

Written testimony of Prof. Natalie Ram supporting Senate Bill 187

I write to support Senate Bill 187, concerning forensic genetic genealogy (“FGG”). If Maryland is to permit FGG, SB 187 provides a robust statutory scheme for balancing public safety, privacy, and criminal justice. I encourage this Committee to support this bill.

Maryland has long been a leader in including meaningful limitations to protect ordinary individuals against routine DNA searches for crime detection purposes. It is therefore no surprise that Maryland is at the forefront of responsibly regulating FGG.

FGG occurs when investigators, often working with private companies, compare a DNA profile developed from crime scene evidence to other DNA profiles searchable on a consumer genetics platform. These searches may reveal genetic relatives of a putative perpetrator. Through sleuthing in the resulting family tree, investigators hope to identify the unknown perpetrator.

FGG is importantly different from traditional law enforcement searches in the statewide DNA database system. Traditional forensic DNA profiles consist of forty data points in non-coding DNA, while FGG profiles consist of hundreds of thousands of DNA data points strewn across the human chromosomes, including many in coding DNA. The statewide DNA database system is largely limited to individuals convicted of (or in some instances arrested for) a felony. *See* MD. CODE ANN., PUB. SAFETY § 2-504(a). By contrast, FGG involves consumer genetics platforms, populated by millions of individuals who may never have been arrested or convicted of any crime. Finally,

while traditional forensic identification relies on direct matches of crime scene evidence to known genetic profiles, FGG relies on familial ties to infer identification—a practice Maryland has forbidden in the statewide DNA database system. *Id.* § 2-506(d). In sum, compared with searches in the statewide DNA database system, FGG uses more genetic data, more sensitive genetic data, and likely exposes a majority of Marylanders to genetic identification—even if they have never used a consumer genetics service themselves.

FGG thus merits close regulation, if it is to be undertaken at all. SB 187 fits that bill. SB 187 includes several noteworthy safeguards. Like a U.S. Department of Justice interim policy, SB 187 authorizes FGG only for the most serious crimes and only after traditional investigative methods have been exhausted. *See* U.S. DEP'T OF JUSTICE, INTERIM POLICY: FORENSIC GENETIC GENEALOGY DNA ANALYSIS AND SEARCHING (Nov. 1, 2019), <https://www.justice.gov/olp/page/file/1204386/download>.

Maryland's bill also adopts additional protections essential to regulating use of this new investigative method. First, SB 187 requires both laboratories and genetic genealogists participating in an investigation to be licensed by the State. Licensure is crucial to enhancing confidence in the quality of leads generated through FGG. In particular, licensure for genetic genealogists is critically needed, as currently there are no professional standards for this work.

Second, SB 187 establishes robust procedures for obtaining additional DNA samples where appropriate. These procedures require obtaining informed consent for genetic samples from non-suspect third parties who may be related to a putative

perpetrator and whose DNA may be needed to fill in a genealogical family tree. The procedures also permit, under narrow circumstances, a court-approved process for obtaining a DNA sample from an individual without that individual's knowledge. Informed consent and judicial oversight, respectively, are essential to protecting the privacy of ordinary Marylanders against potentially overzealous investigative efforts.

Third, SB 187 provides for defense access to FGG, where appropriate. Permitting access to FGG for criminal defendants, and not just prosecutors, is vital to advancing justice and ensuring that only the guilty are convicted.

Fourth, SB 187 requires reporting and review of how, and how often, Maryland investigators or defense counsel pursue FGG. This provision will enable Maryland to exercise informed review of FGG and adapt state policy as needed.

Finally, I understand that pending amendments to SB 187 affirm user control over the investigative use of genetic data by requiring consumer genetics platforms to obtain informed consent from—and not merely give explicit notice to—their users regarding law enforcement use. Consent to law enforcement matching requires more than a disclosure buried deep in a site's terms of service or privacy policy. Requiring informed consent will better achieve SB 187's intent that ordinary site users knowingly submit genetic data for law enforcement use.

This body has consistently acted to regulate law enforcement use of genetic data with public safety, privacy, and criminal justice in mind. Maryland's DNA database is largely limited to individuals convicted of a felony. *See* MD. CODE ANN., PUB. SAFETY § 2-504(a). While Maryland law permits DNA to be collected from certain

individuals merely charged (but not yet convicted) of crimes, these individuals must be charged with a “crime of violence,” burglary, or an attempt to commit these crimes. *Id.* § 2-504(a)(3)(i). The State must automatically destroy and expunge any such DNA samples and records if the prosecution for which DNA was collected is unsuccessful. *Id.* § 2-511(a). Maryland has also explicitly prohibited familial searches in the State’s own database. *Id.* § 2-506(d). To be sure, the scope of Maryland’s statewide DNA database system and repository has expanded over time to include a greater range of criminal convictions and to authorize DNA sampling from some arrestees. But Maryland has undertaken these expansions incrementally, with due regard to the privacy interests of Marylanders who may be implicated. SB 187 seeks this same balance—and it is a praiseworthy example of it.

I have written and testified previously supporting efforts to bar forensic genetic genealogy as unlawful familial searching. My views have not changed. But SB 187 is thoughtful, well considered, and comprehensive. If Maryland is to support forensic genetic genealogy in at least some cases, SB 187 establishes critical safeguards for its use within an appropriate regulatory framework.