



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

POSITION ON PROPOSED LEGISLATION

DATE: March 10, 2020

BILL NUMBER: Senate Bill 848 **POSITION:** Letter of Concern

BILL TITLE: Public Safety – DNA Collection, Records, Analysis, and Reporting

REVIEW AND ANALYSIS:

This legislation seeks to provide protections for people who submit their DNA to commercially available companies for the purpose of a genealogy report. There was a work group in the last interim and all stakeholders participated. There seemed to be a consensus amongst the group that the newly published Department of Justice guideline on the use of genealogy. However, this legislation does not address only the commercial use of DNA, but lawfully obtained DNA for law enforcement purposes.

The Department has the following concerns it would like to bring to the attention of this legislation.

- 1) Direct to Consumer Genetic Genealogy Service definition is incorrect. This should be only entities that test DNA samples but they also include entities that store DNA records. They need to differentiate between "Direct to Consumer Genetic Genealogy Services" and "Publicly Available Open Data Personal Genomics DNA Databases". The prior includes services such as 23andMe and Ancestry while the latter includes services such as GEDmatch.
- 2) Any legislation for Genetic Genealogy needs to be done outside of the existing State DNA Database System sections of the Code (i.e. Public Safety, Title 2, Subtitle 5). The way they did this intersects with State DNA Database System practices that are not related to Genetic Genealogy.
- 3) 2-504 (A) is very problematic. As written, this does two things... both of which the department is opposed to. First, it eliminates the ability to secure "covert" samples (i.e. discarded cigarette, cup, etc.) under any circumstances. Collection of these items have been determined by the courts to be constitutional and furthermore the DOJ interim policy allows for the use of covert samples for genetic genealogy if that seeking consent would compromise the integrity of the investigation. Second, it eliminates the ability to enter into the State DNA Database System samples from suspects and deceased victims which is currently allowed at the State level and although perhaps controversial, doesn't have anything to do with Genetic Genealogy.

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4) 2-506 (E)(F)(G) and (H) also do not belong in the State DNA Database System sections of the Code. There needs to be a new section specific to Genetic Genealogy as it has nothing to do

with the State DNA Database System. While I don't like the Familial DNA Testing ban, it is related to the State DNA Database System and therefore does make sense being in 2-506 (D). There is no place for Genetic Genealogy in Public Safety, Title 2, Subtitle 5.

5) The caveats for performing Genetic Genealogy under 2-506 (E) should not reference 2-504 (B) because that deals with specific requirements for collecting DNA from convicted offenders and arrestees. These don't require consent... the law says they have to submit DNA.

6) The Department thinks that all were in agreement with 2-506 (F).

7) We don't want to limit genetic genealogy to third degree relatedness as stated in 2-506 (G)... that limits the power of genetic genealogy.

8) The Department doesn't understand what they are trying to say in 2-506 (H).

9) 2-508 (A) should not be amended to require a warrant, subpoena, or court order as reporting a CODIS hit is a legal and everyday occurrence.

10) 2-511 (A) (IV) should not be added as the whole point of the State DNA Database System is that the ability to get hits of DNA Database Samples to Crime Scene Evidence Samples is not limited to a one time search but rather future hits are possible as more samples are added to the database.

For all of these concerns, the Department would like to continue to work with both House and Senate sponsors to create a piece of legislation that follows the DOJ guidelines as an establish best practice.