



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

**POSITION ON PROPOSED LEGISLATION**

**DATE:** February 23, 2021

**BILL NUMBER:** House Bill 240      **POSITION:** Support w/amendments

**BILL TITLE:** Criminal Procedure – Forensic Genetic Genealogical DNA Analysis, Searching, Regulation, and Oversight

The Maryland State Police (MSP) has been working with the Sponsor and interested parties to develop legislation that establishes reasonable guidelines taking into consideration the recently issued FBI guidelines. After the legislation was presented to the workgroup MSP provided the following recommended amendments to the Sponsor. It is our understanding that the Sponsor has adopted the amendments for today's hearing:

- 17-102 (H)(1) - This addresses the destruction of the DNA samples gathered in the FGGS and all genetic genealogy information derived from the FGG analysis of those samples. It seems excessive as written considering the need to preserve evidence to account for appeals and post-conviction relief. MSP recommends a change so that it reads, *"Upon the completion of a FGGS investigation that does not result in a prosecution, or upon the completion of a FGGS that does not result in a conviction, or upon the completion of a sentence associated with a conviction obtained through the use of a FGGS, the authorizing court, or any court that ultimately has jurisdiction over any criminal case that arose from the FGGS, shall issue orders to ensure that all DNA samples gathered in the FGGS and all genetic genealogy information derived from the FGG analysis of those samples are destroyed."*
- 17-102 (I)(1) - As worded, MSP recommends a change so that it reads, *"A person may not disclose genetic genealogy data, FGG profiles, or DNA samples unless authorized by a court order in the course of a FGGS, or in the course of any criminal proceeding that arises from a FGGS."*
- 17-102 (J)(1) - This just needs additional wording to ensure the intent is clear. MSP recommends a change so that it reads, *"A person may not willfully fail to destroy genetic genealogy information, FGG profiles, or DNA samples that are required to be destroyed in accordance with Subsection (H) of this section."*
- 17-103 (A)(3) – MSP recommends the following change: *"Biological samples subjected to FGG DNA analysis, either the forensic sample or third party*

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*reference samples, may not be used to determine the sample donor's genetic predisposition for disease or any other medical condition or psychological trait."*

- 17-103 (F) – MSP recommends: *"A court order issued in accordance with Subsection (E) of this section shall incorporate all certification made in subsections (A) through (C) of this section and may describe the specific items of evidence to be tested, designate the specific laboratory facility to be used for the DNA testing, and designate the conditions under which consumptive testing can occur."*
- 17-104 (B) - The Office of Health Care Quality does not certify but rather licenses. MSP recommends: *"A Licensing program shall be established by the Office of Health Care Quality to require the following:"*
- 17-104 (B)(1) – MSP recommends the following language for clarity: *"Licensure of laboratories must begin performing SNP or other sequencing based testing on evidence in support of FGGS on or before October 1, 2022; and"*
- 17-104 (B)(2) – MSP recommends: *"Licensure of individuals must begin performing genetic genealogy on or before October 1, 2024."*
- 17-104 (D) - This suggests that a lab or genetic genealogist will be licensed prior to the licensing program being established which is not possible. There should be no limitations on the labs or genetic genealogists until the licensing program is established. MSP recommends a change that removes the existing language and replaces it with, *"No prohibitions will be placed on either laboratories conducting SNP or other sequencing-based testing or on genetic genealogists participating in FGGS prior to the licensing program being established."*
- 17-105 (A) – The MSP does not believe that the Department of Public Safety and Correctional Services is the correct agency to be responsible for the reporting. However, the MSP is not in a position to perform the reporting requirements nor recommend any specific entity to research and develop the report on an annual basis. Additionally, the requirement to bring together a specific group to review the report seems redundant. Once the report is published for the General Assembly and posted on various websites, anyone can review it at their leisure.

For these reasons, the Department urges the Committee to give House Bill 240 a favorable report as amended.

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