

PA 11-144

HB6538

House	3749-3754	6
Judiciary	1862, 1865-1866, 1907-1909, 1975-1978, 2119-2120, 2266, 2268-2273	19
<u>Senate</u>	<u>6556, 6573-6578</u>	<u>7</u>
		32

H – 1102

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2011**

**VOL.54
PART 11
3438 – 3771**

Total Number voting	144
Necessary for adoption	73
Those voting Yea	144
Those voting Nay	0
Those absent and not voting	7

DEPUTY SPEAKER ARESIMOWICZ:

The bill as amended passes.

Will the Clerk please call Calendar 370.

THE CLERK:

On page 19, Calendar 370, Substitute for House
Bill Number 6538, AN ACT CONCERNING THE COLLECTION OF
BLOOD AND OTHER BIOLOGICAL SAMPLES FOR DNA ANALYSIS,
favorable report of the Committee on Judiciary.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Fox of the 146th, you have the
floor, sir.

REP. G. FOX (146th):

Thank you, Mr. Speaker.

I move for the acceptance of the joint
committee's favorable report and passage of the bill.

DEPUTY SPEAKER ARESIMOWICZ:

The question is on acceptance of the joint
committee's favorable report and the passing of the
bill.

Will you remark, sir?

REP. G. FOX (146th):

Thank you, Mr. Speaker.

This proposal came to the Judiciary Committee from the chief state's attorney. I should point out that what it does is it simply addresses how we deal with our current existing law regarding collection of DNA samples from our DNA data -- for our DNA database.

The way the law currently works is that when an individual is convicted of a felony they are required to provide a DNA analysis for the DNA databank. This does not change anything along those lines. I know there's other bills that are out there, but this bill deals specifically with those who are convicted of felonies.

And what the proposal does is it enables the law enforcement, when an individual either fails or refuses to give a DNA sample, it allows them to use reasonable force to acquire that sample. And what is happening and the way the testimony came before the committee is that in many situations -- or not -- but there are certain situations where it might be beneficial for someone not to give a DNA sample simply because that they may have committed other crimes and

they would be better off not giving a sample and accepting that penalty, than giving the DNA sample and perhaps solving other crimes that are currently unsolved.

Mr. Speaker, the Clerk has an amendment, LCO Number 6511. I would ask that it be called and I be permitted to summarize.

DEPUTY SPEAKER ARESIMOWICZ:

Will the Clerk please call LCO 6511, which will be designated House Amendment Schedule "A."

THE CLERK:

LCO Number 6511, House "A," offered by
Representatives Fox, Hetherington, Aresimowicz and
Olson.

DEPUTY SPEAKER ARESIMOWICZ:

The Representative seeks leave of the Chamber to summarize the amendment. Is there objection to summarization? Is there objection to summarization? Hearing none, Representative Fox, please proceed with summarization.

REP. G. FOX (146th):

Thank you, Mr. Speaker.

There is certain clean-up language with respect to this amendment. It also addresses a section of the

bill that deals with those situations where a crime is committed, DNA is collected, an officer has reasonable and articulable suspicion as to an individual who may have committed the crime.

And what it does is it authorizes the law enforcement to make that request of the DNA databank to determine whether or not there has in fact -- or there is, in fact, a match.

Mr. Speaker, I would urge adoption of the amendment.

DEPUTY SPEAKER ARESIMOWICZ:

The question before the Chamber is adoption of House Amendment Schedule "A?"

Would you remark on the amendment?

Representative Hetherington of the 125th, you have the floor, sir.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker.

This amendment further carries out the purpose of the underlying bill. It cleans up a number of questions and I think will provide a very useful tool in the criminal justice system. So I urge adoption.

Thank you, Mr. Speaker.

DEPUTY SPEAKER ARESIMOWICZ:

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Thank you very much, sir.

Will you remark further? Will you remark further on the amendment before us? If not I will try your minds. All those in favor of the amendment please signify by saying, aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER ARESIMOWICZ:

Those opposed, nay.

The amendment is adopted.

Would you remark further on the bill as amended? Would you remark further on the bill as amended? If not, will staff and guests please come to the well of the House. Will the members please take their seat and the machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber, please.

DEPUTY SPEAKER ARESIMOWICZ:

Have all the members voted? Have all the members voted? If all the members have voted please check the board to make sure your vote has been properly cast. If all the members have voted the machine will be

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locked and the Clerk will take a tally. The Clerk will please announce the tally.

THE CLERK:

House Bill 6538 as amended by House "A."

Total Number voting 144

Necessary for adoption 73

Those voting Yea 144

Those voting Nay 0

Those absent and not voting 7

DEPUTY SPEAKER ARESIMOWICZ:

The bill as amended is passed.

Will the Clerk please call Calendar 420.

THE CLERK:

On page 22, Calendar 420, Substitute for House Bill Number 6440, AN ACT CONCERNING APPLICATIONS FOR GUARDIANSHIP OF AN ADULT WITH INTELLECTUAL DISABILITY AND STATUTORY CHANGES RELATED TO INTELLECTUAL DISABILITY, favorable report of the Committee on Judiciary.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Holder-Winfield, you have the floor, sir.

REP. HOLDER-WINFIELD (94th):

Yes. Thank you, Mr. Chair.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 6
1626 – 1949**

2011

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Secretary and I respectfully submit our approval and support for this bill. Thank you and I'd be happy to answer any questions you might have.

REP. FOX: Thank you, Attorney Klaskin. Are there any questions from members of the committee? Senator Meyer.

SENATOR MEYER: Thank you, Mr. Chairman. Just a comment. Seth, you're a very distinguished constituent of mine and I compliment you on the great job you've done having the business section of the Secretary of State's office and just wish you a lot of continued success. And thanks for your testimony here. I think most of the members of the Judiciary Committee are going to agree with you.

SETH KLASKIN: Thank you.

REP. FOX: Any other questions from members of the committee?

Thank you very much.

SETH KLASKIN: Thank you.

REP. FOX: Next we have Chief Anthony Salvatore. Good afternoon.

JAMES STRILLACCI: Good afternoon, Representative Fox, members of the committee. I'm Jim Strillacci, police chief from West Hartford, Tony Salvatore Chief from Cromwell, we represent the Connecticut Police Chiefs Association. We're here to speak on several bills today.

First, the Connecticut Chiefs support House Bill 6368. This was our suggestion. This is about returning stolen property. Under current

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HB16344
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and find studies which contradict the findings that have been cited, which claim sequential is superior to simultaneous. And most of those have been lab studies rather than field studies, using real crimes and real witnesses. Illinois did a field study and actually found an overall higher rate of known false identifications with the simultaneous, which is not a good result.

I appended several wings to my written testimony which you can look at at your leisure. But I think to sum it up a fairly recent National Institute of Justice publication says that so far research that compares simultaneous and sequential eyewitness identification has not been conclusive.

So like the judge, I would be happy to participate in any study which identifies the best practice, including the best form of lineup. But right now the science is telling us that there are many variables that affect the outcomes of lineups between sequential and between simultaneous. Some of them have to do with the presentation, how many fillers do you use, how many to back load, how much contrast there is among them. Some of them have to do with things outside of the administration of the test. The witness acuity, the length of viewing, the interference with the witness, et cetera. Stress level of the witness. So some of those are variables which have not been isolated in these laboratory studies. And good science should control for all variables.

Since the scientists don't agree I don't think we should make as a matter of law, a choice of one method over another.

We have two bills on the agenda about DNA, 6489 and 6538. The first would allow DNA testing of

persons arrested for serious felonies. Much like we take fingerprints and we take photographs, this is an additional method of identification. It would add work for the police and for the laboratory. I'd certainly be willing for serious felonies to front the cost which is relatively minimum. The lab, I can't speak for them, what their work load would be.

Importantly it would allow post arrest identification of an offender for crimes he either committed before he was arrested or crimes he may commit while released on bail. It's actually axiomatic in law enforcement, you almost never arrest anybody the first time out. You may catch him once, there's something he got away with. And when he's out on bail, he doesn't necessarily go back to the straight and narrow. He goes back to his old ways and he commits other crimes. We've certainly had first hand examples in our community where you arrest the guy for a rape and you start clearing burglaries because you've got his DNA and those are beneficial to society.

6538 would, in response to Senator Kissel's question, there's a proposal in there that would have a way to collect DNA from somebody who's required to submit but refuses. And you know, we think that's worth looking at. As always, ID by DNA assures both to convict the guilty and acquit the innocent. And certainly with all the questions about photo IDs by witnesses, you want something better than a photo. You want their DNA, which is very certain evidence.

ANTHONY SALVATORE: Representative, Chief Salvatore, I'd just like to add in addition to what Chief Strillacci says our position is, that it's time -- if you're going to look at videotaping

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raped, this is a good thing. Thank you so much for your efforts.

JAYANN SEPICH: Thank you, Representative. Thank you. Thank you to the committee for your time and attention. I appreciate it.

REP. FOX: Thank you and like I said earlier, thank you for taking the time to be here today. We all appreciate it.

Next is Dr. Michael Norko.

MICHAEL NORKO: Good afternoon, Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. I'm Dr. Michael Norko, director of Forensic Services, the Department of Mental Health and Addiction Services. I'm here today to speak in support of House Bill 6538, AN ACT CONCERNING THE COLLECTION OF BLOOD AND OTHER BIOLOGICAL SAMPLES FOR DNA ANALYSIS.

The reason that we're supporting this bill is that it affects the work that we do with insanity acquittees. By changing the language that exists in the current statute from our responsibility to acquire a sample from an acquittee prior to their release from custody to the time during which we do the initial evaluation, it takes us out of law enforcement power struggles over people for who we have a responsibility to provide health care as well as risk management.

It's certainly part of our mandate to, in Forensic Services, to care both about the treating of the individual and public safety. But it's not our mandate to engage in law enforcement activities. What we like about this bill, the way the language is restructured is that it asks that the person who's acquitted

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by reason of insanity give their sample during the first 60 days that they come for the evaluation period prior to the point at which the court determines whether they will be committed to the psychiatric review board and prior to the point at which the court determines at what level of security they will initially be held.

This allows us to do what we do with our clients without worrying about the custody.

We don't, unlike the Department of Corrections, we don't have a sentence day upon which the person is going to simply released. We work on the basis of seeing how well the person is doing and give them graduated privilege levels and graduated passes and seeing how they do at each of those and advancing them accordingly, paying attention to both the clinical matters and to the risk management matters.

I do have to say there is one thing in the written testimony that we provided you that actually is an error. We've asked for in the written testimony the language to be added to this bill for subsection C of 54102G. Actually, the bill already covers this but it does it in a different way. So section 4 of this bill actually accomplishes what we'd asked for at the bottom of the first page of our testimony. So you can disregard that part of it.

What we anticipate if this language was adopted is that the court would then be able to consider -- because what would happen is that we would tell the person that the law requires them to give a sample. But if they refused to do so, this amendment would require that we make that report to the court as part of the court report that we submit. So the court

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would know that the person has or hasn't given the DNA sample. And then the court would be able to use that information in deciding what level of security the person would be placed at assuming that they're committed to the PSRB.

Similarly, the PSRB in subsequent hearings would be able to ask these questions. All of the PSRB hearings about patient movements out of maximum security to lesser security are all adversarial hearings at which the State's Attorney is represented, the public defender is represented and all of the board members can ask questions. So they would be able to take that into consideration as well in deciding whether to give a particular acquittees a lesser degree of security than their current placement.

So that's the essence of what we're asking for. If there are any questions I'd be happy to answer them.

REP. FOX: Thank you for your testimony. Are there any questions or comments from members of the committee? Seeing none, thank you very much.

Next is Senator Martin Looney.

SENATOR LOONEY: Good afternoon, Senator Coleman and Representative Fox and members of the Judiciary committee. My name is Martin Looney. I am the state Senator from the 11th District and the Senate Majority leader.

And I'm here today to testify in support of two bills. First, Senate Bill 954, AN ACT CONCERNING THE ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS and secondly, House Bill 6344, AN ACT CONCERNING EYEWITNESS IDENTIFICATION.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 7
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I was waiting. And always had before and did today, too.

REP. FOX: You're welcome to stay after if you'd like.

CHIEF STATE'S ATTORNEY KEVIN KANE: My name is Kevin Kane -- thank you very much. With me is Mike Gailor and Patty Johannes. Mike Gailor is an executive assistant State's Attorney in my office. Patty Johannes is with the Criminal -- Forensic Crime Lab. She's a forensic science examiner here to talk about DNA and answer any questions you may have with DNA.

I postponed her testimony on the DNA in order to let other people talk and we did and thank you for calling us back. I think Mike Gailor can start out with explaining -- the DNA -- there's several different bills relating to DNA, not just the collecting DNA on arrest. And we'd like to address those. We certainly don't want those to be forgotten.

Three years ago we pushed very hard for DNA at the time of arrest and in listening to this and decided not to last year and the year before that partly because of the forensic -- the burdens on the forensic lab that existed at that time. Both backlogs were terrific then and Ms. Sepich made me feel very guilty and that I hadn't been doing my job by not pushing before. I think she had to have -- she was terrific, she was a very good speaker and had compelling reasons and made me feel like I let the public down by not pushing hard three years ago and again last year, but here we are.

MICHAEL GAILOR: Good afternoon. I'm going to try to address each of the bills in sequence and I'll try to be relatively brief.

HB 538
SB 1092

I'll start with 6538 which is the act concerning the collection of blood and other biological samples for DNA analysis. In this proposal which it came from the Division of Criminal Justice, what we've tried to do was address very specific issues that had arisen over the course of the last several years in the DNA data bank oversight committee had tried to deal with.

One of those was people who were on probation. And they needed to get a sample. What happens is the people on probation request that they come in for a sample. They send them a date, they say come on in and provide a sample. Well, the people refuse to show up. Well, when they failed to show up it is sometimes difficult for us to prove a refusal to submit to a sample because we didn't really have the chance to actually sit there and have somebody say, "Will you give a sample" and they say, "No." so what we requested is permission to prosecute individuals for a failure to submit to a sample.

The other situations that have arisen over the course of the years, one of the big problems that we have and this deals with something the Innocence Project is concerned with is revealing information that exculpates a suspect in a criminal act. When police are investigating a crime and they have a suspect and they run some evidence through the data bank and they're told that there's no hit -- presently the data bank, the folks who run the data bank, the people at the lab cannot tell the investigating agency that the person is in the data bank

There's two problems with that. One is that they -- the big problem is that the police cannot eliminate that person as a suspect. So

they continue to spend time and effort pursuing that individual as a suspect. The second problem is for the suspect himself is that the police continue to investigate him. So what we would like in section 2 of the bill, particularly section A is request permission for the people in the data bank to get with the lab and be able to tell the investigative agency whether or not somebody is in the data bank

Other issues that we've had over the course of the year that we've tried to address with this -- Dr. Norfolk talked with the Department of Mental Health and Addiction services, we tried to address their concerns in this bill and I think we found a way to get those samples in an easier method.

And the final issue we tried to address in this is to deal with those people in the correctional system who refuse to give us a sample. That is a major problem. At the present time we have 422 individuals serving felony sentences who have refused to provide DNA samples. Most of those individuals were advised that they could be subject to five years of additional incarceration if they refused to do so. Despite that, they still refuse to do so.

Now we started to prosecute those individuals and in the last three months we've prosecuted two of them. They have been sentenced. We have still not gotten samples from those individuals. What we are requesting is specifically within the Department of Corrections if a person refuses to provide a sample, we're requesting the right for the folks at Corrections to use reasonable force to obtain he sample. It is a necessary way to get

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these samples. But one of the things Ms. Sepich talked about was the passage of time.

With the passage of time several things happen. That means crimes stay unsolved for a long period of time. What also happens with the passage of time is statutes of limitations expire. It is possible that people can delay prosecution for a crime simply by holding out for a period of time. So what we are requesting is permission to use reasonable force to obtain the sample only in those circumstances where a person has refused to do so.

I can share with the committee that we have recently litigated this issue in front of Judge Mullarkey in Superior Court in Hartford and he determined that reasonable force is inherent in the statute. The problem that we're going to have is Judge Mullarkey's decision is going to be appealed. And it's probably going to be another year to two years before we have finality on that. In the meantime, we have 422 people whose samples we don't have. We would like to be able to get those and we would like the committee to approve reasonable force.

The second bill I wanted to address is 1092 which is AN ACT CONCERNING THE MEMBERSHIP OF THE DNA OVERSIGHT COMMI -- PANEL. And Attorney Goodrow had spoken on that previously. And I believe that she indicated that she didn't think there was any objection to that.

Well, as much as we enjoyed having Ms. Goodrow at the meetings, I think it would be inappropriate for her to sit as a member of the oversight panel. And the reason why is the panel makes decisions on people that would be her clients. The panel makes decisions about whether somebody's profile should be purged



STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE
505 HUDSON STREET, HARTFORD, CONNECTICUT 06106

Michelle S. Cruz, Esq.
State Victim Advocate

Testimony of Michelle Cruz, Esq., State Victim Advocate
Submitted to the Judiciary Committee
Wednesday, March 9, 2011

Good morning Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

Raised Senate Bill No. 1092, *An Act Concerning the Membership of the DNA Data Bank Oversight Panel*

Raised House Bill No. 6537, *An Act Concerning Speedy Trials*

Raised House Bill No. 6538, *An Act Concerning the Collection of Blood and Other Biological Samples for DNA Analysis*

Crime victims in Connecticut have a constitutional right to a timely disposition of the case, as long as no right of the accused is abridged. This constitutional right has been a source of frustration for many victims who feel that their case lingered on and on. A relatively quick search on the Judicial Branch website will show that there are many pending criminal cases, involving only misdemeanor crimes, categorized as 'awaiting plea' or 'pre-trial' status and are two or more years old. These pending criminal cases are docketed each month. This is bogging down the criminal dockets and negatively affecting crime victims and defendants alike.

Raised House Bill No. 6537 seeks to revise the time period and procedure for commencing the trial of an incarcerated defendant charged only with misdemeanor crimes. Although the Office of the Victim Advocate (OVA) supports the effort to reduce the length of time it takes to resolve a criminal matter, the OVA respectfully requests that the Committee consider amending the proposal to allow for an expedited, automatic bail hearing to address the release of the defendant in cases where the defendant had been incarcerated for a period of time longer than the maximum sentence that could be imposed for the misdemeanor. Further, the OVA would request that in addition to the issuance of the non-financial conditions to assure the defendant's appearance in court, the court also consider nonfinancial conditions, if any, to ensure the victim's safety.

It is no secret that the criminal dockets throughout our courts are heavy. That being said, there may very well be legitimate reasons for a lengthy delay, such as an ongoing investigation. Establishing a process for an automatic and expedited hearing will ensure that defendants are not released inadvertently when a prosecutor has a legitimate reason for the delay. I urge the Committee to support **Raised House Bill No. 6537** with the recommended amendment.

Regarding **Raised House Bill No. 6538**, as I understand the current process, a defendant who is convicted of a felony offense must submit to a DNA sample. If the defendant is not sentenced to incarceration, the Court will add a condition to the defendant's sentence, that he or

she must report to the Court Support Services Division (CSSD), of the Judicial Branch, for submission of the DNA sample. This process has recently been updated so that CSSD, rather than the Department of Public Safety (DPS), will take the DNA sample for CSSD is more geographically situated to accommodate offenders. The DPS, as of March 8, 2011, reports that there are 165 outstanding arrest warrants for those who have failed to comply with the DNA requirements. This is a remarkable drop in the number of pending warrants reported by DPS prior to this change.

However, the process for failure or refusal to submit to a DNA sample can be improved further or eliminated all together. Precious resources are being expended by CSSD to coordinate appointments for the taking DNA samples, sending out notifications when a defendant misses an appointment, preparing an arrest warrant for those who continue to be noncompliant and further, prosecuting those who remain noncompliant. Rather, those resources could be better utilized to establish the taking of DNA samples in every court in the state. CSSD is housed in every court and this would substantially improve the process of DNA collection and compliance.

During a plea hearing involving conviction of a felony, the defendant is canvassed by the court on the plea, including the defendant's understanding that he/she will be required to submit to a DNA sample. Once that plea is accepted by the court, the defendant now stands before the court as a convicted felon. This is the ideal opportunity for the court to ensure compliance with the DNA requirement by ordering the defendant to report immediately to CSSD to supply the DNA sample. Those defendants, who fail to do so, can be quickly identified and apprehended. In addition; if the defendant was not sentenced at the same time the plea was accepted, the court has the opportunity to respond to the defendant's noncompliance at the sentencing hearing.

The improvement suggested here would likely save money to the Judicial Branch and ensure, in near real time, that convicted felons are in compliance with the conditions of the sentence. Further, the felon's DNA will be quickly captured and entered into the database. I respectfully request that the Committee consider further strengthening this process and amend Raised House Bill No. 6538.

Finally, the OVA respectfully requests that the Victim Advocate be included on the membership of the DNA Data Bank Oversight Panel, along with the Chief Public Defender as proposed in Raised Senate Bill No. 1092.

Thank you for consideration of my testimony.

Respectfully submitted,



Michelle Cruz, Esq.
State Victim Advocate



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY

JOINT COMMITTEE ON JUDICIARY

In support of:

H.B. No. 6538 (RAISED):

An Act Concerning the Collection of Blood and Other Biological Samples for DNA Analysis

H.B. No. 6489 (RAISED):

An Act Requiring DNA Testing of Persons Arrested for the Commission of a Serious Felony

In opposition to:

S.B. No. 1092 (RAISED):

An Act Concerning the Membership of the DNA Data Bank Oversight Panel

March 9, 2011

The Division of Criminal Justice respectfully requests and recommends the Committee's Joint Favorable Report for H.B. No. 6538, An Act Concerning the Collection of Blood and Other Biological Samples for DNA Analysis, and the Committee's Joint Favorable Substitute Report for H.B. No. 6489, An Act Requiring DNA Testing of Persons Arrested for the Commission of a Serious Felony. These bills address issues independent of each other and can be enacted together or independently without negative impact. The testimony we are submitting today is essentially the same as submitted to the Joint Committee on Public Safety and Security earlier in this session on DNA issues. The Division also would recommend the Committee's rejection of, or no action on, S.B. No. 1092, An Act Concerning the Membership of the DNA Data Bank Oversight Panel.

The Division has historically supported the collection of DNA from persons arrested for felony offenses and has further supported the taking these samples at the point of arrest, just as fingerprints are now taken. These provisions would increase the effectiveness of the DNA data bank as a means not only of identifying repeat offenders but equally important of exculpating persons suspected of committing crimes they did not in fact commit. While the Division fully recognizes that such an expansion would carry a significant fiscal impact, we cannot understate

In addition, H.B. No. 6538 would further strengthen the DNA data bank program by (1) providing that DNA samples be "of sufficient quality" to allow for analysis, and (2) to allow for the taking of additional samples if the initial sample is not of sufficient quality, and (3) to allow the Commissioner of Mental Health and Addiction Services and/or the Commissioner of Developmental Services to determine the most appropriate time to test a person in their custody as a result of a finding of not guilty by reason of mental disease or defect, and to make that recommendation to the court. These amendments will close very important gaps in the existing statute with little or no cost to the state.

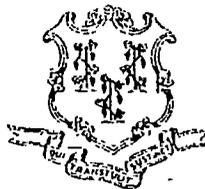
Finally, the Division opposes S.B. No. 1092, An Act Concerning the Membership of the DNA Data Bank Oversight Panel. The purpose of the DNA Data Bank Oversight Panel is to assure the integrity of information in the Data Bank. It often is called upon to make decisions about whether information in the Data Bank should be retained or purged. Because many of these decisions involve clients of the public defender's office, the Chief Public Defender would appear to have an inherent conflict in being involved in making these determinations. The decision about whether a sample should be retained or purged should not be subject to the Chief Public Defender's duty of loyalty to a client.

In making decisions that affect the integrity of the Data Bank the Panel necessarily considers information about persons who are in the Data Bank that is confidential in nature. Allowing the Chief Public Defender to become a member of the Panel would entitle him or her to be present when such information is discussed or reviewed even when the information relates to a client that neither is nor was represented by the Public Defender's Office. Such information might even relate to someone the Public Defender's Office would be prohibited from representing because of a conflict of interest. Simply put, the Chief Public Defender should not be privy to this information.

Recognizing the purpose of the statute, the legislature properly constructed the panel representative of the organizations that are responsible for collecting the data for and, thereafter, maintaining the Data Bank; the Commissioner of the Department of Public Safety, the Commissioner of the Department of Correction, and the executive director of the Court Support Services Division of the Judicial Branch, the attorney for those organizations, the Attorney General, and the Chief State's Attorney. There is no reason why the Chief Public Defender should be a member of the Panel. It should be pointed out that the Chief Public Defender, or a representative, can, and often does, attend meetings as a member of the public. Notes of the meetings, including summaries of what happened during executive session are posted online and are available to the Public Defenders as well as the public at large. S.B. No. 1092 represents an unnecessary and potentially dangerous intrusion by the defense bar into territory where they have historically and legally been prohibited from treading. The Committee should reject or take no action on this bill.

In conclusion, the Division of Criminal Justice expresses its appreciation to the Committee for your consideration of these issues. We would be happy to provide any additional information or to answer any questions the Committee might have.

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

Colonel Danny R. Stebbins
Acting Commissioner

Lieutenant Edwin S. Henson
Chief of Staff

March 9, 2011

Rep. Gerald M. Fox, Co-Chairman
Sen. Eric D. Coleman, Co-Chairman
Judiciary Committee
Legislative Office Building
Hartford, CT 06106

HB 6538 AAC The Collection of Blood and Other Biological Samples for DNA Analysis

The Department of Public Safety supports this proposal.

The intent of this bill is to ensure that individuals convicted of felony crimes provide a sufficient quantity of DNA sample for entry into the Convicted Offender Database, (CODIS). Currently, if a convicted offender fails to provide a "sufficient quantity" there is no statutory authority for government officials to have the individual offender retested. The Department of Public Safety, Division of Scientific Services, which analyzes blood and biological samples for DNA, has approximately fifty cases in which convicted offenders failed to provide a sufficient sample. When convicted offenders fail to provide sufficient samples it precludes the DNA unit from checking the convicted offender database, CODIS, to unsolved crime and provides a disservice to victims of crime.

Additionally, this bill allows forensic laboratory staff within the DNA section to advise law enforcement officials as to whether a DNA profile developed during the investigatory phase is contained in the CODIS databank. This will assist in eliminating suspects or identifying suspects perpetrating criminal acts, providing for efficiency gains to law enforcement. Currently the DNA section cannot supply and or provide information as to whose profile resides in the CODIS database.

Sincerely,

A handwritten signature in cursive script, appearing to read "Colonel Danny R. Stebbins".

Colonel Danny R. Stebbins
ACTING COMMISSIONER



STATE OF CONNECTICUT
DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES
A Healthcare Service Agency

Dannel P. Malloy
 Governor

Patricia A. Rehmer, MSN
 Commissioner

Testimony of Michael Norko, MD
Director of Forensic Services
Department of Mental Health and Addiction Services
Before the Judiciary Committee
March 9, 2011

Good afternoon, Senator Coleman, Representative Fox, and distinguished members of the Judiciary Committee. I am Dr. Michael Norko, Director of Forensic Services for the Department of Mental Health and Addiction Services (DMHAS), and I am here today to speak in support of H.B. 6538 An Act Concerning the Collection of Blood and Other Biological Samples For DNA Analysis.

H.B. 6538 eliminates the requirement that insanity acquittees must submit to the taking of a DNA sample prior to "release from custody" of the Commissioner of DMHAS. Our decisions about offering patients therapeutic passes and privilege levels in their own custody are based on their clinical status and our assessment of current risk. If we are not permitted to grant a therapeutic privilege to a patient because a law enforcement task has not been accomplished, then our mission as a health care agency is compromised, and the credibility of our clinical judgment and our therapeutic alliance with the patient are jeopardized. It is the dual nature of forensic treatment services that we must consider the patient's health and the public safety in our risk management practices related to the patient's mental health, but the collection of a DNA sample is not an appropriate risk management activity for a hospital. It is a law enforcement task. It is not our job to engage in struggles with the patient over such law enforcement tasks, which only weakens our ability to provide appropriate treatment and risk management to the patient.

Therefore, we support the proposed amendment of subsection (c) of section 54-102g. This modified language requires an acquittee to give a DNA sample prior to the first hearing after the acquittal by reason of mental disease or defect, in accordance with subsection (d) of section 17a-582. At that hearing, the court reviews the report from Whiting after an initial 60 day inpatient evaluation, and makes its finding about committing the person to the Psychiatric Security Review Board (PSRB) and makes its order as to the level of security the person will be initially placed under. We would, however, also ask that the following sentence be added to the end of subsection (c) of section 54-102g: "The report of the examination which is filed with the court pursuant to subsection (b) of section 17a-582 shall indicate whether the person submitted or refused to submit to the taking of a blood or other biological sample pursuant to this subsection." By adding this language, it makes it clear that the legislative intent is to have DMHAS make a report about the status of the DNA sample, so that the court can consider that information in making its findings about whether the person will be initially placed in a maximum security treatment setting from which patients are not given therapeutic passes or privileges in their own custody.

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Subsequent decisions about movement of an insanity acquittee out of maximum security must be approved by the PSRB, after an adversarial hearing in which both the states attorney and defense counsel participate. At such a hearing, members of the PSRB or the states attorney may inquire about the status of the DNA sample, and the PSRB may include that information in its consideration of a patient's proposed movement out of maximum security.

These amendments would allow DMHAS to remain true to its clinical and risk management tasks, and allow other mechanisms for considering the status of the DNA sample and what effect that should have on decisions about an acquittee's placement.

Thank you for the opportunity to address the Committee on this important bill. I would be happy to take any questions you may have at this time.

Department of Correction

Testimony of Leo C. Amone

Judiciary Committee

Raised Bill No. 6538, An Act Concerning the Collection of Blood and Other
Biological Samples for DNA Analysis

March 9, 2011

Good morning, Senator Coleman, Representative Fox and members of the Judiciary Committee. The Department of Correction supports efforts such as Raised Bill No. 6538, An Act Concerning the Collection of Blood and Other Biological Samples for DNA Analysis, which would assist the Department of Public Safety and other law enforcement agencies in solving criminal cases in a timely manner.

The Department has made a concerted effort with the support of federal funds to take DNA samples at the front end of an offender's incarceration, rather than at the back end. I am quite pleased to report that the Department is in 100 percent compliance on the front end. However, there are still about 400 inmates who have refused to submit to the taking of a DNA sample from when we tested to address the backlog. The proposed provision that would allow the commissioner or the commissioner's designee to use reasonable force would enable the Department in obtaining samples from those 400 inmates who have continued to refuse to submit to the taking of a DNA sample. Currently, there is no real incentive to cooperate if an inmate with a long sentence has concerns about being identified for another crime. This provision would allow us to support public safety and the efforts of our law enforcement partners.

Thank you for your consideration of the Department's views on this matter.



State of Connecticut

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Testimony of Deborah Del Prete Sullivan,
 Legal Counsel/Executive Assistant Public Defender
 Office of Chief Public Defender

Raised Bill No. 6538

*An Act Concerning the Collection of Blood and
 Other Biological Samples for DNA Analysis*
 Judiciary Committee Public Hearing - March 9, 2011

The Office of Chief Public Defender opposes passage of certain provisions contained within Raised Bill No. 6538, An Act Concerning the Collection of Blood and Other Biological Samples for DNA Analysis. This bill would provide that a person could be arrested and charged with a class D felony if he/she fails to provide a DNA sample even if the failure was beyond the person's control or not knowing, willful or intentional. This Office opposes the insertion of the word "fails" as a person should not be subject to arrest for a felony for an unintentional failure to submit a sample.

This Office suggests that "knowingly" be inserted before the word "refuses" in lines 13 and 76, before the word "refusal" in line 76, and before "refused" in line 159 of the proposal. Again, there can be reasons why a person was unable to comply which can be circumstances beyond the person's control.

Lastly, this Office is opposed to that portion of Section 1 which would authorize the use of "reasonable force" to obtain a blood or other biological sample from a person. (See lines 84 through 89, new subsection (i).) While disagreeing with those who might equate the taking of a DNA sample to that of taking fingerprints, the use of force, reasonable or otherwise, is never utilized to obtain fingerprints. In addition, the Division of Criminal Justice has indicated that the issue of whether current law authorizes the use of reasonable force is on appeal. If the statutes already proscribe such, then any legislation would be redundant. If not, the court may provide an interesting analysis that this Committee may desire to review prior to enacting any such legislation.

The Office of Chief Public Defender opposes this legislation and requests that this bill not be adopted.

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**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2011**

**VOL. 54
PART 21
6546-6914**

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SENATE

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June 7, 2011

Moving now to calendar page 18, where we have a number of items. The first: Calendar 543, House Bill Number 6508.

Madam President, move this item on the Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Calendar 544, House Bill Number 6412.

Move to place the item on the Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Continuing on calendar page 18, Calendar 546, House Bill Number 6538.

Madam President, move to place this item on the Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Calendar 547, House Bill Number 6440.

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SENATE

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June 7, 2011

Mr. Clerk.

THE CLERK:

Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber. Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CLERK:

Madam President, the items placed...

THE CHAIR:

I would ask the Chamber to be quiet please so we can hear the call of the Calendar for the Consent Calendar.

Thank you.

Please proceed, Mr. Clerk

THE CLERK:

Madam President, the items placed on the first Consent Calendar begin on calendar page 5, Calendar 336, House Bill 5697.

Calendar page 7, Calendar 421, Substitute for House Bill 6126.

Calendar page 8, Calendar 449, Senate Bill 1149.

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Calendar page 10, Calendar 470, Substitute for House Bill 5340. Calendar 474, Substitute for House Bill 6274. Calendar 476, House Bill 6635.

Calendar page 12, Calendar 499, Substitute for House Bill 6638. Calendar 500, House Bill 6614. Calendar 508, House Bill 6222.

Calendar page 13, Calendar 511, House Bill 6356. Calendar 512, Substitute for House Bill 6422. Calendar 514, House Bill 6590. Calendar 515, House Bill 6221. Calendar 516, House Bill 6455.

Calendar page 14, Calendar 517, House Bill 6350. Calendar 519, House Bill 5437. Calendar 522, House Bill 6303.

Calendar page 15, Calendar 523, Substitute for House Bill 6499. Calendar 524, House Bill 6490. Calendar 525, House Bill 5780. Calendar 526, House Bill 6513. Calendar 527, Substitute for House Bill 6532.

Calendar page 16, Calendar 528, House Bill 6561. Calendar 529, Substitute for House Bill 6312. Calendar 530, Substitute for House Bill 5032. Calendar 532, House Bill 6338.

Calendar page 17, Calendar 533, Substitute for House Bill 6325. Calendar 534, House Bill 6352.

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Calendar 536, House Bill 5300. Calendar 537, House
Bill 5482.

calendar page 18, Calendar 543, House Bill 6508.

Calendar 544, House Bill 6412. Calendar 546,
Substitute for House Bill 6538. Calendar 547,
Substitute for House Bill 6440. Calendar 548,
Substitute for House Bill 6471.

Calendar page 19, Calendar 550, Substitute for
House Bill 5802. Calendar 551, House Bill 6433.
Calendar 552, House Bill 6413. Calendar 553,
Substitute for House Bill 6227.

Calendar page 20, Calendar 554, Substitute for
House Bill 5415. Calendar 557, Substitute for House
Bill 6318. Calendar 558, Substitute for House Bill
6565.

Calendar page 21, Calendar 559, Substitute for
House Bill 6636.

Calendar page 22, Calendar 563, Substitute for
House Bill 6600. Calendar 564, Substitute for House
Bill 6598. Calendar 566, House Bill 5585.

Calendar page 23, Calendar 568, Substitute for
House Bill 6103. Calendar 570, Substitute for House
Bill 6336. Calendar 573, Substitute for House Bill
6434.

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Calendar page 24, Calendar 577, Substitute for
House Bill 5795.

Calendar page 25, Calendar 581, House Bill
6354.

Calendar page 26, Calendar 596, Substitute for
House Bill 6282. Calendar 598, Substitute for House
Bill 6629.

Calendar page 27, Calendar 600, House Bill
6314. Calendar 601, Substitute for House Bill 6529.
Calendar 602, Substitute for House Bill 6438.
Calendar 604, Substitute for House Bill 6639.

Calendar page 28, Calendar 605, Substitute for
House Bill 6526. Calendar 608, House Bill 6284.

Calendar page 30, Calendar number 615,
Substitute for House Bill 6485. Calendar 616,
Substitute for House Bill 6498.

Calendar page 31, Calendar 619, Substitute for
House Bill 6634. Calendar 627, Substitute for House
Bill 6596.

Calendar page 32, Calendar 629, House Bill
5634. Calendar 630, Substitute for House Bill 6631.
Calendar 631, Substitute for House Bill 6357.
Calendar 632, House Bill 6642.

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Calendar page 33, Calendar 634, Substitute for
House Bill 5431. Calendar 636, Substitute for
House, correction, House Bill 6100.

Page 34, Calendar 638, Substitute for House
Bill 6525.

Calendar page 48, Calendar 399, Substitute for
Senate Bill 1043.

Calendar page 49, Calendar 409, Substitute for
House Bill 6233. Calendar 412, House Bill 5178.
Calendar 422, Substitute for House Bill 6448.

Calendar page 52, Calendar 521, Substitute for
House Bill 6113.

Madam President, that completes the item placed
on the first Consent Calendar.

THE CHAIR:

Thank you, sir.

We call for another roll call vote. And the
machine will be open for Consent Calendar number 1.

THE CLERK:

The Senate is now voting by roll on the Consent
Calendar. Will all Senators please return to the
Chamber. The Senate is now voting by roll on the
Consent Calendar, will all Senators please return to
the Chamber.

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SENATE

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June 7, 2011

Senator Cassano, would you vote, please, sir.

Thank you.

Well, all members have voted. All members have voted. The machine will be closed, and Mr. Clerk, will you call the tally?

THE CLERK:

Motion is on option Consent Calendar Number 1.

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar Number 1 has passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

We might stand at ease for just a moment as we prepare the next item..

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)