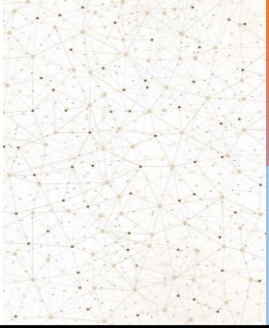


IGG Regulation
Through State Law:
Good Intentions,
Mixed Results

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Outline

- Direct vs indirect regulation of IGG
- Three categories of privacy protection in state laws
 - Maryland Law
 - Utah Law
 - Montana Law
 - Florida Law
- What is left unregulated
- Laws regulating genetic genealogy databases and users

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State Laws Directly Regulating IGG

- Montana (2021)
- Maryland (2021)
- Utah (2023)
- Florida (2023)

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State Law Indirectly Regulating IGG

- California
- Minnesota
- Texas
- Arizona
- Wyoming
- Virginia
- And more

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Three Purposes

- Protecting privacy rights of criminal suspects
- Protecting privacy rights of relatives of criminal suspects and unidentified human remains
- Protecting genetic genealogy database consumers generally

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Montana Code Ann Title 44, Chpt 5, Part 1

- Primary purposes
 - Protect privacy rights of relatives of criminal suspects and unidentified human remains

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MT – Key Privacy Relevant Provisions

- Protection of relatives
 - Warrant required for “consumer DNA database searches” “unless the consumer whose information is sought previously waived . . . privacy in the information”
 - Reference testing (“lineage testing”) included

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MT – Issues

- Not clear what it means to waive “privacy right in the [DNA search results] information”

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Utah Code Title 53, Chtp 10, Pt 4

- Primary purposes
 - Protect privacy rights of criminal suspects
 - Protect privacy rights of relatives of criminal suspects and unidentified human remains

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UT – Key Provisions

- Protection of criminal suspects
 - Limitation on crimes (violent felony or identity of missing or unknown individual)
 - Confirmatory DNA match required for arrest
 - Prosecutor must retain information from genetic genealogy investigation for prosecution and "subsequent judicial proceedings"
- Protection of relatives
 - Voluntary consent or prosecutor consent for reference testers (warrant "if necessary")
 - Can only use genetic genealogy databases where users have opted-in

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UT – Issues

- Not clear when "subsequent proceedings" end
- Not clear when warrant is necessary for surreptitious collection of reference tester DNA

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Florida SB 1402

- Primary purposes
 - Protect privacy rights of relatives of criminal suspects and unidentified human remains

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FL – Key Privacy Relevant provisions

- Protection of relatives
 - Investigative genetic genealogy information and materials made confidential and exempt from Florida's sweeping public records requirements

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FL – Issues

- IGG information still turned over to defense, including names of relatives

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Maryland Criminal Procedure Code Title 17

- Primary purposes
 - Protect privacy rights of criminal suspects
 - Protect privacy rights of relatives of criminal suspects and unidentified human remains

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MD – Key Privacy Relevant Provisions

- Protection of criminal suspects
 - Warrant required to initiate (FGGS)
 - Limitation of FGGS to specific crimes (murder, rape, felony sexual assault, and attempts, and ongoing threats to public safety or national security)
 - Ban on use of DNA to determine risk of disease or psychological traits
 - Only STR profile can be developed and compared from putative perp DNA
 - All DNA and IGG materials must be destroyed after: no prosecution, acquittal, completion of sentence and all postconviction litigation, "or on completion of any prosecution that may arise through the use of FGGS"
 - Prosecutor must retain and disclose all records or materials as required by MD and U.S. constitutions and MD rules of discovery

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MD – Key Privacy Relevant Provisions

- Protection of relatives
 - Can only use genetic genealogy databases where users have opted-in
 - Reference testing with consent or with judicial approval
 - Reference tests can only be used with opt-ins
 - Reference tests and all associated material must be kept confidential and destroyed at end of investigation
 - Licensing of genetic genealogy practitioners who do participate in FGGS
 - Genetic genealogist must turn over all "records and materials . . . in any form" to prosecutor "on completion of FGGS investigation"
 - Genetic genealogist must ensure removal of "all records . . . from any FGG website"
 - Criminal and civil penalties for noncompliance with turning over records, destroying records, and sharing of information

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MD – Issues

- Not clear when FGGS ends, yet criminal and civil penalties for failure to turn over or destroy "all records and materials"
- "All records and materials" in IGG covers a vast swath of material including mostly public records,
- Impossible not to share reference testers' information
- Impossible to remove all records from "FGG websites"

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What is Left Out

- Protections for release of names of relatives of criminal suspect or human remains
 - Florida prohibits public release only, but not release to criminal defendant
- Requiring IGG practitioners to avoid leaving "breadcrumbs" (e.g., private and unsearchable Ancestry trees, member supplied materials; LinkedIn visits; etc.)
- Meaningful protection of inadvertent release of names of relatives
 - Without redacted reports, all the names of relatives are provided to enumerable people involved in the investigation

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Laws Indirectly Regulating IGG

- Primary purpose
 - Protect genetic genealogy consumers' privacy
- Some require express consent from all all individuals for use, collection, or disclosure of genetic data
- Some require express consent for "each disclosure" of their genetic data to third parties
- Most have no exception for law enforcement cases

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