

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 549

(Senator Sydnor)

Judicial Proceedings

Judiciary

**Criminal Procedure - Forensic Genetic Genealogical DNA Analysis and Search -
Applicability for Deceased and Missing Individuals**

This bill exempts from statutory provisions relating to the use of forensic genetic genealogical DNA analysis and search (FGGS), FGGS conducted solely for the purpose of identifying an individual who is (1) deceased or (2) the subject of a missing person report filed with a law enforcement agency and whose whereabouts are unknown.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances.

Local Effect: The bill is not anticipated to materially affect local government finances.

Small Business Effect: None.

Analysis

Current Law: FGGS means the forensic genetic genealogical DNA analysis of biological material using single-nucleotide polymorphisms or other sequencing techniques to develop a forensic genetic genealogical (FGG) profile; 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 a genealogical search using public records and other lawful means to obtain information in accordance with statutory requirements.

Generally, FGGS may not be initiated without judicial authorization and without certifying before the court that the forensic sample and the criminal case meet specified criteria. If an

FGGS is certified in accordance with specified criteria, the court must authorize the initiation of the FGGS.

As part of this process, a law enforcement agent must submit a sworn affidavit, with prosecutorial approval, asserting specified facts regarding the crime being investigated, testing that has already been conducted on the forensic sample, and the progress of the investigation. FGGS is restricted to direct-to-consumer or publicly available open data personal genomics databases meeting specified notice requirements. There are informed consent requirements that must be met before law enforcement can obtain a DNA sample from a third party to assist in FGGS. Law enforcement may not collect a covert reference sample for an FGGS investigation from any third-party individual who has refused consent. However, investigators may seek authorization to obtain a covert sample from a third party if obtaining informed consent from the third party presents specified risks to the investigation and the third party has not already refused informed consent. The fear that a third party will refuse informed consent may not constitute the basis for seeking a covert sample. The person obtaining the informed consent must have training from a genetic counselor approved by the Office of Health Care Quality, as specified.

Law enforcement seeking to collect a covert DNA sample from a potential putative perpetrator or a third party must meet specified criteria, including (1) required notification to the authorizing court prior to collection of the covert sample; (2) with respect to a covert sample from a third party, an affidavit submitted by investigative authorities to the court that seeking informed consent from a third party presents specified risks to the investigation; and (3) a proffer by investigative authorities to the court of their plan to collect the sample without unduly intrusive surveillance and invasions of privacy. Law enforcement must also follow requirements regarding testing, use, and destruction of the sample. The law enforcement officer conducting the covert collection must report back to the court every 30 days about the progress of the covert collection, as specified. Absent a showing of good cause, efforts to collect a covert sample must cease after six months.

DNA samples and genetic genealogy information must be destroyed in compliance with specified requirements. A genetic genealogist participating in an FGGS must turn over to investigators all records and materials collected in the course of the FGGS on the completion of an FGGS investigation and a genetic genealogist may not keep any records or materials. In addition, a genetic genealogist must ensure that specified records have been deleted or removed from any FGG website. Further, the prosecutor must retain and disclose any records or materials as required under the Maryland Constitution, U.S. Constitution, and the rules of discovery under Maryland Rules 4-262 and 4-263, but the prosecutor may not otherwise use or share the records or materials.

A person who discloses genealogical or DNA information without authorization of a court order is guilty of a misdemeanor, punishable by imprisonment for up to five years and/or

a \$5,000 maximum fine. A person who willfully fails to destroy DNA and genetic information as required is guilty of a misdemeanor, punishable by imprisonment for up to one year and/or a \$1,000 maximum fine. A person whose genetic genealogy information, FGG profile, or DNA sample is wrongfully disclosed, collected, or maintained in violation of statutory provisions 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.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 476 (Delegate Bartlett, *et al.*) - Judiciary.

Information Source(s): Baltimore, Carroll, Harford, Queen Anne's, and St. Mary's counties; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of State Police; Department of Legislative Services

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