

Chapter 682

(Senate Bill 187)

AN ACT concerning

Criminal Procedure – Forensic Genetic Genealogical DNA Analysis, Searching, Regulation, and Oversight

FOR the purpose of establishing that a certain forensic genetic genealogical DNA analysis and search may not be initiated without certifying certain information before a court and obtaining a certain authorization; requiring a court to authorize the initiation of a certain forensic genetic genealogical DNA analysis and search if certain information is certified before the court; prohibiting certain biological samples subjected to certain forensic genetic genealogical profile analysis to be used to determine certain information about a certain donor; providing that a certain forensic genetic genealogical DNA analysis and search shall only be conducted under certain circumstances; requiring that the laboratory conducting certain single-nucleotide polymorphisms or other sequencing-based testing has a certain license; requiring certain informed consent in writing to be obtained from a certain third party under certain circumstances; requiring that a person obtaining a certain informed consent have certain training within a certain period of time; requiring that a third party be informed of certain information before giving certain informed consent; prohibiting law enforcement from collecting a certain DNA sample if a third party does not consent to providing the DNA sample; providing that if investigators determine that certain persons may be certain putative perpetrators then a certain DNA sample shall be collected under certain circumstances; providing that on the completion of a certain investigation, certain criminal sentencing, or certain prosecution the court shall issue a certain order; requiring a certain genetic genealogist to turn over certain records to the investigator in a certain case; prohibiting a certain genetic genealogist from maintaining certain records; requiring the prosecutor in a certain case to maintain and disclose certain records and materials under certain circumstances; prohibiting the disclosure of certain data, profiles, and samples under certain circumstances; establishing penalties for certain violations of this Act; prohibiting a person from willfully failing to destroy certain data, profiles, or samples; providing that if certain information, profiles, or samples relating to a person are wrongfully disclosed, collected, or maintained a person may bring a certain cause of action; authorizing a prosecutor in a certain case to file a certain appeal under certain circumstances; providing that a certain defendant may seek judicial authorization for a certain forensic genetic genealogical DNA analysis and search by filing a certain affidavit; providing that certain provisions of this Act apply to any forensic genetic genealogical DNA analysis and search conducted under certain circumstances; providing that a court considering an application for a certain forensic genetic genealogical DNA analysis and search from a certain defendant shall issue a certain order under certain circumstances; providing that a certain court order issued under this Act shall contain certain information; requiring the Office of Health Care Quality to establish certain ~~criteria to satisfy certain requirements~~;

licensing programs; requiring the Office of Health Care Quality to develop a certain training program and identify and approve one or more genetic counselors to administer certain training; requiring the Maryland Forensic Laboratory Advisory Committee to establish certain best practices and recommend certain regulations; prohibiting any restrictions from being placed on a certain laboratory or genetic genealogist prior to the establishment of a certain licensing program; requiring that certain laboratories and genetic genealogists apply for a certain license within a certain time; requiring the ~~Department of Public Safety and Correctional Services~~ Governor's Office of Crime Prevention, Youth, and Victim Services to produce a certain annual report; requiring a certain panel with certain members to review a certain annual report and make policy recommendations; defining certain terms; and generally relating to forensic genetic genealogical DNA.

BY adding to

Article – Criminal Procedure

Section 17–101 through 17–105 to be under the new title “Title 17. Forensic Genealogy”

Annotated Code of Maryland

(2018 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Criminal Procedure

TITLE 17. FORENSIC GENEALOGY.

17–101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “CODIS” HAS THE MEANING STATED IN § 2–501 OF THE PUBLIC SAFETY ARTICLE.

(C) “DIRECT-TO-CONSUMER GENETIC GENEALOGY SERVICES” MEANS GENETIC GENEALOGY SERVICES THAT ARE OFFERED BY PRIVATE COMPANIES DIRECTLY TO ~~CONSUMERS~~ MEMBERS OF THE PUBLIC AND LAW ENFORCEMENT AGENCIES RATHER THAN THROUGH CLINICAL HEALTH CARE PROVIDERS, TYPICALLY VIA CUSTOMER ACCESS TO SECURE ONLINE WEBSITES.

(D) “FGG PROFILE” MEANS A GENETIC PROFILE USING SNPs OR OTHER SEQUENCING METHODS GENERATED FROM A FORENSIC OR REFERENCE SAMPLE BY A LABORATORY FOR THE PURPOSE OF CONDUCTING ~~A~~ AN FGGS.

(E) “FORENSIC GENETIC GENEALOGICAL DNA ANALYSIS AND SEARCH” OR “FGGS” MEANS:

(1) ~~THE FORENSIC GENETIC GENEALOGICAL DNA ANALYSIS OF A FORENSIC OR REFERENCE SAMPLE~~ OF BIOLOGICAL MATERIAL USING SNP OR OTHER SEQUENCING TECHNIQUES TO DEVELOP ~~A~~ AN FGG PROFILE;

(2) A SUBSEQUENT SEARCH USING THE FGG PROFILE IN A PUBLICLY AVAILABLE OPEN-DATA PERSONAL GENOMICS DATABASE, OR A DIRECT-TO-CONSUMER GENETIC GENEALOGY SERVICE TO FIND INDIVIDUALS RELATED TO THE SOURCE OF THE FGG PROFILE ~~AND~~; AND

(3) A GENEALOGICAL SEARCH USING PUBLIC RECORDS AND OTHER LAWFUL MEANS TO OBTAIN INFORMATION IN ACCORDANCE WITH ~~THE REGULATIONS UNDER~~ THIS TITLE.

(F) (1) “FORENSIC SAMPLE” MEANS BIOLOGICAL MATERIAL REASONABLY BELIEVED BY INVESTIGATORS TO HAVE BEEN DEPOSITED BY A PUTATIVE PERPETRATOR AND THAT WAS COLLECTED FROM A CRIME SCENE, OR A PERSON, AN ITEM, OR A LOCATION CONNECTED TO THE CRIMINAL EVENT.

(2) “FORENSIC SAMPLE” INCLUDES ~~THE~~ BIOLOGICAL MATERIAL FROM UNIDENTIFIED HUMAN REMAINS OF A SUSPECTED HOMICIDE VICTIM.

(G) “PUBLICLY AVAILABLE OPEN-DATA PERSONAL GENOMICS DATABASE” MEANS A DATABASE IN WHICH PERSONS VOLUNTARILY SUBMIT THEIR GENOMICS DATA OR GENETIC PROFILES, TYPICALLY PROCESSED THROUGH DIRECT-TO-CONSUMER GENETIC GENEALOGY SERVICES, FOR THE PURPOSES OF COMPARISON OR SEARCHING AGAINST THE GENETIC PROFILES OF OTHER INDIVIDUALS TO EVALUATE POTENTIAL FAMILIAL RELATIONSHIPS BETWEEN THE REFERENCE SAMPLE AND OTHER SERVICE USER SAMPLES.

(H) “PUTATIVE PERPETRATOR” MEANS ONE OR MORE CRIMINAL ACTORS REASONABLY BELIEVED BY INVESTIGATORS TO HAVE COMMITTED THE CRIME UNDER INVESTIGATION AND TO BE THE SOURCE OF, OR A CONTRIBUTOR TO, A FORENSIC SAMPLE DEPOSITED DURING, OR INCIDENT TO, DURING OR INCIDENT TO THE COMMISSION OF A CRIME.

(I) “REASONABLE INVESTIGATIVE LEADS” MEANS CREDIBLE, CASE-SPECIFIC FACTS, INFORMATION, OR CIRCUMSTANCES THAT WOULD LEAD A REASONABLY CAUTIOUS INVESTIGATOR TO BELIEVE THAT THE PURSUIT WOULD HAVE A FAIR PROBABILITY OF IDENTIFYING A PUTATIVE PERPETRATOR.

(J) “REFERENCE SAMPLE” MEANS BIOLOGICAL MATERIAL FROM A KNOWN SOURCE.

(K) (1) “SINGLE-NUCLEOTIDE POLYMORPHISMS” OR “SNPS” MEANS DNA SEQUENCE VARIATIONS THAT OCCUR WHEN A SINGLE NUCLEOTIDE (A, T, G, OR C) IN A GENOMIC SEQUENCE ~~IS ALTERED AND VARIES. THESE VARIATIONS~~

(2) “SINGLE-NUCLEOTIDE POLYMORPHISMS” INCLUDES VARIATIONS THAT MAY BE USED TO DISTINGUISH PEOPLE FOR PURPOSES OF BIOLOGICAL RELATIONSHIP TESTING.

(L) “STR DNA PROFILE” MEANS A GENETIC PROFILE THAT EXAMINES GENETIC LOCATIONS ON THE NON-SEX CHROMOSOMES THAT ARE USED FOR THE STATEWIDE DNA DATA BASE SYSTEM OR THE NATIONAL DNA DATA BASE SYSTEM.

(M) “THIRD PARTY” MEANS A PERSON WHO IS NOT A SUSPECT IN THE INVESTIGATION.

17-102.

(A) (1) FGGS MAY NOT BE INITIATED WITHOUT JUDICIAL AUTHORIZATION AND WITHOUT CERTIFYING BEFORE THE COURT THAT THE FORENSIC SAMPLE AND THE CRIMINAL CASE SATISFY THE CRITERIA ~~PROVIDED FOR UNDER~~ SET FORTH IN THIS SECTION.

(2) IF AN FGGS IS CERTIFIED BEFORE A COURT IN ACCORDANCE WITH THIS SECTION, THE COURT SHALL AUTHORIZE THE INITIATION OF THE FGGS.

(B) A SWORN AFFIDAVIT SHALL BE SUBMITTED BY A LAW ENFORCEMENT AGENT WITH APPROVAL OF A PROSECUTOR FROM THE RELEVANT JURISDICTION ASSERTING ~~THE FOLLOWING~~ THAT:

(1) ~~THE CRIME IS A MURDER, FELONY SEXUAL ASSAULT, OR AN ATTEMPT TO COMMIT A VIOLENT CRIME OTHER THAN HOMICIDE OR SEXUAL ASSAULT AND THE CIRCUMSTANCES SURROUNDING THE CRIMINAL ACT OR ACTS PRESENT~~ THE COMMISSION OF, OR THE ATTEMPT TO COMMIT, MURDER, RAPE, A FELONY SEXUAL OFFENSE, OR A CRIMINAL ACT INVOLVING CIRCUMSTANCES PRESENTING A SUBSTANTIAL AND ONGOING THREAT TO PUBLIC SAFETY OR NATIONAL SECURITY;

(2) THE FORENSIC SAMPLE TO BE SUBJECTED TO THE FGGS IS BIOLOGICAL MATERIAL REASONABLY BELIEVED BY INVESTIGATORS TO HAVE BEEN

DEPOSITED BY A PUTATIVE PERPETRATOR AND THAT THE FORENSIC SAMPLE WAS COLLECTED FROM:

(I) A CRIME SCENE;

(II) A PERSON, AN ITEM, OR A LOCATION CONNECTED TO THE CRIMINAL EVENT, OR; OR

(III) THE UNIDENTIFIED HUMAN REMAINS OF A SUSPECTED HOMICIDE VICTIM;

(3) AN STR DNA PROFILE HAS ALREADY BEEN DEVELOPED FROM THE FORENSIC SAMPLE, WAS ENTERED INTO THE STATEWIDE DNA DATA BASE SYSTEM AND THE NATIONAL DNA DATA BASE SYSTEM, AND FAILED TO IDENTIFY A KNOWN INDIVIDUAL; AND

(4) UNLESS THE CRIME BEING INVESTIGATED PRESENTS AN ONGOING THREAT TO PUBLIC SAFETY OR NATIONAL SECURITY CONCERNS, REASONABLE INVESTIGATIVE LEADS HAVE BEEN ~~TRIED~~ PURSUED AND FAILED TO IDENTIFY THE PERPETRATOR.

(C) BIOLOGICAL SAMPLES SUBJECTED TO FGG DNA ANALYSIS, ~~EITHER~~ WHETHER THE FORENSIC SAMPLE OR THIRD PARTY REFERENCE SAMPLES, MAY NOT BE USED TO DETERMINE THE SAMPLE DONOR'S GENETIC PREDISPOSITION FOR DISEASE OR ANY OTHER MEDICAL CONDITION OR PSYCHOLOGICAL TRAIT.

(D) FGGS MAY ONLY BE CONDUCTED USING A DIRECT-TO-CONSUMER OR PUBLICLY AVAILABLE OPEN-DATA PERSONAL GENOMICS DATABASE THAT:

(1) PROVIDES EXPLICIT NOTICE TO ITS SERVICE USERS AND THE PUBLIC THAT LAW ENFORCEMENT MAY USE ITS SERVICE SITES TO INVESTIGATE CRIMES OR TO IDENTIFY UNIDENTIFIED HUMAN REMAINS; AND

(2) SEEKS ACKNOWLEDGEMENT AND CONSENT FROM ITS SERVICE USERS REGARDING THE SUBSTANCE OF THE NOTICE DESCRIBED IN ITEM (1) OF THIS SUBSECTION.

(E) THE LABORATORY CONDUCTING SNP OR OTHER SEQUENCING-BASED TESTING AND THE GENETIC GENEALOGIST PARTICIPATING IN ~~THE~~ FGGS SHALL BE LICENSED BY THE OFFICE OF HEALTH CARE QUALITY IN ACCORDANCE WITH § 17-104 OF THIS SUBTITLE.

(F) (1) (I) ~~INFORMED~~ SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, INFORMED CONSENT IN WRITING SHALL BE OBTAINED FROM ANY

THIRD PARTY WHOSE DNA SAMPLE IS SOUGHT FOR THE PURPOSE OF ASSISTING A FGGS AND ALL STATEMENTS MADE IN OBTAINING THE INFORMED CONSENT SHALL BE DOCUMENTED FROM BEGINNING TO END BY VIDEO OR AUDIO RECORDING.

(II) IF THE USE OF INFORMED CONSENT WILL COMPROMISE THE INVESTIGATION AS DEMONSTRATED UNDER SUBSECTION (G)(1)(II) OF THIS SECTION AND THE THIRD PARTY HAS NOT ALREADY REFUSED TO CONSENT, INVESTIGATORS MAY SEEK AUTHORIZATION TO COVERTLY COLLECT A DNA SAMPLE IN ACCORDANCE WITH SUBSECTION (G) OF THIS SECTION.

(2) THE PERSON OBTAINING THE INFORMED CONSENT SHALL HAVE TRAINING FROM A ~~BIOETHICIST~~ GENETIC COUNSELOR APPROVED BY THE OFFICE OF HEALTH CARE QUALITY UNDER § 17-104 OF THIS SUBTITLE WITHIN 1 YEAR AFTER THE OFFICE OF HEALTH CARE QUALITY HAS IDENTIFIED AND APPROVED A GENETIC COUNSELOR OR WITHIN 1 YEAR AFTER THE PERSON JOINS THE INVESTIGATIVE UNIT CONDUCTING THE INVESTIGATION, WHICHEVER IS LATER.

(3) THE THIRD PARTY SHALL BE INFORMED, AT A MINIMUM, OF THE FOLLOWING BEFORE GIVING INFORMED CONSENT IN WRITING:

(I) THE INVESTIGATION INVOLVES A CRIME SPECIFIED UNDER SUBSECTION (B)(1) OF THIS SECTION;

(II) THE THIRD PARTY IS NOT A SUSPECT IN THE INVESTIGATION AND HAS THE RIGHT TO REFUSE TO CONSENT TO THE COLLECTION OF A DNA SAMPLE;

(III) THE LAW PROHIBITS THE COVERT COLLECTION OF A DNA SAMPLE IF THE THIRD PARTY REFUSES TO CONSENT TO THE COLLECTION OF A DNA SAMPLE;

~~(III)~~ (IV) THE THIRD PARTY HAS BEEN IDENTIFIED THROUGH A SEARCH OF A DIRECT-TO-CONSUMER OR PUBLICLY AVAILABLE OPEN-DATA PERSONAL GENOMICS DATABASE AS A POTENTIAL RELATIVE OF AN INDIVIDUAL BELIEVED TO HAVE COMMITTED A CRIME SPECIFIED UNDER SUBSECTION (B)(1) OF THIS SECTION;

~~(IV)~~ (V) INVESTIGATORS ARE SEEKING THE THIRD PARTY'S DNA TO ASSIST IN IDENTIFYING THE PERSON OR PERSONS WHO COMMITTED THE CRIME, OR TO IDENTIFY THE VICTIM OF A HOMICIDE, AND FOR NO OTHER PURPOSE; AND

~~(v)~~ (vi) 1. THE THIRD PARTY'S DNA SAMPLE AND ANY INFORMATION OBTAINED FROM ITS ANALYSIS WILL BE KEPT CONFIDENTIAL IN ACCORDANCE WITH A COURT ORDER DURING THE COURSE OF THE INVESTIGATION;

2. THE DNA SAMPLE AND ANY DATA OBTAINED FROM IT WILL BE DESTROYED WHEN THE INVESTIGATION OR ANY CRIMINAL CASE ARISING FROM THE INVESTIGATION ENDS; AND

3. IN ACCORDANCE WITH A COURT ORDER, THE THIRD PARTY WILL RECEIVE NOTICE BY CERTIFIED DELIVERY THAT THE DESTRUCTION HAS OCCURRED.

(4) IF THE THIRD PARTY DOES NOT CONSENT TO PROVIDING A REFERENCE SAMPLE FOR ~~A~~ AN FGGS INVESTIGATION, LAW ENFORCEMENT MAY NOT COLLECT A COVERT REFERENCE SAMPLE FROM THE INDIVIDUAL.

(G) (1) IF INVESTIGATORS DETERMINE THAT ONE OR MORE PERSONS ~~MAY BE~~ ARE PUTATIVE PERPETRATORS OF THE CRIME UNDER INVESTIGATION AND IT IS NECESSARY TO COLLECT A COVERT DNA SAMPLE FROM THE ~~PERSON, THE FOLLOWING CRITERIA SHALL BE SATISFIED~~ PUTATIVE PERPETRATOR OR A THIRD PARTY:

~~(1)~~ (i) THE AUTHORIZING COURT SHALL BE NOTIFIED PRIOR TO THE COVERT COLLECTION OF THE PUTATIVE PERPETRATOR'S OR THE THIRD PARTY'S REFERENCE SAMPLE;

~~(2)~~ (ii) ~~A SHOWING SHALL BE MADE TO THE SATISFACTION OF THE COURT TO DEMONSTRATE WHY A COVERT COLLECTION IS NECESSARY~~ SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, FOR A COVERT COLLECTION OF A DNA SAMPLE OF A THIRD PARTY, INVESTIGATIVE AUTHORITIES SHALL PROVIDE AN AFFIDAVIT TO THE COURT DEMONSTRATING THAT SEEKING INFORMED CONSENT FROM A THIRD PARTY CREATES SUBSTANTIAL RISK THAT A PUTATIVE PERPETRATOR WILL FLEE, THAT ESSENTIAL EVIDENCE WILL BE DESTROYED, OR THAT OTHER IMMINENT OR IRREVERSIBLE HARM TO THE INVESTIGATION WILL OCCUR;

~~(3)~~ (iii) INVESTIGATIVE AUTHORITIES SHALL MAKE A PROFFER TO THE COURT EXPLAINING HOW THEY PLAN TO CONDUCT THE COVERT COLLECTION IN A MANNER THAT AVOIDS UNDULY INTRUSIVE SURVEILLANCE OF INDIVIDUALS OR INVASIONS TO THEIR PRIVACY AND FOLLOWS THE LAWS OF THE STATE;

~~(4)~~ (iv) FOR A COVERT COLLECTION OF A DNA SAMPLE OF A PUTATIVE PERPETRATOR, ANY PUTATIVE PERPETRATOR DNA SAMPLE THAT IS

COLLECTED COVERTLY MAY ONLY BE SUBJECTED TO AN STR TEST TO SEE IF IT MATCHES ~~A~~ AN STR DNA PROFILE OBTAINED FROM A FORENSIC SAMPLE;

~~(5)~~ (V) ANY COVERTLY COLLECTED DNA SAMPLE, INCLUDING SNPs AND OTHER GENETIC PROFILES OR RELATED INFORMATION, THAT DOES NOT MATCH THE STR DNA PROFILE OBTAINED FROM A FORENSIC SAMPLE SHALL BE DESTROYED AND MAY NOT BE UPLOADED TO ANY DNA DATABASE, INCLUDING LOCAL, STATE, OR FEDERAL DNA DATABASES WITHIN CODIS, OR ANY DNA DATABASE NOT AUTHORIZED BY LOCAL, STATE, OR FEDERAL STATUTE; AND

~~(6)~~ (VI) ~~(H)~~ 1. THE LAW ENFORCEMENT OFFICER CONDUCTING THE COVERT COLLECTION FROM A PUTATIVE PERPETRATOR SHALL REPORT BACK TO THE AUTHORIZING COURT EVERY 30 DAYS ABOUT THE PROGRESS OF THE COVERT COLLECTION AND SHALL MAKE A PROFFER ABOUT FUTURE PLANS IN ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION ITEM (III) OF THIS PARAGRAPH; AND

~~(H)~~ 2. WITHOUT GOOD CAUSE SHOWN, COVERT COLLECTION EFFORTS TO OBTAIN A SAMPLE FROM A PUTATIVE PERPETRATOR SHALL CEASE AFTER 6 MONTHS.

(2) THE FEAR THAT A THIRD PARTY WILL REFUSE INFORMED CONSENT MAY NOT CONSTITUTE A BASIS FOR SEEKING COVERT COLLECTION OF A DNA SAMPLE FROM THE THIRD PARTY.

~~(H) (1) ON THE COMPLETION OF THE FGGS INVESTIGATION~~

(I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, ON COMPLETION OF AN FGGS INVESTIGATION THAT DOES NOT RESULT IN A PROSECUTION OR RESULTS IN AN ACQUITTAL, OR ON COMPLETION OF A SENTENCE AND POSTCONVICTION LITIGATION ASSOCIATED WITH A CONVICTION OBTAINED THROUGH THE USE OF FGGS, OR ON COMPLETION OF ANY CRIMINAL PROSECUTION THAT MAY ARISE FROM THE 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 PERSONS IN POSSESSION OF DNA SAMPLES GATHERED IN THE FGGS AND ALL GENETIC GENEALOGY INFORMATION DERIVED FROM THE FGGS ANALYSIS OF THOSE SAMPLES ARE DESTROYED TO DESTROY THE SAMPLES AND INFORMATION.

(II) 1. ON THE COMPLETION OF AN FGGS INVESTIGATION, THE GENETIC GENEALOGIST PARTICIPATING IN THE FGGS SHALL TURN OVER TO THE INVESTIGATOR ALL RECORDS AND MATERIALS COLLECTED IN THE COURSE OF THE FGGS, INCLUDING MATERIAL SOURCED FROM PUBLIC RECORDS, FAMILY

TREES CONSTRUCTED, AND ANY OTHER GENETIC OR NONGENETIC DATA COLLECTED IN THE FGGS.

2. THE GENETIC GENEALOGIST MAY NOT KEEP ANY RECORDS OR MATERIALS IN ANY FORM, INCLUDING DIGITAL OR HARD COPY RECORDS.

3. THE GENETIC GENEALOGIST SHALL ENSURE THAT ALL RECORDS DESCRIBED UNDER THIS SUBPARAGRAPH HAVE BEEN DELETED OR REMOVED FROM ANY FGG WEBSITE.

4. THE PROSECUTOR SHALL RETAIN AND DISCLOSE ANY RECORDS OR MATERIALS AS REQUIRED UNDER THE MARYLAND CONSTITUTION OR THE UNITED STATES CONSTITUTION AND THE RULES OF DISCOVERY AS PROVIDED IN MARYLAND RULES 4-262 AND 4-263, BUT MAY NOT OTHERWISE USE OR SHARE THE RECORDS OR MATERIALS.

(2) THE COURT ORDERS SHALL INCLUDE THE REMOVAL AND DESTRUCTION OF ANY FGG PROFILES PREVIOUSLY UPLOADED TO DIRECT-TO-CONSUMER OR PUBLICLY AVAILABLE OPEN-DATA PERSONAL GENOMICS DATABASES.

(3) ALL INDIVIDUALS WHO WERE NOT THE SOURCE OF THE STR DNA PROFILE OBTAINED FROM THE FORENSIC SAMPLE AND WHOSE DNA WAS COLLECTED THROUGH INFORMED CONSENT OR COVERTLY DURING THE COURSE OF THE FGGS SHALL RECEIVE NOTICE OF THAT DESTRUCTION BY CERTIFIED DELIVERY.

(I) (1) A PERSON MAY NOT DISCLOSE GENETIC GENEALOGY DATA, FGG PROFILES, OR DNA SAMPLES NOT AUTHORIZED BY A COURT ORDER IN THE COURSE OF ~~A~~ AN FGGS, OR IN THE COURSE OF ANY CRIMINAL PROCEEDING THAT ARISES FROM ~~A~~ AN FGGS.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$5,000, OR BOTH, ~~IN ACCORDANCE WITH § 2-512 OF THE PUBLIC SAFETY ARTICLE.~~

(J) (1) 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.

(2) A PERSON WHO VIOLATES THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$1,000 OR BOTH, ~~IN ACCORDANCE WITH § 2-512 OF THE PUBLIC SAFETY ARTICLE.~~

(K) A PERSON WHOSE GENETIC GENEALOGY INFORMATION, FGG PROFILE, OR DNA SAMPLE IS WRONGFULLY DISCLOSED, COLLECTED, OR MAINTAINED IN VIOLATION OF THIS SUBTITLE HAS A PRIVATE RIGHT OF ACTION UNDER RELEVANT STATE LAW GUIDING TORT CLAIMS, AND IS ENTITLED TO MINIMUM LIQUIDATED DAMAGES OF \$5,000 FOR A VIOLATION.

(L) A PROSECUTOR IN A CRIMINAL CASE THAT INVOLVES AN FGG INVESTIGATION MAY FILE WITH THE COURT OF SPECIAL APPEALS AN APPEAL FROM AN INTERLOCUTORY ORDER BY A COURT THAT EXCLUDES OR SUPPRESSES EVIDENCE IN THE FORM OF AN STR DNA PROFILE OBTAINED FROM THE FGGs.

17-103.

(A) A DEFENDANT IN A CRIMINAL CASE CHARGED WITH A CRIME OF VIOLENCE UNDER § 14-101 OF THE CRIMINAL LAW ARTICLE OR A DEFENDANT CONVICTED OF A CRIME OF VIOLENCE UNDER § 14-101 OF THE CRIMINAL LAW ARTICLE AND SEEKING POSTCONVICTION DNA TESTING IS ENTITLED TO SEEK JUDICIAL AUTHORIZATION FOR ~~A AN~~ FGGs BY FILING AN AFFIDAVIT WITH A TRIAL COURT OR POSTCONVICTION COURT CERTIFYING THAT ~~THE FORENSIC SAMPLE AND THE CRIMINAL CASE SATISFY THE FOLLOWING CRITERIA:~~

(1) THE FORENSIC SAMPLE TO BE SUBJECTED TO THE FGGs IS BIOLOGICAL MATERIAL REASONABLY BELIEVED TO HAVE BEEN DEPOSITED BY A PUTATIVE PERPETRATOR AND COLLECTED FROM:

(i) A CRIME SCENE;

(ii) A PERSON, AN ITEM, OR A LOCATION CONNECTED TO THE CRIMINAL EVENT, ~~OR;~~ OR

(iii) THE UNIDENTIFIED HUMAN REMAINS OF A SUSPECTED HOMICIDE VICTIM;

(2) ~~A AN~~ STR DNA PROFILE HAS ALREADY BEEN DEVELOPED FROM THE FORENSIC SAMPLE, WAS ENTERED INTO THE STATE DNA DATA BASE SYSTEM AND THE NATIONAL DNA DATA BASE SYSTEM, AND FAILED TO IDENTIFY A KNOWN INDIVIDUAL;

(3) BIOLOGICAL SAMPLES SUBJECTED TO FGG DNA ANALYSIS, ~~EITHER WHETHER~~ THE FORENSIC SAMPLE OR THIRD PARTY REFERENCE SAMPLES, ~~MAY WILL NOT~~ BE USED TO DETERMINE THE SAMPLE DONOR'S GENETIC PREDISPOSITION FOR DISEASE OR ANY OTHER MEDICAL CONDITION OR PSYCHOLOGICAL TRAIT:

(4) ~~A~~ AN FGGS SHALL ONLY BE CONDUCTED USING A DIRECT-TO-CONSUMER OR PUBLICLY AVAILABLE OPEN-DATA PERSONAL GENOMICS DATABASE THAT:

(I) PROVIDES EXPLICIT NOTICE TO ~~THEIR~~ ITS SERVICE USERS AND THE PUBLIC THAT LAW ENFORCEMENT MAY USE ~~THEIR~~ ITS SERVICE SITES TO INVESTIGATE CRIMES OR TO IDENTIFY ~~UNIDENTIFIED~~ HUMAN REMAINS; AND

(II) SEEKS ACKNOWLEDGMENT AND CONSENT FROM ITS SERVICE USERS REGARDING THE SUBSTANCE OF THE NOTICE DESCRIBED IN ITEM (I) OF THIS PARAGRAPH;

(5) THE LABORATORY CONDUCTING SNP OR OTHER SEQUENCING-BASED TESTING, AND THE GENETIC GENEALOGIST PARTICIPATING IN THE FGGS, ~~HAS BEEN~~ ARE LICENSED BY THE OFFICE OF HEALTH CARE QUALITY IN ACCORDANCE WITH § 17-104 OF THIS TITLE; AND

(6) (I) INFORMED CONSENT IN WRITING ~~IS~~ SHALL BE OBTAINED FROM ANY THIRD PARTY WHOSE DNA SAMPLE IS SOUGHT FOR THE PURPOSE OF ASSISTING ~~A~~ AN FGGS AND ALL REQUIREMENTS DESCRIBED IN ~~§ 17-102(F)~~ § 17-102(F)(1) THROUGH (3) OF THIS TITLE ARE SATISFIED; AND

(II) IF THE THIRD PARTY DOES NOT CONSENT TO PROVIDING A REFERENCE SAMPLE FOR ~~A~~ AN FGGS INVESTIGATION, NEITHER DEFENSE NOR POSTCONVICTION COUNSEL, ~~OR~~ NOR ANYONE ACTING ON THEIR BEHALF, MAY COVERTLY COLLECT A REFERENCE SAMPLE FROM THE THIRD PARTY.

(B) (1) IF DEFENSE OR POSTCONVICTION COUNSEL DETERMINES THAT ONE OR MORE PERSONS ~~MAY BE~~ ARE PUTATIVE PERPETRATORS OF THE CRIME UNDER INVESTIGATION AND IT IS NECESSARY TO COLLECT A COVERT DNA SAMPLE FROM THE ~~PERSON~~ PUTATIVE PERPETRATOR OR A THIRD PARTY;

~~(1)~~ (I) THE AUTHORIZING COURT SHALL BE NOTIFIED PRIOR TO THE COVERT COLLECTION OF THE PUTATIVE PERPETRATOR'S OR THE THIRD PARTY'S REFERENCE SAMPLE;

~~(2)~~ (II) ~~A SHOWING SHALL BE MADE TO THE SATISFACTION OF THE COURT TO DEMONSTRATE WHY A COVERT COLLECTION IS NECESSARY~~ SUBJECT TO

PARAGRAPH (2) OF THIS SUBSECTION, FOR A COVERT COLLECTION OF A DNA SAMPLE OF A THIRD PARTY, INVESTIGATIVE AUTHORITIES SHALL PROVIDE AN AFFIDAVIT TO THE COURT DEMONSTRATING THAT SEEKING INFORMED CONSENT FROM A THIRD PARTY CREATES SUBSTANTIAL RISK THAT A PUTATIVE PERPETRATOR WILL FLEE, THAT ESSENTIAL EVIDENCE WILL BE DESTROYED, OR THAT OTHER IMMINENT OR IRREVERSIBLE HARM TO THE INVESTIGATION WILL OCCUR;

~~(3)~~ (III) COUNSEL SHALL MAKE A PROFFER TO THE COURT EXPLAINING HOW COUNSEL PLANS TO CONDUCT THE COVERT COLLECTION IN A MANNER THAT AVOIDS UNDULY INTRUSIVE SURVEILLANCE OF INDIVIDUALS OR INVASIONS TO THEIR PRIVACY AND FOLLOWS THE LAWS OF THE STATE;

~~(4)~~ (IV) FOR A COVERT COLLECTION OF A DNA SAMPLE OF A PUTATIVE PERPETRATOR, ANY PUTATIVE PERPETRATOR DNA SAMPLE THAT IS COLLECTED COVERTLY MAY ONLY BE SUBJECTED TO AN STR TEST TO SEE IF IT MATCHES AN STR DNA PROFILE OBTAINED FROM A FORENSIC SAMPLE;

~~(5)~~ (V) ANY COVERTLY COLLECTED DNA SAMPLE, INCLUDING SNPs AND OTHER GENETIC PROFILES OR RELATED INFORMATION, THAT DOES NOT MATCH THE STR DNA PROFILE OBTAINED FROM A FORENSIC SAMPLE SHALL BE DESTROYED AND MAY NOT BE UPLOADED TO ANY DNA DATABASE, INCLUDING LOCAL, STATE, OR FEDERAL DNA DATABASES WITHIN CODIS, OR ANY DNA DATABASE NOT AUTHORIZED BY LOCAL, STATE, OR FEDERAL STATUTE; AND

~~(6)~~ (VI) 1. DEFENSE OR POSTCONVICTION COUNSEL CONDUCTING THE COVERT COLLECTION ~~FROM A PUTATIVE PERPETRATOR~~ SHALL REPORT BACK TO THE AUTHORIZING COURT EVERY 30 DAYS ABOUT THE PROGRESS OF THE COVERT COLLECTION AND SHALL MAKE A PROFFER ABOUT FUTURE PLANS IN ACCORDANCE WITH ~~§ 17-102(c)(3) OF THIS TITLE~~ ITEM (III) OF THIS PARAGRAPH; AND

~~(7)~~ 2. WITHOUT GOOD CAUSE SHOWN, COVERT COLLECTION EFFORTS TO OBTAIN A SAMPLE ~~FROM A PUTATIVE PERPETRATOR~~ SHALL CEASE AFTER 6 MONTHS.

(2) THE FEAR THAT A THIRD PARTY WILL REFUSE INFORMED CONSENT MAY NOT CONSTITUTE A BASIS FOR SEEKING COVERT COLLECTION OF A DNA SAMPLE FROM THE THIRD PARTY.

(3) ANY INDIVIDUAL ACTING UNDER COURT SUPERVISION IN ACCORDANCE WITH THIS SUBSECTION SHALL BE TREATED AS AN AGENT OF THE

STATE FOR PURPOSES OF ENFORCING STATE AND FEDERAL CONSTITUTIONAL PROTECTIONS.

(C) (1) THE STATE SHALL BE NOTIFIED THAT AN APPLICATION FOR JUDICIAL AUTHORIZATION TO CONDUCT ~~A~~ AN FGGS HAS BEEN MADE BY DEFENSE OR POSTCONVICTION COUNSEL AND A COPY OF THE APPLICATION SHALL BE SERVED ON THE STATE AT THE TIME THE APPLICATION IS FILED UNLESS THE APPLICANT IS ALSO REQUESTING PERMISSION FROM THE COURT TO REDACT CERTAIN PORTIONS OF THE APPLICATION.

(2) ONCE A COURT HAS RULED ON THE MOTION FOR REDACTIONS, A COPY OF THE APPLICATION SHALL BE SERVED ON THE STATE WITHIN 5 DAYS OF RECEIPT OF THE COURT ORDER.

(3) THE AUTHORIZING COURT SHALL ENSURE THAT THE STATE IS INFORMED OF THE PROGRESS OF THE FGGS UNLESS DEFENSE COUNSEL OR POSTCONVICTION COUNSEL CAN SHOW GOOD CAUSE AS TO WHY THAT INFORMATION MAY NOT BE DISCLOSED.

(D) THE PROVISIONS OF § 17-102(H) THROUGH (K) OF THIS TITLE APPLY TO ANY FGGS CONDUCTED BY DEFENSE OR POSTCONVICTION COUNSEL.

(E) A COURT CONSIDERING AN APPLICATION FOR ~~A~~ AN FGGS FROM A CRIMINAL DEFENDANT SHALL ISSUE THE ORDER ON A SHOWING THAT TESTING HAS THE SCIENTIFIC POTENTIAL TO PRODUCE EXCULPATORY OR MITIGATING EVIDENCE AND THE DEFENDANT HAS COMPLIED WITH ALL OTHER REQUIREMENTS OF THIS SECTION.

(F) A COURT ORDER ISSUED IN ACCORDANCE WITH SUBSECTION ~~(K)~~ (E) OF THIS SECTION SHALL INCORPORATE ALL CERTIFICATIONS 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.

(A) THE OFFICE OF HEALTH CARE QUALITY SHALL ESTABLISH ~~THE CRITERIA THAT MUST BE MET BY DIRECT TO CONSUMER GENETIC GENEALOGY SERVICES.~~

~~(B) A CERTIFICATION PROGRAM SHALL BE ESTABLISHED BY THE OFFICE OF HEALTH CARE QUALITY TO:~~

~~(1) LICENSE A LICENSING PROGRAM FOR LABORATORIES MUST BEGIN PERFORMING SNP OR OTHER SEQUENCING BASED TESTING ON EVIDENCE IN SUPPORT OF FGGS ON OR BEFORE OCTOBER 1, 2022; AND~~

~~(2) LICENSE A LICENSING PROGRAM FOR INDIVIDUALS MUST BEGIN PERFORMING GENETIC GENEALOGY ON OR BEFORE OCTOBER 1, 2024.~~

(B) THE OFFICE OF HEALTH CARE QUALITY SHALL:

(1) DEVELOP A TRAINING PROGRAM ON OBTAINING INFORMED CONSENT UNDER §§ 17-102 AND 17-103 OF THIS SUBTITLE; AND

(2) IDENTIFY AND APPROVE ONE OR MORE GENETIC COUNSELORS TO ADMINISTER THE TRAINING.

(C) THE MARYLAND FORENSIC LABORATORY ADVISORY COMMITTEE SHALL:

(1) ESTABLISH BEST PRACTICES FOR LABORATORIES PERFORMING SNP OR OTHER SEQUENCING BASED METHODS; AND

(2) RECOMMEND REGULATIONS THAT ESTABLISH MINIMUM QUALIFICATIONS FOR INDIVIDUALS PERFORMING GENETIC GENEALOGY.

~~(D) IF A LABORATORY IS APPROVED FOR A LICENSE BY THE OFFICE OF HEALTH CARE QUALITY PRIOR TO THE REGULATIONS ESTABLISHED UNDER THIS SECTION BEING ADOPTED, THE LABORATORY SHALL REAPPLY FOR A LICENSE~~

(1) PROHIBITIONS MAY NOT BE PLACED ON ANY LABORATORY CONDUCTING SNP OR OTHER SEQUENCING-BASED TESTING OR ON GENETIC GENEALOGISTS PARTICIPATING IN AN FGGS BEFORE THE RELEVANT LICENSING PROGRAM IS ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION.

(2) WITHIN 1 YEAR AFTER THE OFFICE OF HEALTH CARE QUALITY ESTABLISHES THE RELEVANT LICENSING PROGRAM UNDER SUBSECTION (A) OF THIS SECTION, LABORATORIES CONDUCTING SNP OR OTHER SEQUENCING-BASED TESTING AND GENETIC GENEALOGISTS PARTICIPATING IN AN FGGS SHALL APPLY FOR THE LICENSE REQUIRED.

(E) NEITHER THE LABORATORY CONDUCTING SNP OR OTHER SEQUENCING BASED TESTING, NOR A LAW ENFORCEMENT OFFICIAL, MAY DISCLOSE GENETIC GENEALOGY INFORMATION WITHOUT AUTHORIZATION.

17-105.

~~(A) IN ACCORDANCE WITH § 2-513 OF THE COURTS ARTICLE, THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES ON OR BEFORE JUNE 1 ANNUALLY, THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES SHALL SUBMIT A PUBLICLY AVAILABLE ANNUAL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY, THAT SHALL INCLUDE, FOR THE PRECEDING CALENDAR YEAR:~~

(1) ~~THE NUMBER OF REQUESTS FOR FGC FGGS AND THE RELATED DOCUMENTATION MADE, BROKEN DOWN BY NUMBER OF REQUESTS MADE BY PROSECUTORS, PRE-TRIAL DEFENDANTS, AND POSTCONVICTION DEFENDANTS;~~

(2) THE NUMBER OF TIMES ~~FGC~~ FGGS WAS GRANTED AND THE BASIS OF EACH GRANT OR DENIAL;

(3) THE NUMBER OF PUTATIVE PERPETRATORS IDENTIFIED THROUGH ~~FGC~~ FGGS;

(4) THE NUMBER OF COVERT COLLECTIONS OF REFERENCE SAMPLES FROM PUTATIVE PERPETRATORS, A DESCRIPTION OF THE METHODS USED DURING THE COVERT COLLECTION, THE TIME PERIOD NEEDED TO PERFORM THE COVERT COLLECTION, ANY COMPLAINTS FROM INDIVIDUALS SUBJECT TO SURVEILLANCE DURING THE COVERT COLLECTIONS, AND ANY COMPLAINTS OR SUGGESTIONS FROM JUDGES SUPERVISING THE COVERT COLLECTIONS;

(5) AN EVALUATION OF THE "PURSUED REASONABLE INVESTIGATIVE LEADS" REQUIREMENT IN ACCORDANCE WITH § 17-102(B)(4) OF THIS TITLE, INCLUDING SCIENTIFIC, PUBLIC, AND NONFORENSIC;

(6) THE COSTS OF THE FGGS PROCEDURES;

(7) THE RACE AND AGE OF THOSE IDENTIFIED AS PUTATIVE PERPETRATORS;

(8) THE NUMBER OF TIMES A THIRD PARTY REFERENCE SAMPLE WAS REQUESTED AND COLLECTED, AND THE RACE AND AGE OF THE THIRD PARTIES;

(9) THE NUMBER OF REQUESTS MADE BY DEFENDANTS AND POSTCONVICTION LAWYERS; AND

(10) ~~WHETHER THE SEARCHES ULTIMATELY RESULTED IN ARRESTS OR CONVICTIONS OF PEOPLE IDENTIFIED THROUGH THE GENETIC GENEALOGY SEARCH~~

THE OUTCOME OF EACH AUTHORIZED SEARCH, INCLUDING WHETHER THE SEARCH RESULTED IN AN ARREST OR A CONVICTION FOR THE TARGET OFFENSE.

(B) A PANEL COMPRISING JUDGES, PROSECUTORS, DEFENSE ATTORNEYS, PUBLIC DEFENDERS, LAW ENFORCEMENT OFFICIALS, CRIME LABORATORY DIRECTORS, BIOETHICISTS, RACIAL JUSTICE EXPERTS, CRIMINAL JUSTICE RESEARCHERS, CIVIL AND PRIVACY RIGHTS ORGANIZATIONS, AND ORGANIZATIONS REPRESENTING FAMILIES IMPACTED BY THE CRIMINAL JUSTICE SYSTEM, SHALL BE CONVENED TO REVIEW THE ANNUAL REPORT EACH YEAR AND MAKE POLICY RECOMMENDATIONS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.

Enacted under Article II, § 17(c) of the Maryland Constitution, May 30, 2021.