

Bill Number: HB1209
Scott D. Shellenberger, State's Attorney for Baltimore County
Opposed

WRITTEN TESTIMONY OF SCOTT SHELLENBERGER,
STATE'S ATTORNEY FOR BALTIMORE COUNTY
IN OPPOSITION OF HOUSE BILL 1209
PUBLIC SAFETY – DNA COLLECTION,
RECORDS, ANALYSIS AND REPORTING

I write in opposition of House Bill 1209 which would greatly hamper law enforcement in a useful and legal tool to solve crime?

I am hopeful that you remember the presentation done in Cambridge last fall on this important topic.

Maryland already has one of the most restrictive laws in the country regarding the testing of DNA samples.

Public Safety Article 2-506 states a person may not perform a search of the statewide DNA database for the purpose of identification of an offender in connection with a crime for which the offender may be a biological relative of the individual from whom the DNA sample was acquired.

Does (d) already prohibit familial DNA searches from a genealogical website? No. House Bill 1209 expands the current prohibition by requiring consent of possible suspect to do genealogical DNA searches.

House Bill 1209 also eliminates decades old existing 4th amendment and Supreme Court case law dealing with the concept of abandoned property. The courts have ruled that once a person discards an item, they no longer have a 4th amendment interest into the property. A person may abandon a coffee cup and a Detective may collect it from the trash to have the known DNA tested and compared to a sample from a rape or homicide. In Maryland, as it should, this match would only constitute probable cause and the State would be required to get a direct sample using a warrant or consent. House Bill 1209 eliminates decades of settled law and court rulings. It would greatly hamper law enforcements ability to solve crime.

In addition, this bill would prohibit the police from ever utilizing a search warrant to get a persons DNA in any case unless the suspect consents. If a women is raped and semen is recovered and we have probable cause to believe a suspect is responsible we cannot get his DNA unless he consents.

House Bill 1209 would also eliminate the ability to perform genetic DNA searches without the consent of the possible murder Defendant, who is going to consent under

these circumstances. So House Bill 1209 would effectively make Maryland a State where virtually no genetic DNA searches are permitted.

How this works is unknown DNA from crime scene (Forensic DNA) is collected. A search is made in CODIS and no match is found, they then go to the genealogy website such as Ancestry.com or 23andMe.com. If they find someone that does not match, but has many similarities, it could be a relative such as a brother or sister (closest), cousin (farther), 2nd cousin (even farther) or 3rd cousin (farthest). Now they have to do old fashioned police work and still solve the crime of who did it. Why do we need this tool?

- Joseph DeAngelo from California was known as the Golden State Killer. This is the most famous case from 1974 through 1986 where he committed 50 rapes, 12 murders and was caught using a genealogy DNA search.
- William Talbott, II is from Washington State and was found guilty in 1987 of a double murder.
- John Miller is from Indiana and plead guilty in 1998 of murder and rape of an 8 year old, April Tinsley.
- Raymond Rowe is from Pennsylvania and received life without parole in 1992 for murder and sexual assault of a school teacher.
- Jesse Bjerke is from Virginia and plead guilty in 2016 for the abduction and rape of a female lifeguard.
- John Whitt is from North Carolina and confessed to the murder of his wife and son in 1998.
- Gary Hartman is from Washington State and murdered a 12 year old in 1986.
- Roy Waller is from California and committed 10 rapes from 1991 through 2006.
- Mark Manteuffel is from California and committed rape, sodomy and torture in 1992 and 1994.
- Michael DeVaughn is from Mississippi and committed murder and rape of 20 year old Jody Loomis in 1972.
- Terrence Miller is from Washington State and committed murder and sexual assault of an 81 year old in 1990.
- Eddie Anderson is from California and committed a murder of a 30 year old victim in 1976.
- Michael Henslick is from Illinois and committed murder of a 22 year old victim in 2009.
- Darold Bowden is from North Carolina and committed rape in 2006 through 2008.
- Luke Fleming is from Florida and committed rape and murder in 1999.
- Jerry Lee is from Georgia and committed murder of a 28 year old victim in 1997.
- Donald Perea is a deceased Defendant from Colorado. He committed murder and sexual assault of an 18 year old victim, Jeannie More in 1981.
- Paul Chartrand is a deceased Defendant from California who committed murder in 1979.

- Arthur Martinez is a deceased Defendant from California who committed two murders in 1977 and 1978.

All of these cases were solved using Genealogical DNA which House bill 1209 would severely limit. How many of the Defendant's I just mentioned would consent to testing? There are at least two dozen more.

It has already been used in Maryland to solve a crime. In 2007 through 2011 in Montgomery County, Marlon Michael Alexander committed a series of rapes. A GED match came back to two relatives. The family members helped identify Alexander and he pled guilty to two offenses. In 2019 he was found guilty of three rapes and was given a life sentence.

There is another side to this story.

Brian Dripps confessed to sexual assault and murder of 18 year old after a DNA genetic match. That match exonerated Christopher Tapp who was wrongfully convicted in 1996. He wasted 20 years of his life in jail. Would we want him to stay in jail in Maryland?

This method is also helpful in identifying unidentified bodies. Genealogy DNA match is used to identify the unidentified.

There can be some reasonable guidelines imposed by the law that don't essentially operate as a ban. The Federal Interim Guidelines have the below listed guidelines which Maryland could easily adopt:

- Violent Crimes or Threat to Public Safety
- All other leads exhausted
- Law Enforcement must ID self to company
- Only an investigative lead
- May not arrest solely on genetic association
- Must have tried and failed at CODIS
- Prosecutor permission

I am happy to work with anyone to draft a law that has reasonable limitations on law enforcement.

I urge and unfavorable report on House bill 1209 as written.