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POSITION ON PROPOSED LEGISLATION

BILL: HB 301 – Forensic Genetic Genealogical DNA Analysis and Search – Affidavit for Judicial Authorization

FROM: Maryland Office of the Public Defender

POSITION: Unfavorable

DATE: February 4, 2025

The Maryland Office of the Public Defender respectfully urges the Committee to issue an unfavorable report on House Bill 301.

House Bill 301 eliminates the requirement for law enforcement to exhaust “reasonable investigative leads” before resorting to forensic genetic genealogy (FGG). Eliminating this requirement would be a significant misstep, jeopardizing both privacy rights and the integrity of criminal legal investigations.

FGG operates at the intersection of cutting-edge investigative techniques and the fundamental right to privacy. This method grants law enforcement access to highly sensitive genetic data generated through consumer technology. The current law strikes a careful balance, ensuring investigative benefits do not come at the expense of individual privacy. A core principle of the existing statute is the requirement that law enforcement exhaust less intrusive methods before turning to FGG. Removing this safeguard weakens essential privacy protections.

Research indicates that individuals in the United States consider genetic data stored with genealogy companies to be intensely private—on par with the sanctity of personal spaces such as bedrooms or the confidentiality of text messages and emails. These searches are uniquely invasive, revealing information individuals may not even know about themselves, cannot control, and that may have future implications beyond current scientific understanding. Preserving the current restrictions on FGG is crucial to upholding these privacy expectations.

Furthermore, the broad use of FGG raises significant constitutional concerns. This technique essentially subjects millions of innocent people to genetic searches without probable cause, leaving law enforcement officers with unchecked discretion to determine whom to investigate further and whom to arrest. In this way, FGG resembles the general warrants and writs of assistance that the Founders explicitly sought to prohibit through the Fourth Amendment. See *Stanford v. Texas*, 379 U.S. 476, 481-82 (1965).

While FGG can be a powerful tool in criminal investigations, it is important to recognize its limitations. DNA evidence alone rarely provides an unequivocal “they did it” answer. Instead, it

is one piece of a larger investigative puzzle, and its use must be carefully regulated. Requiring law enforcement to exhaust all reasonable investigative leads before turning to FGG is simply a standard of good police work—a standard that was intentionally included by the working group that originally drafted the FGG legislation.

It is unclear why the proposed legislation seeks to eliminate this requirement, other than to hasten the process for employing FGG and relieve law enforcement of the responsibility of conducting thorough investigations before resorting to genetic searches.

Maryland’s current law appropriately balances the need for effective investigative tools with the fundamental right to genetic privacy. Any attempt to “streamline”; the use of FGG undermines these critical protections and should be firmly opposed.

For the foregoing reasons, the Maryland Office of the Public Defender strongly urges the Committee to maintain the existing statutory restrictions on the use of FGG and return an unfavorable report on House Bill 301.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.
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