



**Testimony for the House Judiciary Committee  
March 3, 2020**

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**HB 1209 Public Safety - DNA Collection, Records, Analysis, and  
Reporting**

**FAVORABLE**

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The ACLU of Maryland urges a favorable report on HB 1209, which would prohibit law enforcement or any other investigative body from searching DNA or genealogical databases maintained for commercial purposes in the furtherance of a criminal investigation.

**Marylanders' privacy should not depend on the whim of  
commercially-maintained databases**

Several companies, including Ancestry.com and 23andMe, maintain databases of DNA and other genealogical information about persons who willingly submit samples with the hope of learning more about their familial relationships. These individuals—and their familial networks—should not waive their basic privacy rights as a result of this personal, commercial activity.

Privacy safeguards maintained by these companies, though laudable, are inadequate. For example, 23AndMe maintains a policy that its results cannot be considered “proof in a legal context” because the company lacks “the means to reliably connect any particular DNA sample or account to an individual.”<sup>1</sup> Additionally, the company bars law enforcement from submitting samples from incarcerated people or defendants in criminal proceedings. However, these companies also maintain that they will comply with valid legal processes which attempt to gain consumers’ information. It is therefore unclear whether individuals’ information is actually protected from use in criminal proceedings. Moreover, companies’ policies can change often, drastically, and without notice to the public. Marylanders’ should not be forced to choose between the personal and familial benefits of DNA technology and maintaining their basic privacy rights, and this choice should not depend on the commercial inclinations of private businesses.

<sup>1</sup> 23andMe Guide for Law Enforcement, available at <https://www.23andme.com/law-enforcement-guide/> (last accessed Jan. 19, 2019).



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## Maryland

As with prior iterations of the legislation, the ACLU of Maryland respectfully proposes that HB 1209 be amended to include a statutory exclusion such that DNA or other evidence obtained in violation of the bill's provisions may not be admissible in a criminal proceeding. This provision is necessary to deter law enforcement from violating the law. The Court of Appeals has held that Maryland courts may not act to create an exclusionary rule where one does not exist: "In the absence of statute or a rule promulgated by this Court, the Circuit Court does not have the inherent power to create an exclusionary rule of evidence under a statute that itself does not have an exclusionary rule." *Thompson v. State*, 395 Md. 240, 259 (Md. Ct. of Appeals 2006) (*internal citations omitted*). In *Upshur v. State*, the court further noted that "[o]ne may not wish an exclusionary rule into being by waving a magic wand. It is something that must be deliberately and explicitly created to cover a given type of violation." *Upshur v. State*, 208 Md. App. 383, 398 (Md. Ct. of Appeals 2012). Therefore, unless this body specifically includes an exclusionary rule to deter the conduct proscribed by HB 1209, evidence collected in violation of the bill's provisions may be admissible in criminal proceedings.

For the foregoing reasons, we urge a favorable report on HB 1209.