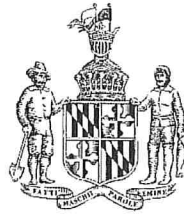


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Informational Testimony

SB 169 – Commercial Law – Consumer Protection – Biometric Data Privacy

Dear Chairman Griffith and Members of the Committee:

This submission is to provide information on Senate Bill 169 and its impact. This is provided on behalf of Aisha Braveboy, States Attorney for Prince George's County, and the Maryland State's Attorney's Association. I am Robert Dean, Special Assistant State's Attorney for Prince George's County, assigned to work with the Cold Case Homicide Unit of the Prince George's County Police Department.

Our concern is the effect that the effect of SB169 may have on important law enforcement activity should it become law as is – specifically the effect on the forensic genetic genealogical investigative process. We urge you to consider ways to accomplish your purpose in protecting biometric data privacy yet at the same time preserving Maryland's ability to utilize the forensic genetic genealogy investigative process, which has become an essential tool in solving cold cases of homicide and sex offenses. As the bill stands now, it is flawed, but we believe it can be fixed.

One and a half years ago, our office was awarded a \$470,000 grant from the Department of Justice to support the investigation of unsolved homicides and sex offenses using forensic genetic genealogy. Working with the police crime lab, we have identified at least 640 cases of unsolved homicides and sex offenses in Prince George's County where forensic genetic genealogy investigation may be useful. (This process is also valuable in identifying human remains.) We currently have 15 active cases utilizing the forensic genetic genealogy process and we anticipate increasing that number up to about 20 by the end of this year.

In 2021, the General Assembly enacted a comprehensive regulatory scheme covering some of this field in *Title 17 of the Criminal Procedure Code*. This comprehensive effort, the only one in the nation so far, governs in considerable detail how investigations utilizing forensic genetic genealogy are to proceed.

Title 17 establishes regulatory criteria, including judicial oversight of the investigative process, and rules governing the composition of the data bases available to law enforcement for this investigative purpose. There are rules requiring confidentiality and destruction protocols, as well as the establishment of regulatory criteria for those involved in the process.

Without getting into all the details of the Title 17 requirements, our unit must follow the requirements of Title 17, as well as the *Department of Justice Interim Guidelines on Forensic Genetic Genealogy (2019)*. We currently have obtained judicial approval to proceed in approximately 15 cases that occurred from 1972 to 2006.

An initial step in developing leads for investigative purposes is to submit biological samples from the crime scene that are likely to originate from the offender. This sample must have already been submitted to the national CODIS data base to see if there is a match from samples of known offenders that have already been provided into the data base.

Once it is determined that there is no match, the Forensic Genetic Genealogy process involves sending the biological sample of a purported unidentified offender to a private laboratory that performs a SNP extraction (Single Nucleotide Polymorphism), which is then uploaded into a database of DNA samples that have been voluntarily submitted by consumers to determine their ancestry. The donors to this data base have consciously opted into the database and agreed that their DNA sample could be made available to law enforcement.

Based upon the SNP upload of the suspect sample, a distant relative of the possible suspect may be identified based upon a calculation of familial DNA characteristics. At this point, a genealogist will construct a family tree based upon open-source information.

This process can be very time consuming. But it may provide leads for investigators to follow. In building the family tree, persons of interest may be revealed. Any leads that arise through this process will, of course, need further investigation based on the specifics of the crime being investigated.

Our concern with SB 169 (as well as cross-filed HB 33) is that those private entities that develop the SNPs and those that maintain the essential databases of DNA profiles voluntarily submitted will likely avoid accepting Maryland cases because of the potential reach of this bill.

A reading of the bill as it defines and regulates biometric data by private entities, and the destruction protocols imposed, as well as the cause of action it affords individuals has the very real potential of ending the forensic genetic genealogy investigative process in Maryland.

This is not an unlikely result. I have spoken to representatives of Othram and BODE technologies who have expressed concern over the potential negative impacts this legislation may have.

In light of the already existing regulatory scheme of *Criminal Procedure Title 17*, and the chilling effect that SB 169 would have to the availability of this crime solving technique in Maryland, we urge this committee to consider amending this proposed legislation to exclude from the coverage of this bill those entities that have laboratories developing the appropriate

DNA profiles necessary in the forensic genetic genealogy process, as well as those entities that maintain those data bases essential to the forensic genetic genealogy process.

Title 17 section 17-101 (c) and (g) provides a statutory definition for those entities that provide the services necessary to the forensic genetic genealogy process. The operative definitions are: (c) Direct to Consumer genetic genealogy services; and (g) publicly available open-data personal genomics database.

Therefore, we urge that these two types of private entities be excluded from the definition of private entities for purposes of SB 169 found in 14-4501 (E) (2) of SB 169. In addition to this amendment, the purpose clause should be amended to explain that nothing in this law should affect the investigative processes regulated in *Title 17 of the Criminal Procedure Article*.

I will be happy to answer any questions.

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