



THE MARYLAND HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401

**HB240**

**Criminal Procedure - Forensic Genetic Genealogy DNA Analysis, Searching, Regulation,  
and Oversight  
Statement in SUPPORT**

Chair Clippinger, Vice-Chair Atterbeary and Members of the House Judiciary Committee, thank you for the opportunity to testify in support of HB240, a bill that will establish a regulatory framework for law enforcement's use of familial DNA. I introduced this legislation last year, but withdrew the bill to improve it after requests from advocates. Over the interim, the Senate convened a Forensic Genetic Genealogy workgroup, chaired by Senator Sydnor and myself. In the workgroup, we worked with advocates including the ACLU, Innocence Project, Maryland State Police, MSAA, the Chiefs and Sheriffs, as well as leading academic experts to craft what we believe is an incredibly strong, first-in-the-nation bill that properly balances the constitutional privacy concerns of individuals who are presumed innocent and defendants with the ability of law enforcement and prosecutors to effectively use this technology.

As many of you may recall from the Judiciary Committee retreat in 2019, this is a complicated and incredibly interesting evolving area of policy. The term "familial DNA" or "genetic genealogy" is the DNA made available through direct-to-consumer DNA companies such as 23 & Me and Ancestry.com, which is uploaded into open-source genetic databases by the users. Many people choose to upload this information into databases, like GEDmatch, in order to increase their likelihood of finding distant relatives and tracing their heritage. However, as these databases have grown and developed, they are now searchable and used by law enforcement in the pursuit of solving investigations, establishing probable cause for the issue of warrants, and resulting in arrests. The most famous of these cases is the Golden State Killer case from California. In that case, this technology was used to identify the Golden State serial killer 40 years after he committed his first murders. Since the Golden State Killer case, around 70 cold cases have been solved through the use of this type of technology.

There are so many legitimate public safety reasons for why we want to continue to allow this technology to be used by law enforcement. However, there are also legitimate privacy and 4th Amendment concerns that must be addressed as this technology becomes more prevalent. No one objects to the use of this technology for crimes of violence, murders, and sexual assaults, and this bill does not forbid the use of this technology for those cases. Rather, this bill simply seeks to

establish a regulatory framework for its most appropriate use that balances the constitutional rights of all parties involved.

Senator Sydnor, the cross-file on this bill, and I worked very closely and collaboratively with all of the workgroup members on both the base bill and the two amendments presented to the Committee. We ask that the Committee please consider and favorably adopt both sets of amendments to the base bill, which adopts all of the feedback provided by all of the work group members.

The bill, along with the two amendments, will do the following:

- Require a sworn affidavit by law enforcement at the outset of a familial genetic genealogy (FGG) search that limits the use of this technology to the following crimes, or the attempt to commit the following crimes: murder, rape, felony sexual assault, or a crime that presents an ongoing threat of violence;
- Require investigators to pursue reasonable investigative leads before engaging in the use of this technology;
- Forbid the biological samples to be used to determine any genetic predisposition for disease or other medical conditions, psychological, or phenotypic traits;
- Allow for the searches to be conducted on open-data databases that provide explicit notice and consent to users and the public that law enforcement may use its service sites to investigate crimes or identify unidentified human remains;
- Require informed consent in writing from the presumed innocent party whose DNA is being collected to compare to the DNA from the crime scene;
- Prohibit law enforcement to surreptitiously collect DNA if informed consent is not given by the presumed innocent party;
- Allow for law enforcement to make a case to the court, via an affidavit, that seeking informed consent from the presumed innocent party could materially harm the case;
- Require that the collected DNA and any FGG searches be destroyed at the conclusion of the case, after all post-trial options have been exhausted;
- Prohibit any collected DNA to be uploaded into any DNA database, including CODIS
- Require the Governor's Office of Crime Prevention, Youth, and Victim Services to provide an annual report to the MDGA;
- Create a panel of judges, prosecutors, defense attorneys, public defenders, law enforcement, crime lab directors, civil and privacy rights organizations, bioethicists, families impacted by the criminal justice system and others to provide an annual report with policy recommendations for the improvement of this policy.

**I respectfully request a favorable report on HB240. Thank you.**