 USED FOR THE DNA TESTING, AND DESIGNATE THE CONDITIONS UNDER WHICH
24 CONSUMPTIVE TESTING CAN OCCUR.

25 17-104.

26 (A) THE OFFICE OF HEALTH CARE QUALITY SHALL ESTABLISH THE
27 CRITERIA THAT MUST BE MET BY DIRECT-TO-CONSUMER GENETIC GENEALOGY
28 SERVICES.

29 (B) A CERTIFICATION PROGRAM SHALL BE ESTABLISHED BY THE OFFICE
30 OF HEALTH CARE QUALITY TO:

31 (1) LICENSE LABORATORIES MUST BEGIN PERFORMING SNP OR
32 OTHER SEQUENCING BASED TESTING ON EVIDENCE IN SUPPORT OF FGGS ON OR
33 BEFORE OCTOBER 1, 2022; AND

1 **(2) LICENSE INDIVIDUALS MUST BEGIN PERFORMING GENETIC**
2 **GENEALOGY ON OR BEFORE OCTOBER 1, 2024.**

3 **(C) THE MARYLAND FORENSIC LABORATORY ADVISORY COMMITTEE**
4 **SHALL:**

5 **(1) ESTABLISH BEST PRACTICES FOR LABORATORIES PERFORMING**
6 **SNP OR OTHER SEQUENCING BASED METHODS; AND**

7 **(2) RECOMMEND REGULATIONS THAT ESTABLISH MINIMUM**
8 **QUALIFICATIONS FOR INDIVIDUALS PERFORMING GENETIC GENEALOGY.**

9 **(D) IF A LABORATORY IS APPROVED FOR A LICENSE BY THE OFFICE OF**
10 **HEALTH CARE QUALITY PRIOR TO THE REGULATIONS ESTABLISHED UNDER THIS**
11 **SECTION BEING ADOPTED, THE LABORATORY SHALL REAPPLY FOR A LICENSE.**

12 **(E) NEITHER THE LABORATORY CONDUCTING SNP OR OTHER SEQUENCING**
13 **BASED TESTING, NOR A LAW ENFORCEMENT OFFICIAL, MAY DISCLOSE GENETIC**
14 **GENEALOGY INFORMATION WITHOUT AUTHORIZATION.**

15 **17-105.**

16 **(A) IN ACCORDANCE WITH § 2-513 OF THE COURTS ARTICLE, THE**
17 **DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES SHALL SUBMIT A**
18 **PUBLICLY AVAILABLE ANNUAL REPORT TO THE GOVERNOR AND, IN ACCORDANCE**
19 **WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY,**
20 **THAT SHALL INCLUDE, FOR THE PRECEDING CALENDAR YEAR:**

21 **(1) THE NUMBER OF REQUESTS FOR FGG AND THE RELATED**
22 **DOCUMENTATION;**

23 **(2) THE NUMBER OF TIMES FGG WAS GRANTED AND THE BASIS OF**
24 **EACH GRANT OR DENIAL;**

25 **(3) THE NUMBER OF PUTATIVE PERPETRATORS IDENTIFIED**
26 **THROUGH FGG;**

27 **(4) THE NUMBER OF COVERT COLLECTIONS OF REFERENCE SAMPLES**
28 **FROM PUTATIVE PERPETRATORS, A DESCRIPTION OF THE METHODS USED DURING**
29 **THE COVERT COLLECTION, THE TIME PERIOD NEEDED TO PERFORM THE COVERT**
30 **COLLECTION, ANY COMPLAINTS FROM INDIVIDUALS SUBJECT TO SURVEILLANCE**
31 **DURING THE COVERT COLLECTIONS, AND ANY COMPLAINTS OR SUGGESTIONS FROM**
32 **JUDGES SUPERVISING THE COVERT COLLECTIONS;**

1 **(5) AN EVALUATION OF THE “PURSUED REASONABLE INVESTIGATIVE**
2 **LEADS” REQUIREMENT IN ACCORDANCE WITH § 17-102(B)(4) OF THIS TITLE,**
3 **INCLUDING SCIENTIFIC, PUBLIC, AND NONFORENSIC;**

4 **(6) THE COSTS OF THE FGGS PROCEDURES;**

5 **(7) THE RACE AND AGE OF THOSE IDENTIFIED AS PUTATIVE**
6 **PERPETRATORS;**

7 **(8) THE NUMBER OF TIMES A THIRD PARTY REFERENCE SAMPLE WAS**
8 **REQUESTED AND COLLECTED, AND THE RACE AND AGE OF THE THIRD PARTIES;**

9 **(9) THE NUMBER OF REQUESTS MADE BY DEFENDANTS AND**
10 **POSTCONVICTION LAWYERS; AND**

11 **(10) WHETHER THE SEARCHES ULTIMATELY RESULTED IN ARRESTS OR**
12 **CONVICTIONS OF PEOPLE IDENTIFIED THROUGH THE GENETIC GENEALOGY**
13 **SEARCH.**

14 **(B) A PANEL COMPRISING JUDGES, PROSECUTORS, DEFENSE ATTORNEYS,**
15 **LAW ENFORCEMENT OFFICIALS, CRIME LABORATORY DIRECTORS, BIOETHICISTS,**
16 **RACIAL JUSTICE EXPERTS, CRIMINAL JUSTICE RESEARCHERS, CIVIL AND PRIVACY**
17 **RIGHTS ORGANIZATIONS, AND ORGANIZATIONS REPRESENTING FAMILIES**
18 **IMPACTED BY THE CRIMINAL JUSTICE SYSTEM, SHALL BE CONVENED TO REVIEW**
19 **THE ANNUAL REPORT EACH YEAR.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2021.