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RE: SB187 Written Testimony

Judicial Proceedings
Chair Will Smith
Maryland Senate

Thank you for allowing me the opportunity to address you on the above proposed piece of legislation. Joseph James DeAngelo was born in 1945 and was a police officer. He was also responsible for the rapes of 50 individuals, 13 murders, and over 100 burglaries from 1973 to 1986. He evaded capture using his knowledge of police investigations, limits on DNA evidence at the time of the crimes, and failures of law enforcement agencies to communicate across organizations.

Having a suspect's DNA profile via a sexual assault examination kit (what this Bill describes as a "forensic sample" and a "FGG profile"), investigators attempted to match the suspect with known DNA profiles. Unsuccessful in that avenue, investigators used the profile to create a personal genome and uploaded it to their open source genealogical website GEDmatch (what this Bill calls "Publicly Available Open-Data Personal Genomics Database"). The website identified 10-20 people with a similar genetic profile. Investigators then used the list to construct a large family tree. From the tree, they found the suspect DeAngelo (AKA the Golden State Killer, the East Area Rapist, the Original Night Stalker).

GEDmatch did not have DeAngelo's DNA profile. Instead, after developing him as a suspect, investigators gained his DNA from samples he discarded (a trash can left out for pick up).

If those California investigators were operating under the restraints of Senate Bill 187 then it is likely he would still be roaming freely. Instead the perpetrator of these heinous acts is serving a life sentence in the California Penitentiary System. Instead of congratulating the ingenious methods used to capture this man who brutalized and

terrorized California for over a decade, this Bill makes sure that Maryland Law Enforcement never uses the same tactics if faced with the same scenario.

First, it bans the use of the investigative technique without judicial authorization. The Bill clearly avoids the use of the word warrant. To involve a neutral magistrate in the investigative process but, not requiring a warrant is akin to making investigators get judicial approval for record checks or the capture of DNA with sexual assault examinations.

Secondly, the Bill dictates what databases an investigation can utilize assuming they can get this judicial authorization. Making evidence obtained by law enforcement admissibility subject to a third parties rules. This is something novel in my experience as a prosecutor. Imagine if a gun dealer did not disclose to its customers that they would be subject to a background check. Then using this logic the State could not prosecute anyone who lied on an application.

Third, it creates an admissibility issue if the State violates the provisions spelled out in page three involving a third party. Typically, a Defendant who seeks to suppress evidence must have standing to satisfy such a claim. This Bill would negate that making what the State did (or did not do) with a third party a “get out of jail free card.”

Fourth, this Bill again brings in judicial supervision (but not a warrant) if investigators seek to obtain DNA evidence from abandoned material (what this Bill calls, “Covert Reference Sample”).

Fifth, this Bill creates a crime if investigators violate any of its provisions. Meaning a chilling effect if an investigator ever tries the tactics that led to the apprehension of a vile rapist and killer.

Sixth, the Bill creates a new way to collaterally attack a conviction by allowing convicted persons to do what the State may not. A defendant convicted of certain offenses may demand DNA testing of a forensic sample from any crime scene, person, or item collected from a location connected to the criminal event (by this definition it could be another case entirely from other jurisdictions). The only hurdle the convicted person would have to demonstrate is a “reasonable belief” (see SB 187 p. 8 ln. 10). The State must indulge the investigation using all the same tactics they cannot now use without judicial approval. In effect, it makes the State investigators the convicted person’s private investigative team with no thought about compensation. The Maryland State’s Attorneys Association seeks an unfavorable report on SB187

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