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HB6489

House	6930-6984	55
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**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 6
1626 – 1949**

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that you'll hear from other people, about backlog, backlog in case work, backlog in the data bank. These issues become apparent with my work at the Connecticut Innocence Project because although we don't have the burden of proving in order to prove somebody is innocent who actually committed the offense, the use of the data bank and the folks at the lab have become integral as well as frankly our colleagues at the Office of the Chief State's Attorney in successfully demonstrating innocence.

So the purpose of the bill is really to get a designee on board but also to make clear that we are not seeking to have identifying information. In fact, as we understand the law, the folks at the lab -- and this is something that is an issue for them.

I'm surprised actually that there's not a separate bill by them -- they are not, as I understand it, allowed to even communicate to other law enforcement agencies whether an individual's DNA is in the state lab -- I'm sorry, the state data bank. So that is information that is guarded. We are not interested in being privy nor are we asking for that in this bill.

BRIAN CARLO: One other bill that has had some discussion and is not our bill but is Raised Bill 6489, and that has to do with the taking of DNA samples at the time of arrest. And there may be questions on this. I will try to be very brief with respect to this. I did testify in front of public safety.

Our concerns are really this. That at its essence, and I think our entire system of jurisprudence is based upon the idea, that at the time that someone is arrested they are

proven innocent. At the time that they are convicted and sentenced, when that has now been determined, before the appeal but at the time of the sentencing, the relationship between that person who has been convicted into this context of a felony, but the relationship between the person who has been convicted and our government is different.

The government is allowed to impose things upon that person that they cannot impose prior to the conviction. For example, incarceration, probation, requirements of court. Our issue -- and so as the law exists today, once a person is convicted and sentenced of a felony, they are obligated under the law to have their DNA sample put into the DNA data bank. We are not here discussing that. That was an argument years ago. That's been decided and that's done.

That, we would submit, is appropriate and we've made some suggestions how to facilitate that process and make it more practical working with the cochairs of public safety. When you move that point in time and the taking of a sample from the time of final judgment where that relationship with government has changed, there's a time of arrest where the arrestee is presumed innocent. That raises several significant problems. The first are constitutional problems.

Yes, are other states doing it? They are. And I think the number is around 22. Some of them actually hold the sample until after final judgment after sentencing. Some are doing it. And people will say, well, how can they do it, and if they can do it, why can't we. Well, there's two answers to that.

One is United States Constitution has not

decided that that is not a fourth amendment violation, but even more importantly from our perspective here, the state constitution has not decided that it is constitutional under the state constitution. So there are constitutional considerations and certainly constitutional litigation that will flow from any change in law that requires these samples that ultimately would go into the data bank.

Issue number two are privacy concerns. And you will hear people talk about things such as junk DNA, that the DNA, parts of the profile, parts of the genetic profile that are tested, the 15 sites, are called junk DNA. Well, they were actually junk DNA about 15 years ago, but the science has come way beyond that now. And while they can't establish that they are causal of medical conditions, the scientific community believes they are predictive of medical conditions. So what does that mean? That means if you have the genetic profile, you have access to information which insurance companies would pay a fortune for. If they could get your genetic profile and have some idea as to what diseases you might be more likely to get, they would want that information.

But the other piece is it's not just the 15 that our lab has. The lab has the entire genetic profile which they keep on two cards called FTA cards and they keep them in perpetuity, they keep them forever. So when you hear, well, this is junk DNA and it's not really DNA that reveals any medical information, first that's not scientifically accurate, but even if it were, they have the whole genetic profile. So those are the two concerns that I think raise in terms of constitutional and privacy concerns.

The third concern and the real public safety

concern, and you hear about this touted as a public safety vehicle or vehicle to enhance public safety, is as we speak today, my understanding is -- and I know Patty Johannes from the lab is here so she can correct me if my numbers are wrong.

We talked to them a few weeks ago -- there's not a backlog on DNA data bank entries, they're not really backlogged, they're up to date. What I do understand is that there is a backlog of 3,800 samples connected with cases that have crimes that have already been committed. So I would submit to you if there are resources -- and I think Commissioner Thomas when he spoke from public safety indicated that the reason he wasn't pushing this bill was because it would cost money and this is probably not the year to be looking for more money, not that he doesn't think the bill is a good idea -- but if there are resources that can be devoted to DNA, then get those resources in the lab to test the samples from the crimes that have been committed so we can actually determine if the person arrested, if the evidence so shows, was the perpetrator or of equal, and I think from Karen's perspective, may be more important that not the perpetrator.

That's the time where you can really use this information on the sexual assault that was committed on Dixwell Avenue in New Haven, do we have the perpetrator. But to have a 3,800 backlog and to use resources for people who are arrested on the front end from our perspective makes no sense at all.

The only other thing that I would want to mention is you hear mentioned often is that if you expand the DNA data bank, that will help identify the James Tillmans of the world. That -- and Karen could speak to this better

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than I can, but I've run this by her and I think I'm correct, that's absolutely incorrect. In James Tillman's case the only time the data bank came into play was when our request for testing revealed that the stains on the evidence were not from him. Then you've now established James Tillman didn't commit this crime.

Next question in terms of public safety, who did. That's when the data bank comes into play. And it is an incredibly valuable law enforcement tool in that context. But I don't want to confuse ideas that if you expand the data bank, somehow all of a sudden are going to pop out 15 or 20 people sitting in our prisons who didn't commit the crime. It absolutely doesn't work that way.

SENATOR COLEMAN: Representative Hewett.

REP. HEWETT: Hi.

BRIAN CARLO: Hi.

REP. HEWETT: I just respectfully just disagreed with probably 90 percent of what you just said, but that's okay.

BRIAN CARLO: So we agree on 10 percent.

REP. HEWETT: We'll work on it.

BRIAN CARLO: Okay.

REP. HEWETT: By taking someone's fingerprint, isn't that also presuming guilt?

BRIAN CARLO: I don't think it's presuming guilt. I think it's a method of identification that is used and has historically been used by law enforcement. I think the issue really relates

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to what information can be garnered from that, and I think in terms of a fingerprint, there is very little suggestion that there's actually private information that one can garner from a fingerprint, a DNA sample, and if we're talking about the entire profile, I don't think there's any dispute that all sorts of information can be gathered from that. And not only information about you, by the way, but information about all your blood relatives as well.

REP. HEWETT: Oh, no, I understand that, and DNA is billions and billions of strands of information. I think we both agree on that.

BRIAN CARLO: We do.

REP. HEWETT: Right. But can we agree that for the purposes of taking DNA upon arrest, can we agree that only 13 of those billion is served for the purpose of identification -- hold on -- and out of those 13, only one of them tells you whether you're male or female, the rest of them doesn't tell you anything about your health or anything?

BRIAN CARLO: I think and I --

REP. HEWETT: You think or you --

BRIAN CARLO: No, no, no, no.

REP. HEWETT: Okay, you know.

BRIAN CARLO: I think the number right now is 15,
not 13.

REP. HEWETT: Okay, well, all right, we won't argue on the two.

BRIAN CARLO: Okay.

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REP. HEWETT: Okay.

BRIAN CARLO: But no, we cannot agree on that because medical science tells us, and these are people like John Butler and Buckleton and Simon Cole who have done research in the area and say, yes, while there is at this stage no indication that they can -- that there are causal pieces of those STRs, those loci, there are predictive.

So in other words, they can't say you're going to get this disease, as they can with some medical situations, they can make it by analyzing that that it is more likely that you will.

So I think those are differences of degree, and it still doesn't address the issue that the lab in their possession has the entire genetic profile which is those billions and billions. They have the whole thing. They just don't test it all, but they've got it sitting on cards they hold forever.

REP. HEWETT: Are they allowed to test it all?

BRIAN CARLO: The lab's protocol?

REP. HEWETT: Yes.

BRIAN CARLO: The lab is only being asked one question.

REP. HEWETT: Right, is that the person or is that not the person.

BRIAN CARLO: The lab is being asked to determine what the genetic profile is based upon those loci that are studied. That is absolutely correct.

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REP. HEWETT: Right, but it's not -- the lab is not asked did you have kidney disease or did you have diabetes, they're not asked that question?

BRIAN CARLO: They are not, but at the same time --

REP. HEWETT: But? You know what "but" means. You know when I hear the word "but," it means disregard everything I just said.

BRIAN CARLO: No, that's not true, but they have access to all that information just like my wife and my social security number which were on that laptop were not supposed to be disseminated, were not supposed to be out there, but they got out there.

So the point of this is that we need to protect not only the purpose that is articulated for which it will be used, but the possibility that it could be used for reasons beyond what we thought about and certainly improper reasons. There's no way to protect them.

REP. HEWETT: Well, what I think we need to protect are those people that has been raped and murdered and those people that are going to get raped and murdered. That's what I think we should be protecting. And I do understand the fourth amendment rights. I do understand that. Now you made a statement earlier about your concern about -- what we should be concerned about is the people in the database where old crimes have been committed already. What about the new ones? There's going to be -- I don't think that we've seen the last with the guy just arrested in New Haven, I don't think that that was going to be the last rape that was ever going to be on earth. There's going to be some more.

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BRIAN CARLO: No question.

REP. HEWETT: Are we concerned about that?

BRIAN CARLO: We are absolutely concerned about that.

REP. HEWETT: Not from your testimony.

BRIAN CARLO: No, the question is not -- no, we've already said the DNA database is an incredibly important tool. As we sit here today, convicted felon samples go in. The question is at what point in time should that sample be taken. Are we talking at the beginning of the process or are we talking at the point in the process where this person has been determined to be guilty of a crime.

REP. HEWETT: Are you familiar with CODIS?

BRIAN CARLO: I am.

REP. HEWETT: Okay. What is one of the requirements to get DNA into the CODIS data bank?

BRIAN CARLO: My guess would be --

REP. HEWETT: No, I don't want you to guess.

BRIAN CARLO: No, no, I don't know what that protocol is.

REP. HEWETT: Okay. One of the first requirements is there has to be a clause for expungement. If you're not convicted of that crime, there has to be a clause in that law to expunge your DNA.

BRIAN CARLO: Okay.

REP. HEWETT: Okay. Thank you.

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SENATOR COLEMAN: Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Good afternoon. So I'm concerned about the DNA bill. I've expressed that several times. I have the same concerns as some of the people who are putting forward these bills, but I'm not sure it works necessarily the way that some of us believe it does.

So a couple of questions, and I don't know, you're not DNA scientists, but maybe you know this from having worked with it. Is it possible that if we take this DNA from people who are not guilty but who have been arrested, is it possible that the science could actually indicate that a person committed a crime that they did not commit, is that within the realm of possibility?

KAREN GOODROW: I think, Representative, what you're referring to -- and again I am not a scientist, but I've learned a lot from our folks at the lab -- you're I think referring to a coincidental match where by accident or I assume that your question does not refer to an intentional mismatch?

REP. HOLDER-WINFIELD: No, I'm not referring to an intentional mismatch, and let me be a little more clear so that maybe you can actually answer my question with full knowledge of what I'm asking.

Again, I don't know everything about DNA. I've just done a little bit of research. It seems to me that as opposed to what we see on television, you often don't have perfect samples of DNA in that if you had a full sample, it would be easy to tell if this was the individual, but if you have a partial

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sample, you have a partial, it's possible that there could be a partial match showing that at certain loci you have the same number, and I think you, I, police, people who deal with this would recognize what the partial match actually says, but I'm curious if that partial match becomes a part of the discussion of a case, wherever it goes within the case, people who don't know as much might give it more credence than it actually has?

KAREN GOODROW: Thank you, Representative. I think what you are referring to is actually something in the field that's referred to as familial DNA investigative tool where you have -- whether it's because there's not enough DNA or the integrity of the biological substance has somehow been compromised but there may be to the crime scene evidence a connection to somebody who's in the data bank but not on a sufficient number of alleles, as was the discussion earlier, in other words, not on the full 15, possibly six or seven, not enough to call it; as I think Dr. Ladd at the lab would say.

And then the question becomes whether or not that crime scene evidence with this partial match can be somehow tied in on a familial search. Maybe perhaps there's not enough alleles to say that that crime scene matches this person in our data bank, but maybe it matches his or her brother or sister or aunt or uncle. And my understanding from having these discussions with the folks at the Connecticut forensic laboratory is that we do not as a policy or protocol in Connecticut use familial DNA hits or partial matches for investigative purposes but that this is something -- and I think in Virginia is one of the states where they do use it. And that is also part of the concern that somebody may in fact be linked to

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a crime or erroneously linked to a crime based upon a partial match because of a relative (inaudible).

REP. HOLDER-WINFIELD: Also, we spoke a little bit about the Tillman case. The individual who was eventually the person that we caught for the crime, that person had been in Connecticut obviously at one point in time. Had that person had interaction with our criminal justice system?

KAREN GOODROW: He had. And my understanding, again, this has been in discussions with folks at the lab, was that Mr. Foster, the individual who about 18 months after James Tillman was released, was arrested on precisely what the representative is proposing, an arrest swab out of Virginia. The dilemma is my understanding as well is that there was a swab taken from him on a subsequent date in Connecticut that was not processed into the system because again resources.

And therefore had that swab from the crime scene subsequent to the incident in Mr. Tillman's case been processed in theory, Mr. Foster would have been arrested in Connecticut and would not have been able to go on to commit the sexual assault in Virginia. I think really what you're talking about here is a policy.

It's as Brian says, if we have this backlog of 3,800 or 3,500 cases, do we want to use whatever funds we can come up with to resolve that backlog or again the reasonable minds could differ, do we want to use that money for arrest swabs.

And obviously you folks unfortunately have to make those difficult decisions. But that

specifically is the situation with Mr. Tillman's case. Mr. Roman's case, a gentleman who was released in December of 2008, having spent 21 years in prison in Connecticut for a murder that he did not commit, in that case that individual enjoys the presumption of innocence.

The person who was ultimately arrested my understanding is that he's on trial presently, but that individual went on to commit, if in fact he's guilty, as the DNA demonstrates, another sexual assault in Connecticut for which he spent seven years in prison. And so there was the case that Mr. Roman went to prison for, the rape and murder of a seventeen-year-old young woman.

There were two other murders back in the early 1980s that had been, at least one of them connected with this individual through DNA, subsequent to those three murder cases, that individual then committed a sexual assault. I don't know the details. I know that he went to prison for seven years, so it was sufficiently onerous.

And then the DNA that was done at again our state forensic lab through our request with the cooperation of the State's Attorney's office led to Mr. Roman's release and exoneration and the arrest of this individual.

REP. HOLDER-WINFIELD: And my final question.

So being concerned about all of this, I wonder if you could talk to me about when in the process do we take the DNA of those who are consented currently because it's my understanding that we don't necessarily take it early in the process? So even if we didn't have a backlog, it seems to me that if we

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don't -- if you're serving a sentence of like ten years and I take your DNA at the end of the ten years, it doesn't do me much usage in that ensuing ten years.

BRIAN CARLO: Absolutely true, and I think it was either last year or the year before I was testifying this and someone threw that out, and again similar to my discussion with my client, how does that make any sense from our perspective, and the answer is it absolutely doesn't.

So the way it is configured right now is that the DNA would be taken subsequent to sentencing. Our position would be there would be absolutely no reason to delay that to as they were about to walk out the door. If someone gets an 80 year sentence, they're never going to walk out the door, so you would take it at the very least at the front of the sentence.

What we have suggested in language with the two co-chairs of public safety was an idea that really the time period that makes the most sense as a practical matter to get the sample is post conviction. So if that's by a plea bargain or that's after a trial, jury verdict, presentencing. So after they're convicted, they are informed by the court if it's an eligible offense, if it's a felony under Connecticut's law, that they will be required to give a DNA sample.

Now, virtually all, and actually in fact all sentences in the State of Connecticut -- and when I say "virtually all," if someone has a murder case and it's pretty clear they're going to get 60 years and they've got nothing to lose -- but virtually all sentences are discretionary on the judge at the time of

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sentencing as to how much time the client -- our client is going to get. After a trial the range can be pretty wide. After a plea bargain there are often cap sentences which means that the judge can't go above a certain amount. Well, actually the judge can go above that amount, but has to allow the client to withdraw.

So the point is the judge has a lot of discretion at sentencing as to how much time a person would get, and the clients and their lawyers know that.

So my counsel to a client would be you are being required to give a DNA sample. Now would be a really good time to comply with the requests that are being made of you because your cooperation or lack thereof will be made known to the trial judge at the time of sentencing, and to the extent that you were hoping for a more lenient sentence, the prospects of that would be greatly diminished by your failure to comply.

So that's the perfect time. The only caveat to that -- and we're talking about then a relatively short period of weeks -- would be to be consistent with our position would be that the actual taking of the swab, which as a practical matter, is generally the swabbing of the inside of the mouth, that sample is now taken and held, and it's held until the judgment becomes final.

When I say "judgment final," those are technical legal terms. Sentencing is over. Then as it would be today would go to the lab for processing, testing and entry into the data bank, the difference being you now have a point in time which as a practical matter is a point in time where people -- people who are going to

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be inclined to make it difficult after sentencing, there may be some in this period of time, but the vast majority and certainly the vast majority of clients I've dealt with, their concern is the lowest number they can get at the time of sentencing, they're going to comply.

That seems to us to be the perfect time because it's after the conviction, sample taken, and the sample is not actually given to the lab until, again, that interrelationship between my client and our government has changed as a virtue of that conviction.

REP. HOLDER-WINFIELD: Thank you. Thank you for your testimony.

Thank you, Mr. Chair.

SENATOR COLEMAN: Representative Adinolfi.

REP. ADINOLFI: Thank you, Mr. Chairman. Welcome. I've seen a lot of you this week. Two questions. You talk about the backlog. Is all the testing done in Connecticut?

BRIAN CARLO: I believe -- and again Patty Johannes is here -- I believe all the case work testing is done. My understanding is, and I think we spoke about this before, that some of the data bank backlog was contracted out, but I believe all the actual case work testing, so in other words, the processing of evidentiary samples taken from a crime scene or connected with a crime, are done in-house in Meriden.

REP. ADINOLFI: I have a family member down in the Washington D.C. area who works for a private forensic lab and they get a lot of work or most of their work from the FBI. It's done privately. I'm sure that some of this work

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could be done privately and outside probably at the same time save a lot of money doing it. But that wasn't my main point. You mentioned about where the records of this could mistakenly get out to the public where it shouldn't be, right, the DNA records of the family background?

BRIAN CARLO: Or any other part --

REP. ADINOLFI: Just like it happened with the computers, but don't we have the same problem in many other areas like sealed juvenile records, can't they accidentally or, you know, get out to the public?

This is something we have to face. Now, do they keep the DNA sample or the records of the DNA sample? Because I belong to an organization and we have a program called CHIPS, Child Identification Program, where we actually take DNA samples, swabs, and we give them to the parents to hold. This is in case a child is, you know, disappears or something like that and they might want to go through somebody's car and see if there was anything in that.

We had this happen the way we started this was in Massachusetts had started this CHIPS program first, and a young girl, very young, four or five years old, was picked up and was in the process of being taken away in a car by some unknown man. And what she started to do was she expectorating all over the car.

Well, the guy went about a mile and told her to get the hell out because there was DNA evidence all over that car that if anything happened with his license plate on there it could be implicated.

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So by getting back to my question is do they keep the records of the sample or the actual sample? I would think there would be a limited time that you can keep that, the actual sample.

BRIAN CARLO: And I would have thought that too. I spoke with the lab this week, and again, lab personnel is here today and they can tell me if I'm wrong.

My understanding is speaking with them this week is they take the swab from the mouth. They then use something called an FTA card which my understanding is, and again I'm not a scientist, binds that to the card. They actually use two of them. And once they've run the sample and determined that they have a full genetic profile, they throw away the swab, but those FTA cards which now contain the entire genetic profile are not only kept but are kept in perpetuity forever. They're going nowhere.

REP. ADOLFINI: So they learn that. The last thing I had was that about taking the DNA samples, you know, it works two ways. You can get somebody out of prison if we did something correct, and that's correct, we should do that.

But I know like when I've mentioned before about my nephew being murdered and bludgeoned to death and the type of murder it was, there's no doubt in my mind that the people that committed this murder were arrested for some other reason later on for some other type of crime or similar crime perhaps.

And my thoughts of that if they were taking DNA evidence upon arrest, they destroy it if they're let go or they're not charged with anything, that perhaps there would have been closer for my family by now and we would have known who did it, so it works two ways.

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BRIAN CARLO: And we did talk about this. And we talked about the fact that if that person who was involved in a life of crime picked up any felony convictions in the State of Connecticut under our law as it exists today they are in there and that you would have that answer that not only that you want but that you deserve.

REP. ADINOLFI: Well, I was just wondering if a little lesser, you never know. You just get lucky, you figure you can pick somebody up on a DUI and the DNA evidence would correspond so I'm going far down. I have my reasons. Thank you.

SENATOR COLEMAN: Representative O'Neill.

REP. O'NEILL: Thank you. I'm not sure, I stepped out of the room for a few minutes but I thought you were testifying about the collection time, the point in time in which collection of DNA would be done.

BRIAN CARLO: That's correct.

REP. O'NEILL: And so are you therefore talking about Bill 6538, is that the context in which you're talking about, if that's the one that specifies a time and place and stuff like that?

BRIAN CARLO: No, I was talking about 6489. The issue surrounding taking samples at the time of arrest of serious felonies.

REP. O'NEILL: Okay. And now one of the things that's become an issue and if I remember correctly in the past is who is going to take the samples. Now, if your suggestion were to become the law, who would do the sampling?

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BRIAN CARLO: You know, we -- when we had that discussion one of the things that I immediately told the cochairs of Public Safety was as soon as I walked out of the room I was going to call Judicial. Because it would seem that one of the parties that could do that would be CSSD. Or -- and again, I, you know, that -- whether it's CSSD or -- I mean, it would have to be some part of Judicial I would think. We're certainly beyond sort of the law enforcement piece of it so it's not going to be a local police department as it would be. Or it may well be at the time of the arrest.

Yeah, so I'm not really sure in terms of, you know, letting them know that this burden would be there. I would assume that the resources that DOC now has to do that would just be shifted, so I don't know that there would be a change in the cost to the state of Connecticut. But it would seem to me and again, I would recognize this when I proposed it, I gave them a call and let them know, just so you know that we're talking about this because you may have an interest in this, but it would seem to me that they would be the appropriate sort of department or the appropriate entity to figure out how that ought to be done.

REP. O'NEILL: Because I thought we had this conversation a couple of years ago and I didn't get the impression that they were really interested in assuming that role. Maybe I misunderstood them, but that was my impression.

BRIAN CARLO: Oh no, I -- that's the reason I made that phone call is because I think they're probably not that interested in assuming that role. I'm not going to speak for them but from -- you know, to have an additional burden placed on them by a change in legislation and

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to get involved in that, my guess would be they wouldn't be very interested in that at all.

REP. O'NEILL: And I'm assuming that as regards the clients in the Public Defender's office, you're not interested in taking swabs and going through that process either.

BRIAN CARLO: Well, probably not although I'm not sure that anyone is going to really sign on and going to want us to be doing that. And I'm not sure what the protocols are for both the state system and the federal data bank system as to whether there are requirements as to who can take the sample. My gut would be that certainly the feds wouldn't be too thrilled with defense counsel taking a sample, putting it in an envelope and saying, "Okay, this is my client's sample, go ahead and run it."

I mean, I may be wrong, but as a practical matter I think our folks wouldn't be that thrilled about it. And I was really asked to come up with an idea as to what I thought would work. We're not sort of invested in that time frame. I mean, it's not like that's something that we think should happen that we're advocating. The question was asked what would you suggest, what do you think would work in terms of time frame logistics and we think that would work.

REP. O'NEILL: Do you have any idea -- co-witness -- what -- are any other states doing it at the point in time that you're advocating that we start doing it?

BRIAN CARLO: That I don't know.

REP. O'NEILL: Thank you, Mr. Chairman.

SENATOR COLEMAN: Representative Morris and then Representative Verrengia.

REP. MORRIS: Thank you, Mr. Chairman. A couple questions. One goes back to earlier when Representative Hewett asked you in terms of presumption of guilt. And the difference between -- what's the real difference between fingerprints -- and I'd like to even add a mugshot -- that's taken right now when a person's arrested as opposed to DNA. And if I understand your answer correctly your premise was that the only difference is there's too much information is given in the DNA piece. All right? When it's available. Other than the fact that your sense is that there's too much information given, in terms of the concept of presumption of guilt, the processes have -- makes no real difference in that regard, would you agree? In other words, the fact that I'm taking fingerprints or I'm taking a mugshot, or that I'm taking DNA and I'm trying to identify you, I'm taking something from you and you haven't been -- you haven't -- and you're still presumed to be innocent.

BRIAN CARLO: Absolutely. But in those two the identification is related to the case for which you have been arrested and the issue there is do we actually have -- and this has happened in cases -- where someone says, "My name is John Smith" and they get the prints and, you know, as a defense lawyer, you get that call and say okay, not John Smith so you better change your file because that's not actually your client's name. So the identification there and the information there is being gathered to ensure that the person that is now under arrest is, in fact, the person they claim to be by photograph or by fingerprint.

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REP. MORRIS: You're -- that's the sole purpose for -- identification at that point?

BRIAN CARLO: I don't know at one point -

REP. MORRIS: Taking fingerprints?

KAREN GOODROW: Well, I think historically again, I think Kevin Kane is still present, but I think historically that was exactly what Brian said. There are occasions that happen, actually, more often than you might think where the individual who is under arrest when his or her prints are compared and it's demonstrated it's the wrong person.

REP. MORRIS: I understand that but the question -- but that's not the -- that's not the primary purpose for it, though.

KAREN GOODROW: Well, I don't think it's evolved into the primary purpose.

REP. MORRIS: No.

KAREN GOODROW: But there --

REP. MORRIS: Let's stick with fingerprints, let's just stick with that.

BRIAN CARLO: Okay.

REP. MORRIS: Okay, what's the primary purpose for taking a person's fingerprint or mug shot and they're still presumed innocent? What's the primary purpose?

KAREN GOODROW: In my experience, hopefully, they've had fingerprints on the scene and they're trying to compare them but let's not forget -

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REP. MORRIS: Hmmm, very good. So hopefully you have fingerprints at the scene and they may compare them.

KAREN GOODROW: But if I may throw something out again that our colleagues have continually instructed us about that fingerprints are only as good as the person who -- the police officer who has taken them, who rolls them in terms of comparing against the evidence from the scene. And I think one of the -- without speaking for Brian -- the difference here is there seems to be a lot more faith these days in DNA technology. It's not error proof, but it's certainly a lot more reliable than fingerprints because of the human element involved with fingerprints. There's not an automatic, "My fingerprint is seen at the chocolate shop," right. And they see if there's a hit or a match. There is first an examination done by a human being and if -- we're going through this quite frankly, right now, with again, the assistance of the Office of the Chief State's Attorney in a case from 1985 and it's not a DNA determinant case. And those kind souls at the lab have reviewed all of the evidence including the fingerprint evidence and they have had to tell us, by the way, about 20 of these witnesses/suspects we could not do anything with these fingerprints because they were so poorly taken at the time.

REP. MORRIS: Thank you. I'll kind of deal with that more. But the real basis for my question here was really dealing with the constitutional issues of whether -- in terms of presumption of guilt, all right. For my benefit, I think, my assessment is you've answered my question when you said, what did you say to me that -

KAREN GOODROW: The reliability.

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REP. MORRIS: It -- if whoever took it it's a reliability issue, but if I've got fingerprints and now I have DNA, I've got an extra tool. I've got more to help me determine -- and you said it yourself, because I'm using the fingerprints because they've been lifted, I'm able to connect that with something at the scene of the crime, may be able to.

KAREN GOODROW: If you were -

REP. MORRIS: So similar to this DNA that's taken, a kind of match. I mean, I may not have had anything else. I might have only had a fingerprint that I thought I was matching or some circumstantial evidence, whatever it was, it gave me a reason to arrest the person and now, once I've got your DNA and I've got your fingerprint, I got your mugshot. I've got more things as a tool to use. So in terms of presumption of guilt, have I done anything different or have I actually enhanced the -

KAREN GOODROW: They have (inaudible)

BRIAN CARLO: But if what you're -- if you're talking about -- and I think you are, the case for which the person's been arrested, that case.

REP. MORRIS: Yes.

BRIAN CARLO: Okay. There are vehicles in the law that are available today that are simple to get. So in other words, I'm arrested. The DNA at arrest is not related, it's not being taken in related to an investigation of the context of a case. It's being taken according to the database. If I'm arrested -- and let's assume they can't get my DNA because the law is not there. And they believe that I committed a sexual assault, it is exceedingly easy for them

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to go into court now and file a motion for nontestimonial evidence, which basically says, we have evidence biological evidence at the scene which we believe, and we're going to show you how, was left by the perpetrator. We think Mr. Carlo committed this crime. We'd like to take his sample. So in the context of this case, we can make exactly the comparison you're talking about, and I absolutely agree, that it's relevant information, it's important information, it's public safety information.

REP. MORRIS: Well, only if you didn't use it to put into a data bank and actually ended up connecting you to several other -- let's say it was a burglary we arrested you for now and now you go in the data bank and we get, gee, you know what, we now got a hit for the same guy for several other burglaries that we couldn't ever -

BRIAN CARLO: Absolutely.

REP. MORRIS: So -- so you have to agree at that point, it has a value that I think the proponents -

BRIAN CARLO: There's no question that it has a value.

REP. MORRIS: Let's go look for the crux. So your piece was having to do with too much information. Let's go along the too much information, although, I'll be honest with you, I don't -- you said the insurance companies would have the ability to get the DNA information and your concern was that it could somehow be disseminated and you need to protect the possibility of that information being disseminated. Well, right now, we collect the DNA for people who have been convicted.

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Isn't that same concern that you have just as possible for those people who have been convicted, maybe for a felony? The felony was a matter of two guys got in a fight and it was an assault or something like that and he was convicted for a felony, that same data would have the same vulnerable -- ability to exposure so why should we treat it -- why should that be a major concern?

BRIAN CARLO: Because I think, and this goes back to what I was saying before, by virtue of the felony conviction and this is a policy decision that that person has lost the right to that degree of protection. At that point, their relationship with the government, our government, has changed so they've lost the right for that degree of protection.

Before -- I mean, if the presumption of innocence is there as a kind of logical matter, I don't see how that person who's been accused -- I mean, remember, when we're talking about accused of a crime that means someone somewhere told law enforcement that this person did something. Whether that's true or not is what the judicial system is set up to decide. So that's the distinction between those two. Once you're convicted of a felony your protections are different.

REP. MORRIS: And I hear that it's just a policy piece, but the moment you're arrested there's a lot of liberties that you lose immediately, aren't there? You have to concede that.

KAREN GOODROW: Absolutely.

REP. MORRIS: In order for protection of people, for the service of justice, we as citizens understand there's certain liberties that we're going to give up. Now, the trick is this

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specific bill says that if you're not convicted it will be expunged. Why would you have difficulty with that? If it's going to be expunged that information is no longer a part of a data bank, it's no longer available to the kind of exposure that you're concerned about.

BRIAN CARLO: Well, obviously, if this bill's going to pass that's a section we support. We think that should happen. It really comes down to the question -- and again, I think the idea of a continuum is a really good way to visualize this, is that if they are ultimately convicted of the felony or a felony, they're going in anyhow. They're going into the data bank anyhow and hopefully there will be processes put in place where that happens earlier rather than later. So they're going in anyhow.

So if they're -- the question is what do you do with that period of time from the time of arrest until the conviction? If there's going to be one, that's where the constitutional claims come up, that's where the privacy claims come up. And that's the period of time where the resource issue comes up as well. And again, we don't generally talk about resources much other than we need more. But in this context, this is, to me, you're taking the money and putting it on the front end. If you're not giving more money you are directly taking it away from the case work that's going on now.

REP. MORRIS: Well, let me ask you this. Let's talk the money side for a quick second there. If on the money side because I'm taking a person's DNA upon arrest -- and let's just use a percentage. I'm just taking a wild guess percentage. In fact, I'm going to take a low one. Let's say ten percent of the people -- let's go even lower -- five percent of the

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people who you took this DNA sample from turn out to be people that you found out they were connected to other cold cases or live cases that you've got going on. I mean, isn't there a major savings that you have that you don't have detectives out there running around here investigating crimes when you now have the hit, you've got the evidence. The savings on that alone -- wouldn't that justify this happening?

BRIAN CARLO: But those -- I'm talking about direct savings in the context of the lab and their budget. Those savings may be there. I'm talking about if the lab had X amount of money and they're not being given more money and now they have a directive they need to do this and they're directed that they need to do this, they need to process these. They can't have a backlog. Then the money -- it's within the lab. So there may be savings in other entities for the state or municipal. And I know Karen wanted to mention that there's also some federal funding as well. But to me, I'm talking about the resources within the lab. And I haven't heard anyone suggesting that with this bill -- we're talking about an awful lot of arrests and we're talking about an awful lot of folks that would qualify that -- and again, they would know better. I was hearing that about 5- or 600 new lab technicians and maybe that number's not right. That was one of our concerns.

REP. MORRIS: It may not be. This bill only deals with serious felonies. This is -- which is different than what we're currently doing. We're -- everyone, everyone who's convicted of any felony upon conviction you're now eligible for this to happen, it must happen, currently.

BRIAN CARLO: But I think it might have been cited in here or maybe in -- the number of serious

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felonies, I think, was calculated to be in the thousands. I mean, there are a lot of them.

KAREN GOODROW: May I speak freely?

REP. MORRIS: Sure.

KAREN GOODROW: Just on sort of a broader stepped back approach for half a minute. Our Office of the Connecticut Innocence Project, the Office of the Chief State's Attorney and the (inaudible) lab applied about 18 months ago for federal funding under the Department of Justice and we, luckily, were awarded a sizable amount. And we shared that money.

And as a result of that money, the lab was able to hire two DNA technicians. And those folks are working only on cases that we bring to them where we think that there's a reasonable likelihood that the person might be proven to be innocent through DNA. These are only DNA cases. I could talk to you for a long time about my nonDNA cases.

But my point being that they now have two designated DNA folks who work only on those cases. And it takes a very long time. Those are only my cases. Those are not the cases of people who are -- who've been arrested. Those are not the cases of the police officers who bring in evidence to try to make arrests.

So my selfish concern, frankly, is that if they, just as Brian said, if they're going to have a new mandate and they're not going to have additional funding, I know that they won't take the time away from our federal money, but I have other cases that are important that don't fit within the confines of the federal money. So does that mean now that I have to go back to clients and inmates in prison and say

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I'm sorry, I thought this was going to be a six month, it's now going to be 12 months or even 18 months. It's totally selfish, but I'm very worried about adding the burden to the lab without some appropriate funding.

REP. MORRIS: Thank you. Thank you for raising the concern. And thank you for your testimony. Thank you, Mr. Chairman.

SENATOR COLEMAN: Thank you, Representative. Representative Verrengia.

REP. VERRENGIA: Thank you, Mr. Chairman. I would agree with you with respect to the money piece and the backlog, especially in cases where people have been the victim of a sexual assault or serious crime. We talked about eye witnesses and the longer those cases go on, the memory of those eye witnesses and even victims is diminished and it does have an impact to those cases so I certainly agree with you there. I understand the impact of that delay. However -- and Representative Morris asked and I don't want to beat a horse here, I just can't understand -- I'm having difficulty understanding what you -- your rationale with respect to DNA at the time of arrest versus conviction in this case and absent a conviction that DNA is not going to be used versus a fingerprint. You had mentioned earlier about the quality of fingerprints. A lot of that a long time ago, not long ago -- was probably the -- maybe employee error and human error in getting a good fingerprint because we used pads and roller pads.

Now with technology, just like DNA, fingerprinting has come a long way. We have the AEGISA system where police officers now can enter a fingerprint into a system irregardless of that person was convicted of any crime, not

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convicted but simply were arrested. And that person can be identified and that fingerprint can be used to solve other crimes, not just identifying a particular suspect to see if John Doe is John Doe.

So I'm having difficulty trying to understand your rationale with respect to the protection of someone versus the time of arrest and conviction and what you do in between. So it seems to me that in this language it's more protective in a fingerprint situation. And maybe that's more way of a comment unless you want to add something to it.

BRIAN CARLO: Yeah, I mean, and the other pieces is fingerprints actually, there's a provision to have them destroyed. And I think what you're saying, I mean, it is -- the difference is not saying that there's not any value in terms of law enforcement in the increased size of the database. It really is the nature of the protections that are provided prior to a conviction. That's the point in time where we think that that's what should happen.

SENATOR COLEMAN: Are there other questions? I have a question and I think it's short. In the discussion of the speedy trial bill, do you think it would make any sense at all to require the determination of speedy trials based upon the classification of the offense when it comes to defending these charges?

HB 6537

BRIAN CARLO: Sure, I mean, the other way to go would be to sort of shorten up the time period in which you could file the speedy trial. Yes, and the reason we actually did it the way that we did it was we were anticipating some questions or concerns about necessary time in order to prepare the case for trial, but we would have no problem with that at all.

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Whatever would get the system so that the case can reach its head within the statutory maximum period that the person is facing makes sense to us.

SENATOR COLEMAN: Thank you. And on the DNA taking, I'm not saying I agree one way or the other with the question that I'm asking. So don't read into the question any position that you might ascribe to me. I'm just asking you to comment concerning what may be the practical unforeseen consequences that would require submission of DNA sampling at the time the person receives a license for motor vehicle -- operation of a motor vehicle or for that matter, at the time of birth?

HB6489

BRIAN CARLO: Well, I mean, I think the question -- I mean, I think the concerns are the same. I think that's only, it's sort of a different portion of the population. But the concerns are the same.

SENATOR COLEMAN: Okay. And those concerns would be that there's too much information contained in a DNA sample and all that information considered together would possibly result in an invasion of privacy?

BRIAN CARLO: Yeah. And I guess one distinction would be that I have a choice as to whether or not I want to go get a driver's license. So that's another factor I would put into that equation and say okay, well, one of the things I'm going to have to do is I'm going to have to give a DNA sample. Again, while I wouldn't necessarily support that that should be a requirement, but I have a choice.

When I'm arrested and this is whether I did commit a crime or I didn't commit a crime, generally speaking, I don't have a lot of

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choice. That's something which happens to me and then this flows from something which I have had -- not the issue of whether I engaged in criminal conduct, but in terms of the arrest itself. How do you control that?

SENATOR COLEMAN: Well, I sort of assumed that those would be your responses and I'm trying to for my own purposes put some parameters on when it would be appropriate, when it wouldn't be appropriate. And I think the proponents of the bill -- I don't necessarily disagree with those that feel that there's a lot of social benefit to requiring the samples at the time of the arrest. I also agree with your insider position, having had some involvement in criminal defense matters, that there is a presumption of innocence that should be at work. And also for the member's consideration that should be considered. So thank you for your testimony today.

Senator Kissel had a question or unless you had a response.

BRIAN CARLO: No, I just wanted to note, because I forgot to say this earlier, we did also submit testimony on both the recording and the ID. So obviously, we didn't talk about that but are here as well on that. I'm sorry, Senator Kissel. SB954 HB1344

SENATOR KISSEL: No, no. By all means and I caught most if not all of the debate from my office. I apologize. I had to meet with some constituents at the same time as well. Related but not specifically on point, currently we have the DNA sample taken at the time of conviction by the Department of Corrections. It's my understanding that there is at least one individual that refused. We went through the whole process of getting a conviction for

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that individual for refusing. The individual just doesn't really seem to want to cooperate and the penalty for the refusal seems to be not significant, at least for that particular inmate.

You said that you're working with the Public Safety Committee to try to maybe move forward with some of these DNA issues. Is there a way that we can maybe ratchet that up a little bit so that if, at the end of the day, we have a similar system to what we have now, that we have some effective means and a viable penalty if an individual -- who knows.

This guy -- I don't know what this individual did. Maybe they committed other murders and they know if I go along with this I'm facing huge amounts of downsides. So I'm not afraid of saying no, I'm just not going to do it. And, you know, I wondered whether you could just take his cup from his cell, but obviously, our authorities don't want to work outside of the parameters of what we have constructed in our statutes.

BRIAN CARLO: You know, and that is sort of, I think the issue that cuts wide. Is that what do you do with the person or the small group of people that just simply don't want to comply. And I don't have a great answer. I mean, the suggestion that I made before was trying to do something and -- with this person again, if that person were convicted of murder and they were facing 180 years in prison, then probably nothing that anyone's going to do at any place, you could make it an A felony not to comply and they're frankly not going to care.

SENATOR KISSEL: Well, let's say he's in there for ten years but he knows that he's done murders and so I'm going to tread water and even if you

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add another year to my sentence, I'd rather tread water than give you my DNA and then have it linked up and all of a sudden, I'm facing some very serious felonies.

BRIAN CARLO: And that was, I think, contemplated in the suggestion that we made in that the time to take the sample is between conviction and sentencing. So prior before they go in.

Now, this person if it's ten year felony, the likelihood is that their exposure was beyond ten years. So either they had a sentence of ten years, 20 after ten, their exposure was greater. So now they're going in front of the judge with the judge having told them at the time of conviction, "You need to give a DNA sample between now and when you come back for sentencing. And you should also be aware that I will take that into consideration when I decide how much time to give you whether or not you comply."

SENATOR KISSEL: Okay. Only because we're beginning a track record in this committee of having very long public hearings -- so you're saying that the policy that we've had in the past, the way to ratchet that up is to have the ear or the persuasiveness of the fact that the judge is going to sentence going forward and so "Defendant, you could really get hammered if you don't cooperate." And that in and of itself should be enough. My other question is just on the -- the panel, the standing panel. And Ms. Goodrow wants to get on here. Are there folks from the State's Attorney's office on there and -

SB1092

KAREN GOODROW: There are, Senator. And the original statute, I think they added in the last couple of years, CSSD. And really, all of the stakeholders. And again, it's really fun

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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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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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REP. FOX: Thank you, Ms. Fair. Any questions from members of the committee? Seeing none, thank you very much for your testimony.

Next is Senator Rob Kane. Is Senator Kane in the room? Then what we'll do is substitute Senator Kane for Representative Nicaastro -- and you have the Senator with you?

Good afternoon.

REP. NICASTRO: Good afternoon, Chairman Fox. He was here a minute ago, okay. I'll be brief because we have the honor of having Katie's mother here today.

Basically, I'm here to speak in favor of House Bill 6489. I testify today in very strong support of House Bill 6489, AN ACT REQUIRING DNA TESTING OF PERSONS ARRESTED FOR COMMISSIONS OF SERIOUS FELONIES. The purpose of this bill is to catch violent repeat offenders sooner. I believe that when this bill is passed it will aid in closing the unsolved cold cases by requiring certain felony crime offenders to have their DNA screened against a DNA database.

I am honored to be able to support this raised bill. It is modeled after Katie's Law that is begin adopted nationally. Incidentally, right now there's ten other states looking at the bill right now. There's 24 that have approved it and there's ten more looking at it right now.

Katie Sepich was brutally murdered in 2003 and her killer, under arrest for burglary in 2006, had his DNA matched as Katie's killer. Had the DNA testing of the arrest been the law in 2003, Katie's killer would have been caught much sooner rather than in 2006 after committing another burglary. DNA matching will not only

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save lives by locking up dangerous criminals, but also prevent repeat offenders from committing additional crimes.

Twenty-four other states, as I've stated, and the federal government have similar laws and have proven that DNA matching works.

In summary, I am in complete agreement with Mrs. Jayann Sepich who will testify right after me. She is Katie's mother, founder of DNA Saves and Katie's Law advocate. By collecting DNA from arrestees, law enforcement can identify criminals earlier and create more efficient investigation practices.

Solving crimes sooner reduces costs associated with misdirected investigations. With the DNA match, law enforcement can quickly narrow in on the right suspect saving untold work hours using traditional investigation methods. The cost savings can then be redirected towards other crimes where DNA is not available and traditional investigation techniques are the only means of solving the crime.

I originated -- I just wanted to point something out here and I know that Katie's mother will do it as well, but I put this all in your hand out that I gave you's (sic) all. But just as an example, in Texas, Christopher Dye, he raped three women before being arrested for burglary. He then raped four more women before being arrested for burglary again. He raped a total of 14 women before being caught. Had his DNA been taken upon his first arrest for burglary, 11 of his victims would not have been raped.

And in another life, I served as a youth officer for 17 years and the worst case I ever saw was young girls being raped. Thank God,

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their lives weren't lost like her beautiful daughter.

But let me tell you something, ladies and gentlemen of this committee, we have a chance here to move forward. We have a chance here to do what's right. We have the chance of moving to the 21st century positively. And no doubt there's going to be critics who say this is unconstitutional. Well, you know what, that's what we have courts for. Our job is to legislate law and this is a proper law because it will save lives, it'll save people from having repeat offenders out there doing this over and over again. And I want to thank you for your time and allowing me to testify. I will turn it over to Katie's mother unless somebody has a question.

REP. FOX: Thank you, thank you, Representative Nicastro and Ms. Sepich, I recognize you came here from, my understanding, New Mexico.

JAYANN SEPICH: That's correct.

REP. FOX: And I know I've heard from Representative Hewett as well about how important you felt it was to be here today so feel free to testify.

JAYANN SEPICH: Thank you, Chairman Fox, distinguished members of the Committee, thank you for letting me be here today to share my story with you. You have the opportunity today to write a bill, to recommend a bill that will not only solve crimes but prevent crimes, save lives, save tax payer dollars and exonerate the innocent.

There are many misperceptions about DNA databasing and what the DNA database can do and what it cannot do. Hopefully today I'll be able to address some of those issues.

On August 31st, 2003, which was Sunday, a Labor Day weekend, my family woke up to the promise of a beautiful day. We had plans to have friends over for a barbecue in our back yard. It was bright, it was sunshiny. Our house was full of out of town friends. And then at 2:15 in the afternoon, the phone rang and our lives were shattered with just six words -- have you seen Katie today. I think maybe some of you have this -- it's been passed out. But in case you don't, this was Katie.

Katie was my beautiful, vivacious, outspoken 22-year-old daughter. She was our first born. She filled our lives with love. She filled our lives with laughter. She had just entered the MBA program at New Mexico State University and had gone to a gathering at a friend's house where she had had an argument with her boyfriend.

And she got mad and she stormed out to walk five blocks home. It was a very safe neighborhood. Katie was fearless. She thought she would be fine. She walked out without her purse, without her phone, without her keys and no one had seen her since. Her roommate was calling, hoping we knew where she was. She had called all of her friends. No one had seen her. They had even called all of the hospitals to see if perhaps Katie was there.

A few agonizing hours later, our worst fears were realized. That morning, target shooters had found the body of a young woman in an old city dump. She had been brutally raped. She'd been beaten, sodomized, strangled and her body set on fire. Our Katie was dead and there are no words to describe to you that agony, that pain. All I can say is that we were plunged into a pit so deep and so black that we thought

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there was no hope, no light. There was no tomorrow and all joy was gone.

After we buried our daughter we turned our attention to finding out who could have done this. We needed justice. We needed to know more than anything that we could stop this man from doing such a horrible thing to anybody else's daughter.

The detective in charge of the case told us that Katie fought so hard for her life that underneath her fingernails was the blood and the skin of her attacker. And he told us that they had extracted a DNA profile from that blood and skin and had uploaded it into a state and national database called CODIS. And he said that about once a week that would be cross referenced with an offender database hoping to find the match so that we could identify this man. And that gave us such bright hope because there were no other clues. There were no other clues. And I made the comment to this detective, I said, "Oh, this man was such a monster, surely he'll be arrested for something else and they'll his DNA and they'll put it in that database and we'll find him and we'll stop him. And he won't be able to do this to anyone else." And that's when Detective Robert Jones said, "Oh Jayann, I'm so sorry but it's illegal to take DNA when you arrest people. We have to wait until they're convicted of certain crimes."

And I have to tell you I was stunned. I was shocked. I'm a mother. My daughter had been brutalized and the best hope we had of stopping this man from doing it again was illegal.

So I began doing research. I became probably obsessed. I wanted to find out how this DNA

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works, what it means. Why we're not using it. So I started looking at everything I could.

The first thing that I found were studies that show how DNA could save lives. And I found many of these studies. And I realized that it wasn't as important to me to find out who killed Katie. It became important to me to prevent crime, to save lives so that other mothers would not have to bury their daughters.

Let me give you a chilling example. And this is what I found that made me very passionate about this. In California a man named Chester Dewayne Turner was arrested 21 times over a period of 15 years and never convicted of a crime that would allow his DNA to be taken. When he was finally convicted of rape and they took his DNA and they put it into the database they found that his DNA matched the DNA found on 12 raped and murdered women. And the first woman had been murdered two months after his first felony arrest.

Now there were a total of 21 arrests over that period, but he was never convicted of a crime that allowed his DNA to be taken. And any one of those arrests would have stopped this man, would have saved those lives.

And if you have the packet that I gave you, allow me, in tribute to these 21 women, excuse me, these 12 women, to read their names.

He raped and murdered, Diane Johnson, Annette Ernest, Anita Fishman, Regina Washington, Debra Williams, Mary Edwards, Andrea Tripplett, Desarae Jones, Natalie Price, Mildred Beasley, Paula Vance and Brenda Bries.

I have to tell you these are not just names. These are someone's daughters. These were

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beloved daughters. These are young women whose lives could have been spared had we taken DNA on felony arrest.

A man named David Jones had been in prison for 11 years, wrongfully convicted of two of these murders. After that match was made, Chester Turner was arrested and David Jones was released from prison.

One DNA sample taken upon arrest could have saved -- and I say 13 lives, because two of those women were pregnant and prevented an innocent man from spending 11 years in prison.

A study commissioned by the city of Chicago followed eight convicted felons. Had their DNA been taken upon arrest, 60 violent crimes including 53 rapes and murders could have been prevented.

A study prepared by the Office of the Governor of Maryland identified 20 violent crimes that could have been prevented if DNA samples had been required upon the arrest of just three individuals. In Colorado the Denver District Attorney's office released a study of 47 violent crimes that could have been prevented if DNA had been collected upon felony arrest of five individuals.

Critics say that we cannot prove that arresting DNA will prevent crimes. But these studies tell me that it can, that it will.

My family went to the New Mexico State Legislature in 2006 and Katie's Law was passed there which mandates that DNA be taken upon certain felony crimes. It went into effect at midnight, January 1st 2007. one hour and fourteen minutes later at 1:14 a.m., the first arrestee was swabbed under Katie's Law. His

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DNA matched a double homicide. And he's since been convicted of both of those murders.

Since that day in New Mexico -- and you have to realize we're a small state population wise. We have about two million population. Since that day we have matched 177 crimes to Katie's Law and arrestee DNA.

I'm also very proud to say -- and I heard testimony today that just isn't true. And I have examples and I want to give them to you. Arrestee DNA does exonerate the innocent. In New Mexico, a little girl was murdered on October 31st, 2005 in New Mexico, in Albuquerque in her own bed. Her name was Victoria Sandoval.

Shortly after that a young man was arrested for her murder. And they knew -- they came to know that the DNA did not match, but they felt like he knew so much about the crime scene that he was probably involved in the crime so he was arrested. And for two and a half years, he awaited trial while he underwent competency hearings because he was mentally challenged.

Then a man in New Mexico named Israel Diaz was arrested for burglary, swabbed and his DNA matched the crime scene DNA found on little 11-year-old Victoria Sandoval. An intensive investigation ensued and it was discovered that Israel Diaz and Robert Gonzales could not have known each other, their paths never crossed and so Robert Gonzales was released after two and a half years in jail and Israel Diaz was arrested.

In Illinois, Jerry Hobbs was held in jail for five years accused with the murder of his daughter and another young woman. Five years. They knew the DNA did not match but they felt

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that he was involved. Another man was arrested in Virginia -- his name is Jorge Torres -- a state which takes DNA upon felony arrest. And Torres' DNA matched the crime scene evidence. A resulting investigation revealed that these two men could not have known each other and Jerry Hobbs was released after five years.

There are a total of three cases in New Mexico where we can show a direct correlation to an exoneration for rape and murder because of arrest and DNA matches made under Katie's Law.

The opponents of this bill will argue that taking DNA upon arrest is a violation of civil liberties or an invasion of privacy and this is not true.

I want you to know that before I started this one of the things that I did was go to the scientists that helped develop this system. Because I wanted to know why, why do people consider this a violation of privacy and an invasion of privacy and a violation of civil rights. And I wanted to hear from these scientists how they developed this system so that it did not. Because obviously, they felt like it was a good system and this is what they told me.

The DNA strand, the double helix that we're all familiar with has over three billion markers, three billion. One of those markers is if I have blue eyes. One of those markers is if I have dark hair. Three billion. Thirteen of those go into the DNA profile, thirteen. Now there is a big difference between DNA and the DNA profile. In the DNA profile, only thirteen markers, and those were specifically selected by genetic scientists because they have no genetic information whatsoever with the

exception of one that does tell gender. The other twelve have no genetic information.

And I would argue vehemently with those who say that there's any predictive information on those twelve markers. Because I got to sit down with one of the men, one of the scientists who developed this system and I said, "I'm not a scientist, I'm a mom. You need to give me DNA for Dummies and explain to me how this works." He said, "I have a perfect example for you." And he asked me if I knew what a 33 RPM vinyl record looked like. And I said, "Yes, I had them in high school."

And he said, "Well, if you're familiar with that, think of that as the DNA molecule." And he said, "You can see the bands where the music is played and you put the needle down, that's where you hear the music." He said, "That's where the genetic information is. And you can see the spaces in between the bands where there's absolutely no genetic information whatever. Those are the bands that we take and put into the DNA profile. Those are the markers." But those are so specifically spaced between those 13 markers that when you have a thirteen marker match there is only a chance of one out of a number that's a one followed by 18 zeros that two people could have that same DNA.

Now I heard today about testimony about oh, there's a partial match, what if there's just a partial match. First of all, in order to go into the national database, you have to have all 13 markers. The state database I believe it's 11 markers. If all of those don't match that must be revealed in court that this is how many matched. And this scientist will say and this is the probability -- one in however many -- that there could be another person's DNA. It's a very accurate science. As a matter of

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fact, the National Institute of Science has said that DNA is the gold standard of forensic science.

Furthermore and I hope you have this other handout that I brought today, this information that's enfolded from here to here. It's the only information that goes in to CODIS. That's it.

There's no names, there's no social security numbers, there's no identifying information. There is a lab ID and that identifies which state and which lab it came from. There's a specimen ID and then there's the marker numbers. Those are the 13 markers that I've talked about. Two numbers delineate each marker. And then there's an analyst identifier.

This exists literally as a digital record in the bowels of a computer unless the match is made to crime scene evidence. It doesn't see the light of day. It's never attached to an arrest record. It only exists in this computer. Once a match is made to crime scene evidence, when that match is made then this lab identifier, that lab is notified and they need to go to their computer which has the identifying information and the cross reference is made there.

Then that sample -- and there was some talk about the original sample has all of the information. The reason they keep that is when they get this match, they go back to the lab and they retest it for accuracy. It's kept to protect. It's kept so they can retest it for accuracy.

Then if it's accurate the only people that can be notified of this information are law

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enforcement. They use it as an investigative lead. If the case is built and the prosecutor decides they want to go to trial, a court order is issued and another DNA sample is taken and that's what's used as evidence in court. So there are tremendous safeguards to this.

I think it's really important that we talk about that sample that they're so worried about that's kept forever and ever.

Well, first of all if someone is found innocent it can be expunged. And as they've indicated before, CODIS will not allow arrestee DNA to be uploaded into the national database unless there is an expungement condition in case someone is found innocent. So if someone is found innocent it can be expunged.

But here's the thing. That is no more dangerous than what is on this cup after I take a sip. We leave our DNA everywhere we go. If someone wants your DNA they can get it. They don't need to break into a state secured safe where it's kept, where it has safeguards and you have to have background checks to get into it. Anybody can get your DNA at any time and it's perfectly legal for anyone to get someone else's DNA if it's been discarded.

It's also a federal offense to tamper with CODIS. It's strictly against federal law to use DNA samples or profiles for any reason other than crime scene matches or to match unidentified human remains. The penalties, which are federal penalties, are fines up to a quarter of a million dollars and prison sentences up to two years.

And since the inception of the CODIS database in the mid-90s, there has never been one, not one, misuse of CODIS.

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It was mentioned that my daughter's murderer was arrested three months after he killed her and he was. But we didn't have Katie's Law. Consequently it was three years after her murder that he was finally convicted and incarcerated and we got his DNA. That's a long time for a family to wait for justice.

But I would like to point out something else. We're talking about money, we're talking about cost. In between the time that we could have had my daughter's murderer and the time that we identified him, during that three year period over \$200,000 was spent in investigating just her case that we wouldn't have had to have spent.

If we're talking about how to use our resources, arrestee DNA is the wisest use of our resources. A study was done recently in Colorado, the city of Denver did it under the auspices of the United States Department of Justice using DNA. It was a three year study. Basically, they found at the end of the three year study that for every dollar that was invested in DNA, the tax payers saved \$90, that's nine, zero. So I think that's a wonderful allocation of resources.

Let's talk about other costs of not using arrestee DNA. Remember the list of women that I read? Those victims of Chester Turner's? They're the true cost of not using arrestee DNA. How much are you children's lives worth? And what about David Jones? What's his cost for spending 11 years in prison wrongfully convicted for a crime that he did not commit?

I want to address one other issue and that's constitutionality. There are courts in this country that have upheld arrestee DNA. One of

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them is the Supreme Court of the state of the Commonwealth of Virginia. They upheld the constitutionality of arrestee DNA. Another is the Ninth Circuit Court of Appeals. I am confident that within the next few years, the Supreme Court of the United States will consider this. I believe that they will.

I can tell you that I've spent the last five years of my life working to see arrestee DNA adopted by states. If I had any doubt that we would not be upheld by the United States Supreme Court, I wouldn't be doing this.

But what are we doing while we're waiting for that United States Supreme Court case? What are we doing? We're solving crimes. We're bringing justice to families and to rape victims that so desperately need it. We're preventing crimes, we're saving lives. We're saving tax payer dollars and we're exonerating the innocent.

I can tell you this. If this law is not passed this year, right now, in the state of Connecticut, there will be a list of names similar to the names I just read. They will be lives that could have been saved. And we will know who they are. We will be able to look back just like we did with Chester Turner. We will be able to look back and we will know who they are. And the mothers and the fathers will know that they could have been saved and were not.

And that's a burden I'm just not willing to bear. And that's why I'm here today. I can say this. If this law is passed, lives will be saved. We won't know who they are. But I believe that's a blessing that we all could share.

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As always, I thank you and I stand for any questions you may have.

REP. FOX: Thank you very much for your testimony this afternoon and for making the important effort to be here in Connecticut today.
Representative Hewett.

REP. HEWETT: First of all I want to thank you for being here today. I remember when I decided to back this law, I remember going online and one of the first names that came up was Jayann Sepich and I kept struggling about how you pronounce the last name and kept saying Sepich and it's Sepich.

And I remember emailing you and I didn't think I was going to hear back from you because I knew you had to be a very busy person. And you emailed me back and said, "I would love to come." So it's been uphill from that point on.

Your testimony is powerful. Powerful. I wanted you to be here today because you put a name with a face. And I just publicly give you my condolences for your daughter. She was very beautiful. She looks just like you. And I know that we will do everything in our power to get this law passed because you're right. The names that you read we know what happened to them.

But the names that are coming up, that's the ones that we should be worried about. And I just want to personally thank you and I'm glad we got you here on time because Mrs. Sepich is on her way to Washington, DC. I'm going to take her to the airport and she will be testifying in front of the US Congress on this same bill. Because it passed the House last year and the Senate ran out of time to take it

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up. And hopefully that will be a different story this year. So again, thank you.

REP. FOX: Senator Kissel.

SENATOR KISSEL: Thank you, I want to thank you for taking the time to come to Connecticut. you have my deepest sympathies as well. That was probably one of the most articulate expositions of what this law is all about that I have ever heard. And I am very proud that I will stand with other supporters of this legislation, of this bill.

But I'll tell you one other thing. Your testimony was so persuasive. I am very concerned because it's my belief that we have a two year backlog of DNA analysis in this state right now. Now granted, these are convicted folks but what is in that DNA, what young people, what folks have been murdered, lost, what crimes are unsolved, what innocent people are serving time for crimes they did not commit?

Your testimony makes it extraordinarily clear that one of the greatest sins this Legislature faces right now is not clearing out that backlog as soon as possible. Because when you said the first hit was within an hour and a few minutes after that law was passed. And I'm thinking, as you said that, we have a two year backlog in this state? And we haven't even passed this legislation. Would we tolerate a two year backlog of fingerprints to see if there's matches? I don't think so.

So I think your testimony was extraordinarily important for this bill. But I also think that it really brought it home that we are not fulfilling our obligation to protect public safety with something that is demonstrably

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beneficial to prove the guilty have committed crimes but also to exonerate the evidence. And that's something we all have to think very, very long and hard about. Because we know that, without even this proposal that that is sitting before us.

So thank you so much for being our conscience here.

JAYANN SEPICH: Thank you, Senator Kissel. Mr. Chairs, Senator Kissell, I would like to point out one thing. I think it's very important that people do understand that the offender system and the crime evidence system are totally separate. And even though, yes, resources come from both, when we start taking more offender DNA that doesn't necessarily impact the crime scene evidence. It's very important that people understand that they're separate personnel, there's separate equipment, there's separate training. It's two totally separate queues if you will.

And what we found in New Mexico is that when you started taking DNA upon felony arrest, we became so much more efficient in our system that we went in New Mexico from having a backlog in our offender side, we don't have a backlog anymore on our offender side. And they really are two separate issues.

I very much advocate for the offending side on DNA in general. But I certainly want people to understand that when you take more DNA from the offenders, that doesn't necessarily mean you're slowing down the crime scene evidence. They are two separate things and I think it's very important to point that out. So thank you for bringing that up as well.

REP. FOX: Thank you. Senator McLachlan.

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SENATOR MCLACHLAN: Thank you, Mr. Chairman. And thank you, Mrs. Sepich for traveling from New Mexico. I hope it's warmer and cozier there than it has been around Connecticut with all our snow. I'd like to agree with Senator Kissel in a lot of what he had to say. Your story is compelling and for those of us who are on the fence on this idea, you certainly have swayed many minds today, I assume.

I wonder if you could share with me how do you respond to those who are somewhat libertarian in their thought and feel that this is an intrusion of government that is not appropriate? Now after listening to you, that doesn't sound like a common sense question, but for those who are libertarian in thought, it makes perfect sense. So I wonder how would you respond to that, please.

JAYANN SEPICH: I am absolutely convinced that a DNA profile is less an invasion of privacy by the government than taking a fingerprint. Fingerprints are not expunged. DNA can be if someone is found innocent.

Fingerprints are attached to an arrest record in most states. Fingerprints can be used for background searches, for employment searches. A DNA profile is never attached to the arrest record and it can't be used for anything other to match crime scene evidence or to identify an unidentified human remain. There are so many protections in the entire database that are built into the system that I truly believe that it is not an invasion of privacy. It is not big government. It's not Big Brother. I think it's protecting our citizens and I think our privacy is truly protected. And I think the potential victims are protected. And that is such an important element of this.

I have to tell you before I started this I probably leaned more, much more -- I was the kind of person that if I went to a grocery store and they wanted me to join their club, I didn't want to do that because I didn't want them tracking everything that I was buying. I mean, I have privacy concerns. I've spent a long time looking into this system and I truly believe that it is not an invasion of privacy, less so actually than fingerprints, but certainly no more so than fingerprints.

SENATOR MCLACHLAN: Thank you. And am I understanding correctly that you believe that this law should include a point that if DNA is taken on point of arrest and that person is found not guilty as our system does rely on presumed innocence, that immediately upon that point of innocence that the DNA records are expunged from the record?

JAYANN SEPICH: What the fed -- excuse me, Senator McLachlan, Mr. Chair -- what the federal government requires is that there is a provision for expungement. And different states handle this differently. In my home state of New Mexico, the expungement is upon the request of the arrestee.

And that's done for several reasons. First of all, it's a very expensive process to track each and every case through the system and automatically expunge it. There are states that have been doing that but they're trying to change it because of the expense.

And also I have to tell you, I believe in the power of arresting DNA for exonerations so strongly that I would not want my DNA removed from the system. And I believe that I should have that choice. I don't believe that the

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government should choose that for me. I believe that I should be allowed to say yes, I want it out or I want it in. because I believe that it would only serve to exonerate me. So I do believe that there should be a right to absolutely have it removed -- and let me go on further to say that I have followed this very closely. Expungement is a simple process. It's complete. It absolutely is total. People say, "Oh, once it gets into a system you can't get it out." This is such a closed system and the way it works it is absolutely expunged completely and I'm totally certain of that because I followed that very closely.

But to answer your question I do believe that if someone is found innocent they should have the right to have it immediately expunged.

SENATOR MCLACHLAN: Thank you, Mrs. Sepich. Continued success in your mission. You've honored your daughter quite spectacularly with all your work.

REP. FOX: Are there any other questions from members of the committee? Representative holder-Winfield.

REP. HOLDER-WINFIELD: Good afternoon. Just -- if you could just tell me how expungement works. You said it's a very simple process.

JAYANN SEPICH: I can tell you how it works -- well, I can tell you how the expungement procedure actually works. Upon notification that the expungement is required, the state lab immediately destroys the sample and they destroy the record in their computer. And then it's synced to the national database and that's the only -- it's like the Smartphone to your computer. But that's the only link is between

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the state and the federal government and it's expunged out of the federal system.

Furthermore, I don't know -- I want to reiterate that in the federal system, in the federal CODIS there's no names, there's no social security numbers. That only exists in a very secure computer at the state level. So if someone said, "Well, what if it wasn't taken out of the federal database. What if there was a glitch and it wasn't taken out?" Even if that were the case, if there were a match there would be no way to figure out who that belonged to because that identifying information has been totally expunged from the state database.

And as I said in my example, there's no names, there's no social security numbers there but it is expunged. Like I said, I've visited the FBI facility, I've watched, I've asked questions. It's totally expunged. But even if it weren't, if they got a hit on that they wouldn't be able to match it back to the person it belong to because that information has been totally destroyed at the state level.

REP. HOLDER-WINFIELD: So you're telling me that once the process is underway, it's a pretty simple process. I wonder if it places -- you obviously -- as you said, it follows -- and this is from the perspective of the individual and I recognize that you don't mind your DNA being in the system.

JAYANN SEPICH: Right.

REP. HOLDER-WINFIELD: But from the perspective of the individual and in the places that you've observed, is it easy for them to have their DNA

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JAYANN SEPICH: It's absolutely simple. All that's required is that a letter be written requesting expungement and then there's just a process where they make sure that they are eligible for expungement. In other words, they were not found guilty and then it's expunged. That's it.

REP. HOLDER-WINFIELD: And so you just write the letter. You don't have to provide any proof is what you're saying.

JAYANN SEPICH: The proof -- well, in New Mexico, the proof is supposed to go with the letter. I mean, they have to verify, yes. They have to have the court documents.

REP. HOLDER-WINFIELD: So just for clarification, if I were in the system and then not charged and whatever happens along the way with my case, I would have to just provide -- I would have the responsibility of providing the court document

JAYANN SEPICH: Whatever document you were given when you were not charged -- and you would be given that document. Now I can't speak for every state. I do know in New Mexico that you are provided with that document. You take that document, write a letter, mail it in, that's it.

REP. HOLDER-WINFIELD: Thank you and thank you for your efforts.

JAYANN SEPICH: Thank you.

REP. FOX: Representative Smith.

REP. SMITH: Thank you, Mr. Chairman. Mrs. Sepich, again, as has been stated here already today, we thank you so much for coming and sharing

part of your life. And what you have done with that horrible incident you have to be given so much credit and I'm sure you hear that all the time but take it to heart because it's true.

I guess the question I have for you is, you know, when I came in today, I wasn't sure where I was going with this bill and what my ultimate decision was and I'm still a little bit up in the air even after hearing what you had to say.

In Connecticut, the bill as proposed to deal with a serious felony or an A or B felony. And my question for you is in your mind should it be a felony or should it be upon any arrest?

JAYANN SEPICH: Representative Smith, what we advocate for DNA today, we advocate for all felony arrests. We don't advocate for anything below that. I know that's not what this bill covers. I'm very, very pleased that this is a step forward that Connecticut is making at this point.

I can tell you that of the 24 states that have some form of arresting DNA, 12 of those take it for all felony arrests and the rest of them have varying degrees. Some are, you know, the same as this, some are a little different. But what we advocate for is all felony arrests. We don't advocate for every arrest.

REP. SMITH: And I'm just wondering what the rationale is behind just limiting to a felony, not a misdemeanor or not every arrest? Because if ultimately the purpose behind this is to either have a match or to exonerate a person, why should we draw the limit for a more serious crime versus say a class A misdemeanor, which is also a serious offense as well.

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JAYANN SEPICH: To be perfectly honest, I think at this point, where our nation is, it's a matter of cost effectiveness. I think we have to look at that. I can tell you I've seen the cost of the DNA testing go down and down since I've become involved. I think it will continue to go down. I - we have just chosen to draw the line at felony offenses because of that cost perspective. But I don't know -- I don't know if that answers your question.

REP. SMITH: It does. Thank you.

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

REP. MORRIS: Thank you, Mr. Chairman. Not a question, but I just want to add my comment to those who have given their thanks to Mrs. Sepich for coming all the way from New Mexico, and as Senator Kissel said, really just laying this out in such a simple fashion a child could understand.

You know, I pretty aggressively fought this the last time it came around because of a lot of the misinformation that was put out there. But you've made it simple enough that I've -- this has my full support, my full sponsorship and everything.

And my condolences to you on behalf of your daughter and my best wishes for your future and I think what you are doing is good for the entire country. For all the people who are sitting behind bars unjustly and this ability that you are putting forward, they can be exonerated. And for all the criminals that are out there and have been getting away with things that they shouldn't be able to get away with and the lives that we can save, young women that are being raped that will not be

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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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SENATOR COLEMAN: Thank you, Mr. Welch and thank you for reminding me about our work on Article Nine. I think the most I've ever known about Article Nine was when you were helping to prepare me with regard to a bill some years ago. And thank you and the rest of the Law Revision Commission for the very important work that you do including buttressing legislators. Any questions? Seeing none, thank you very much.

Andrew Schneider is next. Long time, no see.

ANDREW SCHNEIDER: Good afternoon, Senator Coleman and members of the Judiciary Committee. My name is Andrew Schneider. I'm executive director of the ACLU of Connecticut. And I'm here before you today to express our view that House Bill 6489, AN ACT REQUIRING THE COLLECTION OF DNA FROM PERSONS ARRESTED FOR A SERIOUS FELONY should be vigorously opposed on grounds of constitutionality, safety and cost.

The cornerstone of the American legal system, that a person is innocent until proven guilty is turned on its head when innocent people are included in a criminal data bank. There's a vast difference between using DNA as a tool in investigations, both to catch the guilty and exonerate the wrongly accused and storing the most intimate biological information of persons who have not been convicted of any crime, even if it is only stored for the duration of the legal proceedings that ends in acquittal, which can sometimes take years.

DNA is much more than a fingerprint in that it contains some of the most private information about a person. Our genetic code which is contained in our DNA determines a great deal about susceptibility to disease as well as information about one's family history. This

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is private information about you that should not be made available to the police or the government.

Concerns of misuse of this information are driven by current laboratory practice where each biological sample is retained along with the generated DNA profile. The risk that these samples might be accessed and used in controversial research, for example, on human behaviors such as aggression, substance addiction or criminal tendency or in other sinister ways remains so long as those samples remain on file.

There is an additional danger inherent in these databases as well, which is that they make sharing the data extremely easy. Almost weekly, we hear of another government database being breached and the information being sold by identity thieves.

Massive expansion of DNA collection is unlikely to make us safer and may even undermine criminal justice. DNA is only found in a small fraction of crime scenes and the ability of law enforcement to resolve crimes using DNA evidence is limited by its ability to glean DNA from crime scenes, not by the number of people in a database.

Unchecked expansion of DNA data banks will encourage law enforcement to spend a disproportionate amount of time and money mining crime scenes for DNA when resources could be better spent on other techniques such as community policing.

A recent study has shown that enactment of Britain's arrest and testing program has actually corresponded with a slight decrease in matches with crime scene evidence, probably

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because they're bloating their database with those who are highly unlikely to commit the tiny number of crimes where DNA plays a role.

Backlogs in DNA testing have resulted in delay in priority cases. Consider the tragic case of Christina Worthington, who was raped and murdered on Cape Cod in 2002. although the crime lab had the DNA of her attacker, it took over a year to process the sample thanks to a backlog caused by a DNA dragnet.

DNA testing is not infallible. Mistakes can and have been made in the collection and analysis of DNA and the reporting of results, sometimes resulting in innocent people serving time for crimes they did not commit.

Backlogs increase the chances of these errors as lab analysts and database administrators are pressured to cut corners to meet their work load. Josiah Sutton spent nearly five years in prison starting at age 16 for a rape he could not have committed as a result of an error made by an analyst at the Houston crime lab.

Finally, unchecked expansion reinforces racial disparities. A DNA data bank that includes arrestees will unfairly represent minorities who are wrongfully arrested at disproportionately higher rates than whites. One third of the black population in Britain is currently represented in the UK database as a result of Britain's decision in 2001 to include arrestees in its data bank.

For all these reasons, I urge this committee to reject the bill. Thank you.

SENATOR COLEMAN: Thank you. Are there questions?
I see no questions. Thanks again for hanging in with us on Monday.

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ANDREW SCHNEIDER: Thank you. It was an important issue, thank you.

SENATOR COLEMAN: Michelle Cruz.

MICHELLE CRUZ: Good afternoon, Senator Coleman and distinguished members of the Judiciary Committee. My name is Michelle Cruz and I'm the state Victim Advocate and I run the Office of the Victim Advocate.

My office has submitted numerous volumes of written support and opposition to various bills today. However, what I will do today is I'll just comment on some of the highlights on a few bills and then read the testimony on two more important bills that relate to victims.

First of all, I just want to comment on the Office of the Victim Advocate did provide supportive testimony on House Bill 6537 regarding speedy trials. The victims in the state of Connecticut have a right to a swift disposition in their case and this would assist in those misdemeanor cases. The only addition that the Office of the Victim Advocate would ask for is in cases where an offender is challenging the speedy trial right, instead of immediately releasing that individual, the Office of the Victim Advocate would ask that a prompt bail or bond hearing be allowed to address the incarceration of that particular individual. The reasons for that are described in our testimony as well.

With regards to witness ID which is House Bill 6344, as a testimony today already suggests, there are best practices that will guide witness identification. But as you've heard for a myriad of reasons, codifying these guidelines is not desirable at this time.

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SENATOR COLEMAN: Seeing no other questions, thank you for your time and your testimony.

Janice Flemming.

JANICE FLEMMING: Good afternoon, Chairmen and other distinguished elected officials. I'm here to lend my support for my organization, Voices of Women of Color in support of Raised Bill Number 6539, AN ACT CONCERNING SENTENCE MODIFICATION and 6475, AN ACT CONCERNING MANDATORY MINIMUMS.

My name is Janice T. Flemming. And I am the CEO of Voices of Women of Color. And on behalf of the Voices of Women of Color we would like to first thank you for allowing our organization to submit a testimony in favor of House Bill 6475, AN ACT CONCERNING MANDATORY MINIMUM SENTENCES.

The Voices of Women of Color is an organization in the city of Hartford. Our mission is to create a safe space for women of color to come together in one voice as one community for the liberation of all oppressed people in the areas of voting, housing and employment. Since 2009, the Voices of Women of Color held over 200 house parties in the city of Hartford. These house parties were designed to engage residents in frank and candid conversation about nonviolent drug crimes. During our fact finding and discovery on the issue, we discovered that mandatory sentences have led to considerably longer incarceration sentences. In addition, the Voices of Women of Color witness firsthand how mandatory minimums have broken families -- have broken and disrupted families for the long term -- excuse me.

Mandatory minimums have also contributed to homelessness, increased DCF case numbers and

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has amplified the poverty rate in the city of Hartford significantly.

More specifically, mandatory minimums disproportionately affect black and Latino defendants at a much higher rate than their Caucasian counterparts in cities like Hartford.

In Connecticut, blacks are 12 times more likely to be in prison than whites, Latinos are six times more likely. What this outdated criminal system has created is one out of six children in Hartford having a parent in jail.

This is not acceptable. If we are truly serious about getting Connecticut out of a deficit then we must see House Bill 6475, AN ACT CONCERNING MANDATORY MINIMUM SENTENCES as part of the solution.

Currently, Connecticut is spending over \$40,000 to house a person in our state's prisons. Hundreds of millions of dollars are lost each year because of an outdated criminal justice system. The state of Connecticut can begin to recover those monies with the passing of H.B. 6475.

The Voices of Women of Color ask our elected officials and this General Assembly to pass H.B. 6475, AN ACT CONCERNING MANDATORY MINIMAL, so that we can begin to reunite families. Thank you very much. Any questions?

SENATOR COLEMAN: Thank you. Are there any questions? Thanks for your patience and your testimony.

JANICE FLEMMING: Another comment. I would also ask the General Assembly to really have debate and think long and hard about Bill 6489. I've had the privilege of listening to testimonies all

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day and I see that the General Assembly was very pleased with the testimony that the parent of Kate's Law had given out. I was impressed by the testimony as well.

However, we do live in the state of Connecticut where we have disproportional numbers of blacks and Latinos who are being profiled and arrested at higher rates and I don't know how that would all play out, how would DNA be tested, who would it be for, who's being tested. I still think there are a lot of questions that are unanswered in regards to Bill 6489. I would just encourage the General Assembly to pay close attention to that. Thank you.

SENATOR COLEMAN: Thank you.

James Schulwolf.

JAMES SCHULWOLF: Good afternoon, Senator Coleman, Representative Fox and members of the committee and Senator, thank you for the correct pronunciation of my name which is often difficult.

SENATOR COLEMAN: You heard me hesitate.

JAMES SCHULWOLF: Well done. I'm Jim Schulwolf, I'm a resident of West Hartford, I'm an attorney in Hartford. I'm a member of the executive committee of the Connecticut Bar Association, Commercial Law and Bankruptcy Section and a member of the Connecticut Bar Association, Commercial Finance Committee.

I have delivered written testimony to the committee already and you've also received the report of the Advisory Commission with regard to the amendments to revised Article Nine. I'm here on behalf of the section and the committee to express our strong support for House Bill

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6274, AN ACT CONCERNING AMENDMENTS TO ARTICLE
NINE OF THE UCC.

You've heard earlier testimony from Seth Klaskin of the Secretary of State's Office and from Tom Welch, the chairman of the Advisory Committee, of which I was privileged to be selected as a member, endorsing the bill and specifically endorsing the so-called Alternative B. I want to both endorse that testimony on behalf of the section of the committee and specifically endorse the choice of Alternative B. Because among other things, as they have stated, it will provide greater certainty to the commercial finance industry which has the effect of avoiding unnecessary cost.

And because of -- in today's world the need to avoid the cost of harmonizing computer systems, as it was pointed out by Mr. Klaskin.

A brief bit of history. Revised Article Nine was a substantial revision to the commercial laws that became effective in Connecticut in 2001. since then we've had a number of years to observe it in practice. And to see what worked best and to see which sections needed tweaking. Over the last few years, a consensus has developed nationally that there were a few areas that needed further clarification and that amendments were needed to provide that clarification.

As Tom Welch testified earlier, there's a rigorous national procedure that is undergone when amendments to the Uniform Commercial Code and other uniform acts are being proposed that involves thorough review by, among others, the American Law Institute, the National Conference of Commissioners on Uniform State Laws, the American Bar Association and various industry

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groups. And it's only now that that has been completed that the amendments are being proposed in bill form, in the form that you have it and being introduced in all 50 states.

It's important to note that the Uniform Commercial Code is a uniform act. And it works best when all states are similarly situated and when the laws in all states are the same or as close as they can be. When that's not the case, there's the potential for confusion which results in unnecessary costs and expense, not only to lenders, but also to businesses and consumers.

So without repeating the testimony that was given before, I think from our section's perspective it's important that this bill be passed in its current form for a couple of basic reasons. One -- and I'll be quick -- that our laws reflect the latest and best thinking of the law, and, two, that we're in step and in agreement with the other states that will be passing this bill. If we're not, then again, we run the risk of confusion and making it more difficult to do business in Connecticut.

Thank you very much and happy to entertain any questions.

SENATOR COLEMAN: Are there any questions for James?
Seeing none, thank you.

JAMES SCHULWOLF: Thank you very much.

SENATOR COLEMAN: Christopher Duby.

CHRISTOPHER DUBY: Good afternoon, Senator Coleman.
My name is Christopher Duby. I'm a lawyer that practices in North Haven, Connecticut. I'm here today on behalf of the Connecticut

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Criminal Defense Lawyers Association, upon whose executive board I sit.

We submitted a five or six page letter which was addressed to you, Senator Coleman, detailing our testimony. And I know you heard from Attorney CARLO before, as well as some poignant testimony from some other witnesses.

I think the one thing I would like to draw out in addition to what's in the testimony we've submitted is that the raised bill as it's written -- and I'm referring specifically to 6489, the DNA bill we've heard discussed before -- requires the that arresting agency, the local police agency collect the DNA swab.

And I think just from a general perspective, of somebody who practices regularly in the parts and in the courts, the concern I have with that is really simply that police officers already have plenty to do at the time of an arrest. Between the other things we've already heard about, collecting fingerprints and photographs and attempting to take statements. And there may hopefully, someday soon, be a requirement to video tape certain parts of the proceedings.

And now to further burden those police officers with the collection of the DNA swab -- is something that I think this committee should think about and analyze as it goes through the provisions of this bill.

Other than that I think I'm very comfortable in standing on the submitted testimony. I'm happy to entertain whatever questions the committee may have.

SENATOR COLEMAN: Are there questions for Mr. DUBY?
Seeing none, thank you for your time.

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Finally, regarding the collection of samples at the time of arrest, I don't know that I could say much more than Ms. Sepich. I think she adequately explained the reasons why the collection of samples at the time of arrest is important. The passage of every day means statutes of limitations are expiring and people are avoiding punishment for crimes they might have committed. 24 states currently take samples from some folks at the time of arrest. We view it as a better fingerprint. It is the same as taking somebody's fingerprint at the time of arrest.

The -- in terms of the cost of this, I know that there was some discussion of what the cost of this would be. I think we can address some of that in terms of what has happened in other states. Other states have experienced some increase in cost and I would indicate that we could probably expect some increase in the cost of this.

The states that have experienced the greatest increase in cost have been in states where they have taken samples from all felony arrestees. And the reason why is there's going to be a number of those individuals who are going to get programs or a number of those cases are going to get (inaudible). There are a number of those people who are going to be allowed to plead to misdemeanor offenses. So when you expand the universe of people who you collect the samples from you're going to have a number of people who aren't going to be convicted of felonies and you wouldn't get their samples otherwise.

When you restrict it, as you have attempted to do here, to serious felonies, then you're going to limit the number of people that you won't ultimately get samples from anyway. To the

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extent you -- somebody's charged with murder, it's probably highly likely that that person, if he's convicted, will be convicted for a crime that is a felony. So your chances of getting the sample at the back end is pretty high.

So there will be some additional costs because there will be some cases where the person's found not guilty. There will be some cases where the person -- where the state decides not to pursue the charges. However, the majority of cases, the person would ultimately be convicted of a felony and you'd get the sample at the back end. So it's just a question of when the expense occurs.

In terms of the crimes that you've listed there -- manslaughters, murders, assault 1s, ones that from my review that you might want to take a look at in terms of if you think (inaudible) unlawful restraint, assault in the second degree, those are crimes that sometimes people are allowed to plead to misdemeanor offense and they may not result in felonies.

In terms of the technical aspects of the DNA testing, I'll defer to Patricia.

PATRICIA JOHANNES: Good afternoon. I don't have a prepared statement. I'm just basically here to answer any of your questions. But however, I just would like to make a comment on Ms. Sepich's testimony. She did a commendable job. She explained the DNA testing, the use of the database thoroughly.

The only thing that I would like to clarify is she did make a statement about the costs of resources. It may be true in New Mexico the processing of offender samples or arrestee samples may be separate and not done by the

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same personnel or the same budgetary pool of resources as the forensic samples. However in the state of Connecticut that's not quite the same. We are utilizing the same personnel, the same laboratory spaces when we are processing offender's sample currently as we use of forensics for cases.

Just briefly I'll give you an example. One of my primary jobs -- and I do work with the CODIS database. When matches are generated by CODIS each one of those matches has to be evaluated. The data has to be looked at and the match has to be confirmed by a qualified analyst. And that is one of my responsibilities. However on the same -- by the same token I am a qualified DNA analyst and I can do case work. When rush cases come in, a investigation is high profile or of an expedient nature, I can be easily pulled away from my duties on the database and asked to go into a laboratory and do case work, you know, generate DNA profiles, analyze data and write reports, go to court if necessary.

I'm not unique. Many of my colleagues are doing the same thing. We're basically doing whatever is the most expedient job. If the database a priority at this moment then people are working on the database. Or if there's case work or a high profile case, right now that area that needs the most resources, then they are being put to use in that way.

So basically I think the laboratory's concern is that funding for additional personnel would come along with this bill because right now we are -- our resources are stretched. And you know, getting more and more stretched each day.

Other than that if you have any questions, I'll be happy to answer them.

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SENATOR COLEMAN: Representative Holder-Winfield and then Senator Kissel.

REP. HOLDER-WINFIELD: Good afternoon. I -- my question to you would be at what point in the process do we begin to process the DNA samples after we've taken them?

PATRICIA JOHANNES: Which DNA -- the offender samples?

REP. HOLDER-WINFIELD: The ones -- the offender samples, yes.

PATRICIA JOHANNES: Currently, well, the samples taken now are taken from those convicted of a felony crime. When they come into the laboratory they basically are immediately -- the procedure is begun. Currently, the backlog on getting a sample in the door and into the database is approximately four months. We have about a 3,000 offender backlog. That's down from a few years ago where we were up to over 20,000 sample backlog.

REP. HOLDER-WINFIELD: And just so that I'm clear, the 3,000, the individual sample at the -- that's in four months down the road?

PATRICIA JOHANNES: Right. We -- approximately each month on average, we get about 800 new convicted offender samples. So there's about a 3000 sample backlog, so it's just about three and a half to four months.

REP. HOLDER-WINFIELD: Okay. Under the bill being proposed, at what point would the samples of people who haven't been convicted of anything, at what point would they be processed? After the conviction happens? When in this?

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PATRICIA JOHANNES: I'm not sure that all of those procedural aspects have been worked out. I would think that it would be most expedient to process those samples immediately because there is the potential for those samples to be purged if in fact there is no conviction or charges are dropped.

REP. HOLDER-WINFIELD: So maybe I can direct that to Attorney Kane because --- unless you just don't have a different answer.

CHIEF STATE'S ATTORNEY KEVIN KANE: No, these samples could be -- ideally would be tested as soon as they came in the door -- were collected and came in the door at the lab.

REP. HOLDER-WINFIELD: And then entered into the database.

CHIEF STATE'S ATTORNEY KEVIN KANE: And then turned into the database, yes, under this bill, immediately.

REP. HOLDER-WINFIELD: And so we're going to process -- you need more resources. I think we all agree about that, but we're going to add to this database something that will stretch your resources even more and then allow for people to take that back out of the database if they're not guilty.

CHIEF STATE'S ATTORNEY KEVIN KANE: It would be automatic under this bill, too. Right now, data -- right now -- and correct me if I'm wrong, but right now these samples are not removed from the database unless an offender requests it to be removed. And then they -- under this bill it will be the automatic removal upon a dismissal or a acquittal.

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REP. HOLDER-WINFIELD: So then the offender -- the person who was initially thought of as an offender has no action to take, it just automatically happens.

CHIEF STATE'S ATTORNEY KEVIN KANE: Under this bill it would automatically be removed and purged, yes.

REP. HOLDER-WINFIELD: And I think it was suggested a few minutes ago that -- you know, I'll just leave it there. Thank you.

SENATOR DOYLE: Thank you. Senator Kissel.

SENATOR KISSEL: Thank you very much. Just a few things. And I appreciate where Representative Holder-Winfield was going with this. Yeah, clearly we're struggling to fill a three and a half billion dollar gap and you guys are struggling to try to get on top of backlog. Expanding the amount of work you folks are going to do is problematic unless we as a legislature decide this is a priority. And from the testimony earlier today, it sounds like one of the facts that the woman from New Mexico indicated was that in one of the empirical studies, a dollar invested in DNA research and accumulation and the database returns a 90 percent benefit to the community because of crimes solved, less victimization and other things like that.

Would you agree and I know this is an Appropriations question and not really a Judiciary question, but that if we were to proceed down this path concerns about having folks give personal DNA at an arrest aside for the moment, but just a purely sort of financial dollars and sense, do you agree that there is much to be gained on a dollars and sense measurement by moving forward rapidly with our

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DNA accumulation database or do you disagree with that?

CHIEF STATE'S ATTORNEY KEVIN KANE: It sounded good to me when she said it. The reason I didn't push for DNA the last two years for taking it on arrest, it was a financial burden for the lab -- I'm deferring to the lab. It seemed like it was too much money, the backlogs were too big. The backlog on just analyzing offender samples was just too big. I had never thought of it in terms of a cost savings device until I heard it this morning and that may be a good point. I don't know whether it would save money or not. It sounds logical to think that it might. But I can't answer that without knowing more.

SENATOR KISSEL: Well as an advocate for DNA if we could get our hands on that report, that would be very helpful. And if somebody could find it that would be great.

Two, I thought recently we were two years behind and now I'm hearing four months behind. Was it not that long ago that we were two years behind in the backlog?

PATRICIA JOHANNES: Recently, when the state received ARRA money, American Reinvestment and Recovery Act, thank you. The laboratory was funded, was given money to fund approximately six positions. Those six individuals basically wiped out our backlog. We were at 20,000 samples backlog with our offenders but within about six to eight or nine months, those six people that were again funded by ARRA money were able to basically eliminate that backlog and bring it down to about a one to two or three month backlog.

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Those people are currently have been trained to do forensic cases and they are working on the forensic case back log. But the ARRA money does run out come this June, June 2011. And so we need to find funding for these individuals to keep them going and helping with the -- an in addition if you add another requirement on us, we need to find funding for additional individuals to basically do the new requirements that are associated with this bill.

SENATOR KISSEL: So -- absolutely. So we've made progress, thank heavens for the federal government with the federal funding but we're going to be back in the soup in a few months and we're going to have to struggle to find financing or revenue sources just to keep our head above water. Otherwise, I see us slipping right back to where we were, an ever increasing backlog. Would that be correct?

PATRICIA JOHANNES: I believe that is a fair assessment.

SENATOR KISSEL: Okay. Now let me just move on to another thing. Reasonable force. I think if you're incarcerated in one of our correctional facilities -- and I've toured so many of them, they use reasonable force all the time. I mean, if folks don't want to leave their cell, they're chained and they're -- you know, some COs go in there, not to harm them but to get them to sort of do what they're supposed to do and at certain times.

And there's actually -- I don't know if the litigation I think it's still going on as to whether an inmate can even go on a hunger strike or whether the Corrections Department has the right to ensure that an inmate takes proper nutrition. I do believe that it's

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without question that the Corrections Department has the absolute right to prevent an inmate from committing suicide. And my guess is that sometimes that would require reasonable force as well.

It definitely concerns me that there are over 400 inmates that are looking at the consequences of not giving up their DNA, seeing the potential for an additional five year sentence and saying, "You know what, I'm saying I'm not going to cooperate."

Even if ten percent of those folks, which I don't think is unreasonable, let's say ten percent of those folks have done something in excess of five years; then that means there's other victims out there, that means there is unsolved crimes out there. There may be bodies out there that we don't know who they are. Who knows?

But for over 400 inmates to say, "No, I'm just not going to do it and if you want to convict me and add five years to my sentence, so be it." That's scary. That's absolutely scary and so I'm very supportive of that.

But I always thought you could get DNA off a cup. So I mean, what would reasonable force be. Because I know people, if they argue with this proposal, they're going to paint reasonable force as like six people pinning someone down, opening up their mouth, dragging a swab in there and making it as horrific as possible. But I'm thinking that reasonable force to get DNA from these inmates probably isn't all that different than in any other reasonable force that's been utilized in our correctional facilities on a day-to-day basis.

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CHIEF STATE'S ATTORNEY KEVIN KANE: It's probably less force than is used to take fingerprints at the time of arrest. And one of the reasons police officers don't have to use force to take fingerprints at the time of arrest is that everybody knows that the law provides them to use reasonable force if they have to do it and people submit.

Now they know, and it's obvious they know, that they don't have to -- the don't have to submit and that Corrections people won't use reasonable force because the Legislature last session refused to pass the reasonable force bill and instead increased the penalties. So they refuse, we arrest them, they go to trial and we've had trials, finding them guilty, sentencing them and we still don't have the samples.

Now the force -- it might not be pretty to somebody deciding to refuse and then what are you going to do? I think there can be, there are ways that are certainly not barbaric and that couldn't cause harm where DNA could be collected, especially if the people know that ultimately this can be collected. Then they can do it easier rather than harder.

SENATOR KISSEL: But essentially the key point is, once we make that change legislatively, odds are we're never going to have to use force. Because they're going to know that the force can be utilized and that's why they cooperate with the photographs, that's why they cooperate with the fingerprints. That's why they cooperate with a lot of other things that go on even prior to conviction. Is that --- is that what you're saying?

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes.

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SENATOR KISSEL: Okay. Because I do believe as much as people may have concerns about that -- I do believe that if there are over 400 inmates that we have saying, "Five years? I don't care." That's 400 scary individuals.

You know, we have 17,000 inmates. So many of them are going to come back into society, be rehabilitated, we're going to break that cycle of recidivism. But there are some really dangerous folks in there, too. My guess is that if we looked at those 400, they're probably at the top end. They're probably some very dangerous individuals in there and we really need to find out what other things they may or may not have done.

And I just don't understand a refusal other than just being totally against the system, you know. Asserting a right because they can merely assert a right, but I'm thinking that there's a substantial percentage of those individuals that just don't want us to know what other things they may or may not have done.

And the really other scary component of that is there may be other folks doing some serious time for crimes that if we can get those 400 individuals to comply will exonerate other people who are doing serious time and they're innocent. And so we hear about innocence projects, we have the tools here to maybe get some real justice within our system. And that's within the framework of folks that are convicted. So I think that's important as well. So I hope we can muster the resources. It strikes me that in an area where we do a lot of things as a pilot project or a lot of it as supposition that this is an area where we can really make some concrete progress.

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Last question. The 33 and a third record album analogy that -- again, I know I'm going to mess this -- Seepich, Sepich-- because I didn't want to mess it up -- Ms. Sepich talked about. That sort of countered Attorney Carlo's argument that if this gets into the government's hands people could use it to do research on family history and your sort of medical information and stuff like that. And the way Ms. Sepich described it as no, these 13 or 15 critical pieces of DNA evidence are useless in that kind of analysis, but are -- and they were chosen specifically because of that, but they're absolutely spot on when it comes to determining up to the 17th decimal number whether an individual is associated with that DNA. Is that correct?

PATRICIA JOHANNES: Her analogy of the 33 rpm record, I thought, was right on. I thought I might use that in court sometime when I try to testify. She was very accurate in saying that basically the areas of DNA that we test are like those blank spaces in between the songs on records -- the record album.

And yes, the sample that we do have do contain the whole entire DNA profile or genome of an individual, but those samples are never released to anyone. In fact, I believe it's a D felony if we were ever to release those samples from the laboratory. And she was accurate in saying that the actual DNA profile that are at the laboratory are stored in a computer and basically in the bowels of the computer and are basically a meaningless series of numbers associated with a specimen number. There's no identifying information, not a name, not a social security number, an SBBI number, nothing is actually associated with that sample but a specimen number. And it's not until a match is generated that we would go back and

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look and then look at that specimen number and then -- in a basically different area or a different computer take that specimen number and find out who that individual is.

SENATOR KISSEL: So again, just so I'm very clear about this because the big argument is that all your information is in this database. The way I'm hearing it is that there's the sample that has your entire medical DNA and that's a hard copy, that's what's on the swab or however they got it. That's kept but there's no easy way to get all that because there's thousands of these things.

But the key information that's drawn out of these things are just these 13, 15 data, pieces of data and that the data that's collected and placed into the computer system -- not only is it difficult to get, but that if someone somehow hacked into that computer system and pulled out that data, it's not for each individual.

And let's even assume they are wizards and they can figure out these numbers and put people's names, that there's no -- all the data of the DNA in there, it's just some key parts of the data that's in there. And so you couldn't clone me if you got into that computer or figure out my family medical history. That data's not kept in the computer. You're just going for some key pieces of information to match up and that's how it was selected.

PATRICIA JOHANNES: That is true. There is no information kept in the database that would give me any information as to medical conditions, to a disease or physical characteristics. And in fact, the laboratory, the forensic laboratory itself does not have the capability to test for any of those pieces

of information. We only have the capability to test for those 13 to 15 different locations of DNA that are usable for the DNA database.

SENATOR KISSEL: And so it's really a question of dollars and cents. If we got the dollars and cents together we could clear off the backlog and keep it current. If we move forward, the best utilization of the new DNA information would be to sort of hopscotch over the old set because that might be more useful in ongoing trials and things like that.

But if we, as a Legislature, overcame our concerns regarding some of the personal freedom issues associated with upon arrests -- if that's the will of the Legislature, I don't know how this committee's going to go, I don't know how the Legislature is going to go, it's really a dollars and cents thing.

And that's why I think it's so imp -- because I think it's sort of moving in a direction that upon arrest -- I think as people's concerns are being assuaged, as some of the question marks are being answered, I think that that's moving in that direction. But at the same time, that information regarding a dollar invested in this is worth 90 times in criminal justice and in savings to society -- I think that's really important. Not only just for the proposals we have before us regarding upon arrest but just to keep you guys going at where you've gotten with that ARRA money. Because there is going to be a scramble for dollars. We're just beginning, you said it, I think we're just at the tip of the iceberg, to be honest. And so I think it's very important to use our criminal justice dollars in the most effective ways. And thank you, Mr. Chairman.

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CHIEF STATE'S ATTORNEY KEVIN KANE: Senator Kissel, I don't want to interrupt but just don't forget because it's too important not to -- there are two backlogs here we're talking about. And we've just said we've cleared u on backlog. Well, that's the offender backlog, the samples collected from offenders that have been analyzed and processed and put into the system. We're close to clearing that backlog up.

But there's another backlog that we are swamped in and that's the backlog of all of the evidence that's seized from crime scenes whether it's a sexual assault or a murder or a burglary or an arson or whatever. All of that evidence is in another pool and there's a huge backlog there and we are swamped at that.

SENATOR KISSEL: That's a two year backlog, I heard?

CHIEF STATE'S ATTORNEY KEVIN KANE: That's -- well, at one time, they both were backlogged two years. The offender backlog was two years and so was the evidence backlog. We cleared up the offender backlog largely, but the evidence backlog is still there and that's huge. And that's about two years. Two years only on the violent crime evidence. I don't think they're even processing crimes from burglaries except for unusual burglaries, which I mentioned in Appropriations I think.

States out west are solving a phenomenal number of burglaries and home invasions and other things by processing evidence collected at burglary scenes. We're not even doing that, by and large, in the lab today.

So don't you know, this finance is huge. And that's what's -- as I said that's why we didn't push it harder before. But it's also so compelling -- the need for it is so compelling

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that it ought to be put up very high on the Legislature's priority in deciding what to do with the limited money that we do have.

SENATOR KISSEL: Thank you so much. Thank you, Mr. Chairman.

REP. FOX: Representative Holder-Winfield.

REP. HOLDER-WINFIELD: Just really quickly because I already asked you some questions. You said that Bill 6489 -- you said that the DNA would automatically come out of the system. How does that happen? And so upon a person being found not guilty or whatever the case may be, a certified copy just goes directly from the court? How do we imagine this happening?

MICHAEL GAILOR: Well, we have -- obviously it's a new proposal, we haven't looked at the logistics of it yet. But what I would assume would happen would be a system would be set up whereby we would get computerized notice of the fact that somebody's conviction was -- somebody is found not guilty, somebody's case was denied, the conviction was overturned.

If that would happen the information would then be brought before the DNA data bank oversight panel. The panel would review that information, confirm that the person was in fact found not guilty and the charges are no longer pending and the panel would move to purge the sample from the system and the sample would basically be purged from the system.

So I actually spoke about this with Michael Burke from the lab and when we talked a few years ago one of the things that we had talked about was what happens when somebody's conviction is overturned? How could we deal with that? And we talked about establishing a

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computerized system whereby you get notice and you bring the information to the folks at the panel. So that's how we would envision that to occur.

REP. HOLDER-WINFIELD: Thank you.

REP. FOX: Are there any other questions?
Representative Shaban.

REP. SHABAN: Thank you, Mr. Chairman. Quickly. And I apologize. I was at another meeting if someone answered this already. Have there been any successful or colorable Fifth Amendment challenges in any of these DNA collections, whether it's at the time of arrest, at the time of conviction or you know, using it to match people? Has anyone taken a run at that and has there been any outcomes?

MICHAEL GAILOR: Most of the jurisdictions around the country, almost all the jurisdictions around the country that have considered this have upheld the taking of the sample. I think Ms. Sepich this morning referenced the fact that Virginia had considered the taking of the sample at the time of arrest and they upheld in the Virginia constitution. And I believe there was another jurisdiction that has done so as well. There may have been one state where they kind of -- it's in the upper Midwest -- where it was ruled that the taking of the sample at the time of arrest was a problem. I did not review that decision, I just read of its existence. But with respect to taking the DNA sample at the time of conviction, I believe virtually every jurisdiction that has considered that has upheld it. The only issue might be that one state that's gone otherwise with respect to taking it.

REP. FOX: Senator McLachlan.

SENATOR MCLACHLAN: Thank you, Mr. Chairman. Thank you all for your testimony. I must admit that I came here today probably siding in opposition of the DNA testing and listening to some compelling testimony that certainly made me pay much closer attention. My initial concerns were, of course, financial and civil liberties but I'm thinking long and hard and will continue to do some homework on it.

Do you see, based upon our constitution and previously you had a question about the Fifth Amendment, do you see any valid objections that were raised by the ACLU and others that this is going to put us into a grinding halt trying to implement?

CHIEF STATE'S ATTORNEY KEVIN KANE: No, I don't. I think the legal issues about the propriety of the search and seizure are proper. The privacy issues about getting access to people's health information and other information that really is private obviously are a concern, but I think the science is made clear. Those issues are resolvable. Now as far as delays in court, I'm sure somebody will file a lawsuit but I think they can be easily handled.

SENATOR MCLACHLAN: We heard testimony about, you know, the financial cost actually could be a financial savings and Mrs. Sepich referred to a study which I found a copy of it, I've even emailed it to you, Attorney Kane, for you to look at.

And I've been reading it as we've been talking here just now. In Indiana, this report, which appears to be a valid one. It does come from Purdue. The chair of forensic and investigative science, analytical and forensic

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chemistry from the National Institute of Justice so there's some very knowledgeable people who have written this report and they're claiming in Indiana in this report that it is a savings of over 60 million dollars a year, which is -- certainly raises an eyebrow and makes us all take pause to look at and see does that make any sense at all. They even say that the initial costs are budget neutral by increasing their processing fees. Which leads me to the question what does DNA testing cost us in Connecticut? How much does a DNA test cost and would that be inclusive of the maintenance of the database?

PATRICIA JOHANNES: I believe in the fiscal impact statement that was presented by the department of Public Safety, they -- it costs approximately \$50 per individual for processing the DNA.

SENATOR MCLACHLAN: Thank you. Thank you, Mr. Chairman.

REP. FOX: Representative Hetherington.

REP. HETHERINGTON: Thank you. At the risk if not the certainty of beating this into the ground - - perhaps you'd just help me to understand this again. The DNA sample, if we were to take it on arrest, the sample is taken and then the entire sample goes to the laboratory, correct?

PATRICIA JOHANNES: Yes.

REP. HETHERINGTON: But the laboratory analyzes it, works up a report on the sample only with respect to the 15 key measures, ye?

PATRICIA JOHANNES: Yes.

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REP. HETHERINGTON: Okay. Then the person is acquitted, say, and the laboratory is so notified and the laboratory purges the DNA sample. If the person is convicted or a match is found, the DNA sample with respect -- don't let me -- I'm asking you, I guess, what happens to the DNA sample in that event?

PATRICIA JOHANNES: When an actual match is made by CODIS, again, the data is reviewed and the first thing we do is we pull that particular sample and retest it. We make sure that that sample -- that the specimen number that was generated is in fact the profile that we, you know, thought it to be. And at that point, we confirm that -- at this point we confirm that the individual has a felony, that that person was not in custody at the time of an arrest and it's at that point that -- and we also confirm that this individual has not been previously convicted of this particular incident. And at that time we generate a hit notification notifying the police department that we have a CODIS match.

REP. HETHERINGTON: And then going forward, the record of the analysis and the match would presumably be preserved for future instances when there might be a match and so on.

PATRICIA JOHANNES: Yes. That sample -- the sample stays in the CODIS database and continues to search should another incident -- or this individual be associated with another incident.

REP. HETHERINGTON: But the only thing the CODIS database has is the information with respect to the 15 key points?

PATRICIA JOHANNES: That's correct.

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REP. HETHERINGTON: Okay. Thank you very much. I appreciate your patience in going over this again and again.

REP. FOX: Thank you. Are there any other questions? Chairman Coleman.

SENATOR COLEMAN: Yes, just a very quick question. And I guess I don't necessarily advocate this, but given all of the benefits that have been discussed with the DNA pulls and there's some people's argument that there are no constitutional problems with respect to collection and acquiring samples, why just for serious felonies, why not for all felonies?

CHIEF STATE'S ATTORNEY KEVIN KANE: That's a good question.

SENATOR COLEMAN: Why not do misdemeanors, arrests for misdemeanors? Why not do everybody?

CHIEF STATE'S ATTORNEY KEVIN KANE: Why not do everybody at the time of birth? Well, for law enforcement purposes -- that would be ideal for law enforcement purposes as far as being able to identify people.

But that's for the Legislature -- there has to be a balance here that's proper and right now, for a variety of reasons -

SENATOR COLEMAN: But weigh that balance for me even with respect to arrest for serious felonies. I guess that's my question.

CHIEF STATE'S ATTORNEY KEVIN KANE: The same -- I look at and I think that the courts would too and that's the same issue there that's presented with the taking of fingerprints. You can't just go and decide that we want to have everybody who's in sixth grade -- when I was in

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sixth grade they fingerprinted us all but that was in the McCarthy era. But you can't just go out and say everybody in sixth grade is going to be fingerprinted so we can put everybody's fingerprints into a database.

SENATOR COLEMAN: But think of all the people whose lives would be saved and people who would be exonerated -- incarcerated but innocent, who would be exonerated because of the collection of this information.

CHIEF STATE'S ATTORNEY KEVIN KANE: Oh, I think for law enforcement purposes it would be great. I don't know where and this is an argument -- you know, where would you litigate that. If the Legislature would like to pass that requiring everybody to submit DNA, well, number one the lab really would be overwhelmed. I mean, we're talking about whether or not we can keep up with just felony offenders, the serious felony offenders. We're talking about whether or not we can keep up so it's a -- practically -

SENATOR COLEMAN: So even though so many lives would be saved -

CHIEF STATE'S ATTORNEY KEVIN KANE: Yeah.

SENATOR COLEMAN: -- innocent people would be exonerated and released from wrongful incarceration?

CHIEF STATE'S ATTORNEY KEVIN KANE: It'd be great.

SENATOR COLEMAN: Well, why not a system of people coming forward to volunteer to give samples?

CHIEF STATE'S ATTORNEY KEVIN KANE: If people wanted to volunteer. In England -- I think originally, in the United Kingdom back years ago when DNA was first discovered and begun to

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be used -- there's a terrific book -- I read it -- I forgot the name of it now about the use of DNA in an early case in the United Kingdom, 15 or 20 years ago. I don't remember when it was. And they had -- there were sexual assaults on -- in an area there and the citizens all came in and submitted their DNA, all voluntarily and eagerly, except the one person who was the real perpetrator didn't voluntarily do it.

SENATOR COLEMAN: Then my question was only being partly facetious. I'm really interested seriously in where the line should be drawn and I guess I don't want people to minimize the constitutional issues that's involved in the collection of those DNA samples.

CHIEF STATE'S ATTORNEY KEVIN KANE: And I wasn't -- I hope you didn't think my response was minimizing it either because I think it's a real, very serious issue as to where that line should be drawn. But I don't believe that we're close to that line when we're talking about taking it now from people arrested and charged on serious felony charges.

SENATOR COLEMAN: The other -- not question -- maybe concern or other considerations I might have is if you're providing for the expungement of the sample upon a finding of innocence or acquittal, don't you end up with those that are convicted, the samples of those that are convicted anyway?

CHIEF STATE'S ATTORNEY KEVIN KANE: We do end up with those in the database, yes.

SENATOR COLEMAN: So what are we arguing about?

PATRICIA JOHANNES: Well, for that short time that those samples are in the database, they can search against all the forensic samples that

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are currently been processed in the forensic database. I believe in the case of Tillman who was exonerated by DNA the correct perpetrator was an arrestee from the state of Virginia. So if he was arrested --

SENATOR COLEMAN: Coincidentally, this morning, in fact, I had a conversation with the investigator who worked on the Tillman case. Actually the guy who did the work that led to Tillman's arrest and he was saying that -- I guess he was saying that maybe he screwed up in Connecticut because this guy who was arrested in Virginia was also arrested in Connecticut and had been arrested in Connecticut and in fact, is serving time at the same time Tillman was serving time.

CHIEF STATE'S ATTORNEY KEVIN KANE: Correct.

SENATOR COLEMAN: We don't know why his sample was not considered earlier. It wasn't considered until Tillman was actually, after he was arrested on some other unrelated charges.

CHIEF STATE'S ATTORNEY KEVIN KANE: That's what happened. His sample had been collected and Attorney Goodrow I think alluded to this earlier or Attorney Carlo did and they're right. His sample had been collected when he was arrested in Connecticut but the sample had not been tested in our forensic lab. It was filed from the backlog and had never been testing. He had even been convicted in Connecticut so the sample was there, it could have been connected.

But that case is important for a lot of reasons and it's a case that there is absolutely no doubt that he was innocent, is innocent, was innocent and that was it. I've gone back and looked at that and said how did this happen,

why did it happen and we can get into that in another discussion, maybe about the eyewitness identification statements.

But what happened there is that with that arrest down in Virginia, that's what really did prove him innocent. There was some -- this was a victim that -- it was a stranger sexual assault. The victim came out of the Arch Street Tavern and was abducted and taken away. Later on, what was discovered thanks to the Innocence Project and Attorney Goodrow who found that evidence many, many years later -- there was a dress taken at which the semen sample was found and that semen was not Tillman's. Well, that didn't necessarily mean that he was innocent. I mean, we've had more than one sexual assault victim who had had previous consensual sex with somebody who they may not wanted to have disclosed for a variety of reasons, understandable and that could have happened here.

And people who had talked to the victim didn't think -- you know, they tended to believe her when she said no, I didn't have -- it didn't come from anybody else, but that was -- it could have been an issue in other cases. So really what -- certainly everybody believed that once that was found she was entitled to a new trial, but what really proved Tillman's actual innocence was the hit in Virginia that really proved that he was indeed as innocent as could be and not just somebody about whose guilt there was a reasonable doubt.

SENATOR COLEMAN: I didn't mean to take us off on a tangent. You were about to make a point when I interrupted. I just thought it was coincidental that Tillman had come up and I had --

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PATRICIA JOHANNES: Well, what I was saying is that when you get the arrest and the sample and you generate the DNA profile, that does go into the database and that does search and potentially could match to a forensic sample from a burglary, a sexual assault, a homicide that's already in the database, that has not been identified. So you can generate matches in that way. And so that's the value of taking samples at arrest versus waiting until they're convicted.

SENATOR COLEMAN: Thank you.

REP. FOX: Representative Hetherington.

REP. HETHERINGTON: Thank you for a second time. Wouldn't you agree that there is a legitimate distinction between a person who is possibly guilty in the case of a person who is guilty of a felony which suggests a serious threat to society wither through personal injury or whatever and a person who is not charged with a felony? Therefore the government has, it seems to me, a basis for distinguishing, taking the DNA in the cases of felony that's different from the threat -- the societal threat that is suggested by someone who is charged with a misdemeanor.

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes.

REP. FOX: Are there any other questions?
Representative O'Neill.

REP. O'NEILL: Unfortunately, I've been in and out of the room. How is it that taking a DNA sample is prohibited from being done? Why do you need the statute, I guess, is what I'm wondering. If you don't need a statute for -- or is there a statute for fingerprints that specifically says you can use reasonable force

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to get the fingerprints? I'll start with that.

CHIEF STATE'S ATTORNEY KEVIN KANE: There's a statute I know of that makes it a crime to refuse to give fingerprints. There's no statute, it's just an evolvement of the laws, that once a person's arrested, based on probable cause with or without a warrant, the police can -- it's not against the constitution for them to take fingerprints.

REP. O'NEILL: Is there a ruling by a court saying that it is a violation to take a DNA sample?

CHIEF STATE'S ATTORNEY KEVIN KANE: Is there?

MICHAEL GAILOR: As far as I'm aware there's no ruling to date. The problem is the department of Corrections is concerned about the civil liability that might result if they took the sample by force when they are not authorized to do so. That is the concern. And although as I indicated, Judge Mullarkey indicated that he thought the use of force was inherent in the statute, the Department of Corrections hasn't taken that position.

CHIEF STATE'S ATTORNEY KEVIN KANE: And there is a case that I -- Schmerber versus California directed the issue in a way. It's an old constitutional case dealing with the -- the police when they arrest somebody -- they can do certain things to a person, take his photographs, take his fingerprints.

And in Schmerber versus California, it was a drunk driving case where they decided to take the offender to the emergency room of the hospital in San Francisco and pump out his stomach. And the Supreme Court said that went too far. It was a (inaudible).

So the question became how far into a person's body can the police intrude and I think the concern was -- throughout the country -- that taking a DNA sample -- well, in fact you have to actually take a blood sample. It wasn't until the last few years that you could take a Buccal swab.

In the past when you used to get DNA, originally when we started developing the DNA science you usually had to take a quantity of blood to get DNA from them. Now science has progressed somewhat farther than the law and we can get touch DNA and the law hasn't moved fast enough.

This is interesting, it is an interesting constitutional question. Maybe the police could hold somebody's nose until they open their mouth and they put the swab in. And maybe you wouldn't need a law allowing that. But I don't think I would advise police officers to do that. And I think the lawyers that represent the police department civilly would advise them not to do that.

REP. O'NEILL: Okay. Dealing with the Corrections situation though, I mean, that's because the department itself has kind of a reluctance just internally because they're afraid of being sued by somebody?

CHIEF STATE'S ATTORNEY KEVIN KANE: The Attorney General's Office advised them not to use force to take DNA samples.

REP. O'NEILL: Okay, okay.

CHIEF STATE'S ATTORNEY KEVIN KANE: And that was under the Attorney General, I don't know how many years ago, but that was -- the Attorney

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General was of the opinion that they should not use force to take -- without going back and forth for a special court order.

REP. O'NEILL: okay. And so we don't know what the Attorney General and the local town attorneys would say about the liability of a municipal police officer or the state police if they were to use reasonable force -- because at the arrest point -- because again, it's going to be different if these people have never been convicted of anything and they're not in custody in the same sense that somebody is in custody of the Corrections Department by due process having been provided to them and so forth to get to that point. So the issue about whether you have -- use of force might be more serious of an issue at the arrest stage than at the incarceration stage or anywhere else -- in other words at the very beginning, it's going to be a harder issue to deal with.

CHIEF STATE'S ATTORNEY KEVIN KANE: Yes.

REP. O'NEILL: Because the issue at the end when you're in Corrections is probably bigger at the front end. Okay. And it is a constitutional right -- I mean, like in the Schmerber case -- I can understand why you remember it all these years later. In the Schmerber case, if they had had a statute on the books saying yep, in California you can pump out stomachs of people that get arrested, I mean, it went up on constitutional grounds and the constitution trumps statute.

CHIEF STATE'S ATTORNEY KEVIN KANE: Right.

REP. O'NEILL: If we're worried about the constitutionality of the intrusion into the person's body, don't we still have that same problem whether we've got the statute or not?

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CHIEF STATE'S ATTORNEY KEVIN KANE: Well, apparently we have -- so many states have adopted this statute and within several years and it hasn't been overruled. Mike's familiar with some of the law. I think that we've heard the one case in the upper Midwest where it was held -- go ahead.

MICHAEL GAILOR: There are a number of states that have allowed the use of force either by statute or by court authorizations. Some have done it both. I have yet to find a state that has considered it that said that force cannot be used. They've considered a number of state constitution grounds, federal constitutional grounds, statutory grounds. So I'm unaware of any state that has said the DNA (inaudible).

CHIEF STATE'S ATTORNEY KEVIN KANE: After conviction.

MICHAEL GAILOR: After conviction.

REP. O'NEILL: After conviction.

MICHAEL GAILOR: Right, there's only a few states that are taking it at time of arrest at this point in time and I would think that's being litigated in those states.

REP. O'NEILL: Okay. Well, then if no place in the country has made a ruling that you can't use reasonable force to extract DNA, to take a DNA sample from somebody then I don't understand why the Attorney General's office issued a rule saying that they couldn't use reasonable force.

MICHAEL GAILOR: Part of it has to do with the construct of the statute. Because the statute has criminal penalties with it and an argument could be made that the remedy -- and this

argument has been made for people who oppose -- the argument was made that because the statute proposes a criminal penalty, that is the remedy if someone refuses to submit. But the statute that you as a Legislature considered this year, you had an opportunity to vet these things through -- perhaps there was an opportunity, but instead of doing that, you chose to give them the sanction of criminal penalty.

REP. O'NEILL: So if that statute were repealed then they could -- they'd have a better case for using force?

MICHAEL GAILOR: They might have a better case for it, right. We would simply ask that the -- the reason why we've asked that the penalty not be repealed is because if the use of force is going to be applied, there's still going to be some risk of injury to the people involved and we want to try to avoid that.

REP. FOX: Are there any other questions from members of the committee? Seeing none, thank you for your testimony.

CHIEF STATE'S ATTORNEY KEVIN KANE: Can I mention one thing? One of the bills that we submitted written testimony on a whole bunch of bills and I can't remember it all, what they were, but I'm not going to -- one bill, the speedy trial bill that we didn't submit written testimony on that. I would like to say this about it.

I can't understand for the life of me the reasons why we have to -- why if people are locked up in lieu of bond on misdemeanor cases after 90 days or after the sentence. We do have a procedure in court where anybody can file a motion to the court while the case is pending that's for the review of the bond. I can't imagine anybody coming in and saying,

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but you get cases where the victims are legitimate. You have a neighbor who's -- or somebody is assaulted. It's only a misdemeanor but there's a real victim who's been assaulted and wronged. The defendant says they didn't do it. Then it was good -- in the old days it was good to have been able to give them their day in court.

SENATOR COLEMAN: And I think that's my point. You do have cases where it's -- somebody has to (inaudible) and rather than to have those cases linger on a docket for a prolonged period of time -- I think it would really be nice to have court trials but I guess that decision is up to the defendant and counsel.

CHIEF STATE'S ATTORNEY KEVIN KANE: It is.

SENATOR COLEMAN: But it would be something that I certainly would be in favor of having some mechanism for excusing those kinds of cases from the dockets. Thank you.

CHIEF STATE'S ATTORNEY KEVIN KANE: Thank you.

REP. FOX: Next we have David Cameron. Is Mr. Cameron still here?

DAVID CAMERON: Good evening, Representative Fox and Senator Coleman and members of the committee and I appreciate the opportunity to be here again this year and to testify, even at this late hour after about seven hours. It's been quite an unusual day, though, in some of the testimony we've heard.

I'm appearing in support of three bills. I've submitted testimony to you, 954, on the custodial interrogation recording, 6344 on the eyewitness ID and 6489 on AN ACT REQUIRING DNA

TESTING OF PERSONS ARRESTED FOR THE COMMISSION
OF A SERIOUS FELONY.

And I think all three of these bills are important. I don't think you have too many people from the public testifying in support of the DNA bill, but some of you may recall I've testified in support of that bill for the last four years. I think in 2008 I mentioned Katie's Law in New Mexico and you heard Katie's mother today, very emotional and compelling statement.

At that time there were 11 states that had adopted legislation allowing for DNA samples from arrestees, typically for serious crimes, violent crimes, there were conditions and limits. When I appeared two years ago the number had risen to 15. And as of today, the number is 24. And there's actually a trend in the legislation extending it to all serious felonies. No longer -- all felonies -- no longer just serious felonies or violent crimes.

I've included in my testimony and it might be of interest to you to see a printout from the National Conference of State Legislatures, which has a DNA database of laws, all the laws in the 24 states. And you'll notice that a number of states have provisions for expungement as the Connecticut statute would. Several states also have a provision for a finding of probable cause before the sample is taken. Minnesota and a number of other states.

In that testimony, I make three important arguments, I think, for why despite the very serious concerns about privacy, search and seizure and so forth, three important reasons why this legislation should be supported. And I was delighted to hear a more favorable

reception to that among many more people today than in previous years.

The first, I think it's extending the database that would increase the likelihood that a number of unsolved and long unsolved cases would be solved. I think, secondly, this would prevent a number of repeat offenders from continuing to commit their crimes. And third, I think this would enable some wrongful convictions to come to light and lead to exoneration.

I think all of those are very important reasons. I think each one in itself is sufficient, but I think the three taken together makes this legislation that should be adopted, notwithstanding the very serious privacy issues that come up repeatedly and you heard some spokespeople speak about those today.

But I would like, in my brief remaining time just to say a word or two about the two other measures, custodial interrogation and eyewitness ID. These are very important measures, I think, for preventing wrongful convictions.

SB 954
HB 6344

The Innocence Project has found in its analysis of the 266 cases in which there has been an exoneration because of DNA that by far, the most frequently occurring cause of wrongful conviction and a cause that appeared in over 75 percent of all their wrongful conviction cases were eyewitness misidentification. And they propose a number of reforms to improve that and most of those reforms are in this bill. And -- and in 6344 -- and there's one exception, though, and I would urge you to consider including it, which is recording the eyewitness identification process itself. That's

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LINE 18

2074 Park Street, Suite L
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Good morning Senator Coleman and Representative Fox and members of the Judiciary Committee. My name is Andrew Schneider, I am Executive Director of the ACLU of Connecticut and I am here before you today to express our view that House Bill 6489, An Act Requiring the Collection of DNA From Persons Arrested For a Serious Felony should be vigorously opposed on grounds of constitutionality, safety, and cost. However, we are open to ways that would incorporate our concerns into this legislation.

The cornerstone of the American legal system - that a person is innocent until proven guilty - is turned on its head when innocent people are included in a criminal databank. There is a vast difference between using DNA as a tool in investigations - both to catch the guilty and exonerate the wrongly accused - and storing the most intimate biological information of persons who have not been convicted of any crime, even if it is only stored for the duration of the legal proceedings that ends in acquittal (which can sometimes take years).

DNA is much more than a fingerprint, in that it contains some of the most private information about a person. Our genetic code, which is contained in our DNA, determines a great deal about susceptibility to disease as well as information about one's family history. This is private information about you that should not be made available to the police or the government. Concerns of misuse of this information are driven by current laboratory practice, where each biological sample is retained along with the generated DNA profile. The risk that these samples might be accessed and used in controversial research (for example on human behaviors such as aggression, substance addiction, or criminal tendency) or in other sinister ways remains so long as those samples remain on file. There is an additional danger inherent in these databases as well, which is that they make sharing the data extremely easy. Almost weekly we hear of another government database being breached and the information being sold by identity thieves.

Massive expansion of DNA collection is unlikely to make us safer and may even undermine criminal justice. DNA is only found at a small fraction of crime scenes. The ability of law enforcement to resolve crimes using DNA evidence is limited by its ability to glean DNA from crime scenes; not by the number of people in the database. Unchecked expansion of DNA databanks will encourage law enforcement to spend a disproportionate amount of time and money mining crime scenes for DNA, when resources could be better spent on other techniques, such as community policing. A recent study has shown that enactment of Britain's arrestee testing program has actually corresponded with a slight *decrease* in matches with crime scene evidence – probably because they're bloating their database with people who are highly unlikely to commit the tiny number of crimes where DNA plays a role. Backlogs in DNA testing have resulted in delay in priority cases. Consider the tragic case of Christina Worthington, who was raped and murdered on Cape Cod in 2002. Although the crime lab had the DNA of her attacker, it took over a year to process the sample thanks to a backlog caused by a DNA dragnet.

DNA testing is not infallible; mistakes can and have been made in the collection and analysis of DNA and the reporting of results, sometimes resulting in innocent people serving time for crimes they did not commit. Backlogs increase the chances of these errors as lab analysts and database administrators are pressured to cut corners to meet their workload. Josiah Sutton spent nearly five years in prison, starting at age 16, for a rape he could not have committed, as a result of an error made by an analyst at the Houston Crime Lab.

Finally, unchecked expansion reinforces racial disparities. A DNA databank that includes arrestees will unfairly represent minorities, who are wrongfully arrested at a disproportionately higher rate than whites. One-third of the black population in Britain is currently represented in the UK database as a result of Britain's decision in 2001 to include arrestees in its databank.

For all these reasons, I urge the Committee to reject this bill.

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LINE 2

State of Connecticut
HOUSE OF REPRESENTATIVES
STATE CAPITOL
HARTFORD, CONNECTICUT 06106-1591

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VICE CHAIRMAN
SELECT COMMITTEE ON VETERANS' AFFAIRS

MEMBER
GENERAL LAW COMMITTEE
TRANSPORTATION COMMITTEE

Judiciary Committee Public Hearing 3-9-11

H.B. No. 6489 (Raised) An Act Requiring DNA Testing of Persons Arrested for the Commission of a Serious Felony

Dear Chairman Fox, Chairman Coleman, Ranking Members Hetherington and Kissel and distinguished members of the Judiciary Committee,

I testify today in very strong support of HB 6489: An Act Requiring DNA Testing of Persons Arrested for the Commission of a Serious Felony. The purpose of this bill is to catch violent repeat offenders sooner. I believe that when this bill is passed it will aid in closing unsolved cold cases by requiring certain felony crime offenders to have their DNA screened against the DNA database.

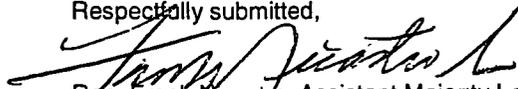
I am honored to be able to support this raised bill. It is modeled after 'Katie's Law' that is being adopted nationally. Katie Sepich was brutally murdered in 2003 and her killer, under arrest for burglary in 2006, had his DNA matched as Katie's killer. Had DNA testing of arrestees been law in 2003, Katie's killer would have been caught much sooner, rather than in 2006, after committing another burglary. DNA matching will not only save lives by locking up dangerous criminals but also prevent repeat offenders from committing additional crimes. 24 other states and the federal government have similar laws that have proven that DNA matching works and can help save innocent lives

In summary, I am in complete agreement with Ms. Jayann Sepich, who you will hear today. She is Katie's mother, founder of DNA Saves and a Katie's Law advocate. By collecting DNA from arrestees, law enforcement can identify criminals earlier and create more efficient investigation practices. Solving crimes sooner reduces costs associated with misdirected investigations. With a DNA match, law enforcement can quickly narrow in on the right suspect, saving untold work hours used in traditional investigations. This cost savings can then be redirected to other crimes where DNA is not available and traditional investigation techniques are the only means of solving the crime.

For your information, I also attach a brochure that further amplifies why we need to pass HB 6489.

I thank you for hearing me and ask you for favorable consideration of this raised bill and am open to any questions.

Respectfully submitted,


Rep. Frank Nicastro, Assistant Majority Leader
79th House District
Bristol, CT



A word from John Walsh

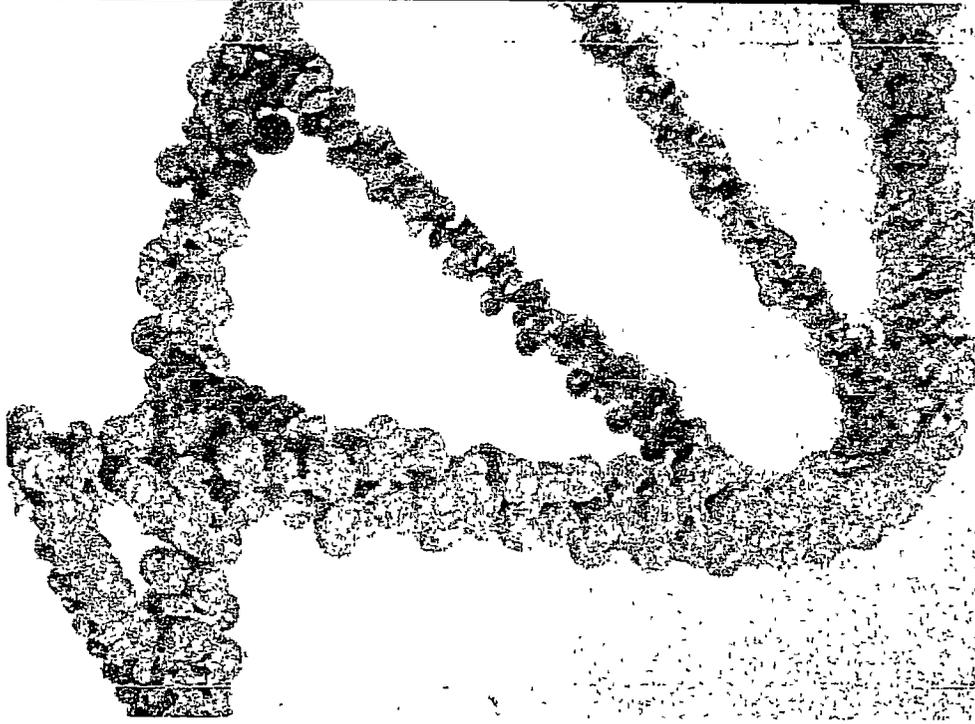
“DNA legislation helps make our communities safer places to live. Don't let your state be the one that provides a safe haven for criminals. Every state can make a difference and save lives, and it starts with you.”

Thank you,

John Walsh
Host, America's Most Wanted
Co-Founder, National Center for Missing & Exploited Children

Update on Legal Challenges...

A federal court in California has denied a motion against the state's arrestee DNA law, remarking, "Put simply, identification means both who that person is and what that person has done. . . The more ways the government has to identify who someone is, the better chance it has of doing so accurately... what the person has done, is no less important. . . Plaintiffs have not demonstrated a likely infringement of their Fourth Amendment rights. Moreover, the government identifies public interests in (1) swiftly and accurately solving crimes, and (2) seeing the public's vote honored."



**FOR MORE INFORMATION ON
HOW YOU CAN PASS KATIE'S LAW
IN YOUR STATE**

WWW.DNASAVES.ORG

E-mail: jsepich@dnasaves.org

Or call Jayann Sepich at
575.361.1931 • 575.885.0715

State Legislators:

PASS

KATIE'S LAW

Katie Sepich, Raped & Murdered August 27, 2003

Why should your state require DNA upon arrest?

- SOLVE GOLD CASES**
More than 116,000 investigations in the US aided by the national DNA database
- SAVE LIVES**
Arrestee DNA testing can prevent crimes by providing early identification of serial offenders
- ABSORB THE INNOCENT**
Guarantees equal access to DNA testing for all felony arrests, and minimizes wrongful incarcerations
- MINIMIZE RACIAL BIAS**
Forensic DNA databasing is blind to race and ensures accurate identification of suspects

TAKING DNA UPON ARREST WILL SAVE LIVES.

The following case studies catalog lives that could have been saved if DNA had been required upon arrest for felony crimes. For more complete details on these and other cases, please visit www.katieslaw.org.

Chester Turner — California

Chester Turner was arrested for assault with a deadly weapon in 1987. He was not convicted. In fact, Turner was arrested a total of 21 times before he was convicted of a crime that allowed his DNA sample to be taken. In 2002 he was convicted of rape, his DNA was taken, and it was found to match twelve other unsolved rape and murder cases. The first of these victims was raped in March of 1987. DNA taken upon his first felony arrest could quite possibly have saved the next eleven lives

Unfortunately, while Turner remained free, a man named David Jones was wrongfully convicted for three of the murders and served eleven years for the crimes — adding one more life to those irreparably harmed by the failure to require DNA from felony arrestees.

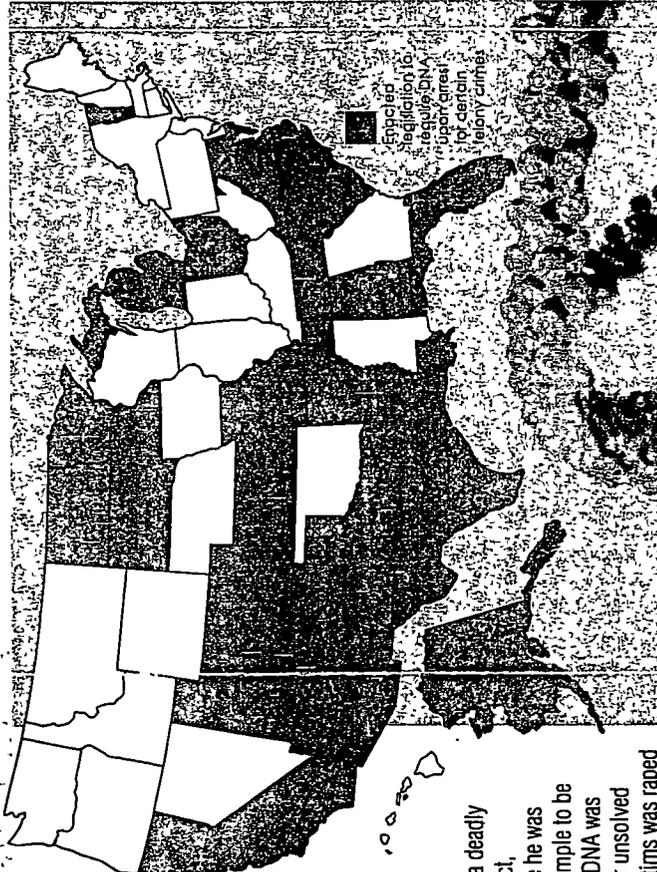
City of Chicago Study

A City of Chicago case study of serial killers and rapists showed that 60 violent crimes, including 53 murders and rapes, would have been prevented with DNA taken upon arrest.

The Mopac Rapist in Texas

In Texas, Christopher Dye raped three women before being arrested for burglary. He then raped four more women before being arrested for burglary again. He raped a total of fourteen women before being caught. Had his DNA been taken upon his first arrest for burglary, eleven of his victims would not have been raped.

Each victim is a tragic testament to the potential for DNA testing upon arrest to halt the needless victimization of innocent people!



49 states require DNA for all felony convictions. 24 states also require DNA for certain felony arrests.

Measurable Success:

California's database, expanded to include arrestees by a voters' initiative, is generating more than 300 cold hits per month — that's one new crime solved each day!

New Mexico's law for arrestee DNA testing took effect January 1, 2007 at 12:01 AM. A DNA sample collected for a felony arrest just 75 minutes later matched to a double homicide.

GENETIC HEALTH PRIVACY IS NOT AT RISK

"The markers that we use are used only for human identification. By knowing my or your complete profile at these 15 markers, we cannot tell anything about your height, your weight, your race, your ethnicity or anything about your health or predisposition to disease... To me its unconscionable not to use these methods to solve serious crimes and prevent future crimes."

Dr. Fred Bieber, Ph.D.
Harvard Medical School



UPDATE ON KATIE'S CASE:

Katie Sepich, a 22-year-old college graduate student, was brutally attacked in August 2003. She was raped, strangled, her body set on fire, and abandoned at a dump site. Katie had fought for her life, and her attacker's DNA was found under her fingernails. The evidence was sent to the national DNA database system, to search for a match. When Katie's parents learned of the DNA database they were certain the killer would soon be identified. But then the Sepiches learned that most states do not allow DNA collection for felony arrests. This was the beginning of the quest for Katie's Law.

The Sepiches took their fight to require DNA for felony arrests to the New Mexico legislature in January 2006. Thirty days later, "Katie's Law" was enacted. After passing this milestone legislation in New Mexico, the Sepiches were dedicated to passing similar bills for "Katie's Law" nationwide.

Later in 2006, a DNA database match was made to Katie's case. Gabriel Avilla was arrested less than three months after Katie was killed in 2003, on aggravated burglary charges. He escaped while on bond before sentencing and disappeared. Avilla was recaptured in August 2005, his DNA was finally taken, and it eventually matched to Katie's case. Avilla confessed to Katie's murder and was charged on December 26 — which would have been Katie's 26th birthday. He will spend the rest of his life in prison.

DON'T WAIT — PASS KATIE'S LAW IN YOUR STATE TODAY.

6489

JAMES S. ...
...

Diane Johnson - March 29, 1987

Annette Ernest - October 29, 1987

Anita Fishman - January 20, 1989

Regina Washington - September 23, 1989

Debra Williams - November 16, 1992

Mary Edwards - December 16, 1992

Andrea Triplett - April 2, 1993

Desarae Jones - May 16, 1993

Natalie Price - February 12, 1995

Mildred Beasley - November 6, 1996

Paula Vance - February 3, 1998

Brenda Bries - April 6, 1998

CODIS DNA Profile

This is the *only* information sent to NDIS

LabXYZ

0012152

**06,09,11,12,10,10,22,24,9.3,10,08,09,
14,14,15,17,17,22,25,12,12,9,10,09,13**

DHL

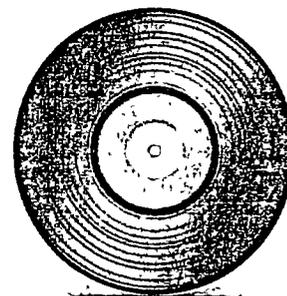
-
- 1) LabXYZ = Originating Laboratory Identifier
Laboratory XYZ in X State
 - 2) 0012152 = Specimen ID #
Number automatically generated upon entry into CODIS
 - 3) 06,09,11,12,10,10,22,24,9.3,10,08,09,
14,14,15,17,17,22,25,12,12,9,10,09,13 = STR Type
 - 4) DHL = Analyst Identifier

FACT SHEET ON FORENSIC DNA ANALYSIS Addressing Privacy Concerns

A common concern raised during discussions of expansion of forensic DNA programs involves fears over risks to personal privacy, and especially genetic health information. Such concerns are understandable and are certainly an important matter to address. However, a significant body of laws and regulations (both state and federal) already exist to provide ample protection against illegal privacy intrusions. Moreover, forensic DNA analysis itself does not lend to genetic health testing procedures. The following fact sheet explains how existing scientific methods, as well as laws and regulations provide rigorous privacy protections.

FACT ONE: Forensic Analysis of DNA Samples Does Not Reveal Personal Information

- There are more than 3 billion base pairs in a DNA strand, and forensic DNA analysis uses just 13 of these pairs (or 26 individual sites). These 13 sites, or "loci", were specifically selected by a scientific working group of DNA experts assembled by the FBI (with authority through an Act of Congress),
- The selected 13 sites were specifically selected because they reside on portions of the human genome that are non-coding and contain no useful genetic information. However they are uniquely individual to each person (with the exclusion of identical twins – thus far scientific research has discovered no genetic differences between identical twins).
- A convenient description was offered by a renowned forensic geneticist and former chair of the national DNA Advisory Board. The 13 core loci of forensic DNA analysis can be compared to the spaces in between songs on LP records – for the younger generation, liken this to the dead space in between songs on your iPod. The spaces in between songs (represented by the darker bands on the record below) contain no useful information about the song. One cannot listen to that space and determine how the songs on this record will sound. However, taken as a whole, the measure of these blank spaces between songs is unique to each album.



FACT TWO: Shared Forensic DNA Databases Do Not Include Personally Identifying Information

- The shared local, state and national forensic DNA databases (call CODIS – Combined DNA Index System) contains absolutely no personally identifying information about an included individual, other than a notation on whether the subject is male or female.
- The CODIS profile contains only the DNA profile (recorded as a series of numbers and letters), and additional data regarding the lab and analyst responsible for the profile. Consider the following sample CODIS profile – this is the *only* information shared in CODIS.

Originating Laboratory Identifier _____	LabXYZ
Specimen ID # _____	0012152
13 Core Loci _____	06,09,11,12,10,10,22,24,9,3,10,08,09, 14,14,15,17,17,22,25,12,12,9,10,09,13
Analyst Identifier _____	DHL

- After a CODIS match, the Originating Laboratory (which is the crime laboratory that "owns" the sample) uses the Specimen ID # (a consecutive number automatically generated upon database entry) to cross-reference an offline, state-owned secure database in which the identity belonging to that profile is kept. These identities are *not* shared with other laboratories (or criminal justice interests) absent a database match.
- CODIS profiles are not permitted to be shared with other types of databases and are not part of the criminal history record or otherwise accessed by third party criminal justice interests such as the Department of Homeland Security. DNA profiles are only searched against the CODIS index of unsolved crimes, and occasionally against the CODIS missing persons/unidentified remains index.
- CODIS data is protected by the FBI's state of the art encryption and firewalls. The database has never been breached. However, if a hacker were to circumvent these protections and gain illegal access to the database, the only information this hacker would gain is the profile information provided in the sample above. There is no useful information to be gained by hacking CODIS.

While the profile generated by forensic DNA analysis does not contain private genetic information, arguments abound that the collected DNA sample could still be misused – either tested by the crime laboratory for alternate purposes or otherwise gained by 3rd parties for testing. The following points address the likelihood of this concern.

FACT THREE: Collected DNA Samples Are Retained For Quality Control and To Further Protect Privacy

In engaging in this discussion, it is first important to understand that crime laboratories, as a matter of regulation, do not destroy DNA samples after analysis. While destroying the samples could allay some privacy and misuse concerns, the actual result would be a loss of quality control and could result in unwarranted and avoidable privacy intrusions.

- Samples are retained so that laboratories may perform quality control checks. The following scenarios provide clarification of why retention of these samples is vital:
 1. After a match is made on the DNA database, the laboratory re-tests the original offender sample in order to confirm the match. This re-testing ensures that no mistakes were made – such as a mistake in data entry. This additional process to ensure accuracy also ensures that investigators are not wrongly given the name of an innocent person in connection with a serious crime investigation. This step protects the privacy of those on the database so that innocent people are not wrongly questioned.
 2. Through the process explained above, if a problem is identified with a DNA profile, then the laboratory would need to have access to all original samples in order to determine exactly when the mistake occurred, for how long the mistake was perpetuated, and whether it is a systemic problem or something localized to specific personnel. Without the ability to retest, the integrity of the entire database is compromised. It would also be impossible to recollect the majority of the samples, as many of the offenders will no longer be under supervision – recollecting samples from may not be legal, and would at the very least be an unnecessary invasion of privacy.
- **CONSIDER:** Many states currently require the retention of biological evidence for cases involving a serious criminal conviction. The biological evidence retained is not only that of just the offender, but also typically contains samples from the victim and from others who may have needed to be excluded as possible suspects– for example, in a rape case, spouses and other consensual sexual partners would have been asked to provide a DNA sample so that this DNA profile can be excluded if it is found in a rape exam.
- Destroying samples after analysis would also prohibit laboratories from changing to new, and possibly more accurate and efficient, DNA technologies. Such a change in technologies could require retesting of existing samples – this has already happened once since the DNA databases were established.
- Regulations established for participation in the national DNA database system by the Scientific Working Group on DNA Analysis Methods (SWGDM) indicate a scientific preference for retaining offender DNA samples. Standard 7.2 of the Quality Assurance Standards for DNA Databasing Laboratories says that “where possible” laboratories should “retain the database sample for retesting for quality assurance and sample confirmation purposes”.

FACT FOUR: Collected DNA Samples Are Securely Stored and Amply Protected.

The Scientific Working Group on DNA Methods (SWGDM), which establishes Quality Assurance standards required by the FBI for participation in the national DNA database, has published the standards listed below relating to requirements for secure facilities (*Quality Assurance Standards for DNA Databasing Laboratories*, www.fbi.gov/about-us/lab/codis/qas_databaselabs). All DNA laboratories participating in the national DNA database system are further required to undergo an audit on an annual basis to ensure compliance with these standards.

Standard 4.1.5 Specify and document the responsibility, authority, and interrelation of all personnel who manage, perform, or verify work affecting the validity of the DNA analysis

Standard 6.1 The laboratory shall have a facility that is designed to ensure the integrity of the analyses and the samples.

Standard 6.1.1 Access to the laboratory shall be controlled and limited in a manner to prevent access by unauthorized personnel. All exterior entrance/exit points require security control. The distribution of all keys, combinations, etc. shall be documented and limited to the personnel designated by laboratory management.

Standard 7.1 The laboratory shall have and follow a documented sample inventory control system to ensure the integrity of database and known samples. This system shall ensure that:

Standard 7.1.1 Database, known, and casework reference samples shall be marked with a unique identifier or the laboratory shall have and follow a method to distinguish each sample throughout the processing (such as plate or rack mapping) that may not require the assignment of unique identifiers

Standard 7.1.2 Documentation of sample identity, collection, receipt, storage, and disposition shall be maintained.

Standard 7.1.3 The laboratory shall have and follow documented procedures designed to minimize loss, contamination, and/or deleterious change of samples and work product in progress.

Standard 7.1.4 The laboratory shall have secure areas for sample storage including environmental control consistent with the form or nature of the sample.

- In sum, DNA samples must be stored in a secure, locked site which allows limited access to only those personnel named in the laboratory's written policy manual. These national standards developed by SWGDM are a minimum standard, and are often superseded by more stringent state procedures.

FACT FIVE: Federal and State Laws Penalize Misuse of Offender Profiles

Federal law strictly prohibits the dissemination of information from the DNA database to unauthorized persons and for unauthorized reasons.

- Section 42 USC 14133(b) provides that results from DNA analysis may only be released to criminal justice agencies for law enforcement identification purposes; in judicial proceedings; and to criminal defendants for the case in which the person is involved.
- Section 42 US 14133(c) provides that any person who has access to information contained in the national DNA database and knowingly discloses such information in an unauthorized manner may be fined up to \$100,000. Furthermore, any person who accesses such database information or samples without authorization may be fined up to \$250,000 and sentenced to one year in prison.

FACT SIX: Federal and State Laws Penalize Misuse of Private Genetic Information

Under the federal Genetic Information and Non-discrimination Act (GINA) (PL 110-233):

- Insurance carriers are prohibited from discriminating among policy holders (current or prospective) based on information regarding genetic predisposition to disease.
- Employers may not request, require or purchase genetic information or samples from employees, and may not make hiring, firing, promotion, job placement or promotion decisions using genetic information.
- Thus, even if a rogue lab employee act in an illegal fashion to sell or otherwise misuse DNA collected for CODIS inclusion, there is little market for such information as the end user is prohibited from utilizing the data in any meaningful way and faces both criminal and civil prosecution.

Connecticut General Statutes also provides additional genetic privacy protections:

- §54-102k provides that misuse of a DNA sample and profile may be punished as a Class D felony.
- Genetic testing information is further protected from Insurance industry use in Chapter 705 (*Connecticut Insurance Information And Privacy Protection Act*) and Chapter 704 (*Unfair and Prohibited Practices*), and is protected from Employer abuse in Chapter 814c (*Human Rights and Opportunities*).

FACT SEVEN: Forensic DNA Analysts Do Not Have the Training or Resources to Misuse Samples

Although misusing forensic DNA samples in violation of federal and state laws would mean a DNA analyst is willing to not only jeopardize his/her career but also risk criminal penalties in order to sell genetic information to a market that is prohibited by federal law from existing, occasionally there is still an argument that a "rogue" DNA analyst may attempt to do so for personal gain. However, this scenario is also extremely unlikely for the following reasons:

- As noted previously, the 13 loci tested for forensic purposes do not reveal any personal genetic health information. Thus, the original DNA sample would have to be accessed and re-tested.
- The laboratory personnel with access to both the storage facilities as well as the laboratory equipment is strictly regulated, so the number of personnel physically able to conduct such testing is very limited.
- Assuming the rogue employee has acquired the additional chemicals needed (which are highly proprietary and not commonly available), the next step would be to perform analysis on the genetic analysis machines. Many of these machines run automatically throughout the night and would need to be stopped and restarted in order to be adjusted for the supposed genetic health testing. Such actions would trigger activity logs showing the unauthorized activity.

**Testimony of Jayann Sepich on RHB 6489, AN ACT REQUIRING DNA TESTING OF
PERSONS ARRESTED FOR THE COMMISSION OF A SERIOUS FELONY**

**Before the Judiciary Committee
Public Hearing: March 9th 2011**

Co-chairman, Senator Coleman, Co-chairman, Representative Fox and distinguished members of the Judiciary Committee. My name is Jayann Sepich. My daughter Katie was a 22-year-old graduate student at New Mexico State University when she was brutally raped and murdered, her body set on fire and abandoned in an old city dump. As a result of her murder our family learned that DNA was not being used in the same manner as fingerprints. After over a year of research, we became advocates for arrestee DNA testing. New Mexico passed "Katie's Law" in 2006, which mandates that DNA be taken upon arrest for certain felony crimes. At the present time 24 states and the federal government have passed legislation to mandate arrestee DNA. I am here today to share my story.



State of Connecticut

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ATTORNEY BRIAN S. CARLOW
DEPUTY CHIEF PUBLIC DEFENDER

Testimony of
Brian Carlow, Deputy Chief Public Defender
Office of Chief Public Defender

Raised Bill No. 6489

An Act Requiring DNA Testing of Persons Arrested
For the Commission of a Serious Felony
Judiciary Committee Public Hearing
March 9, 2011

The Office of Chief Public Defender opposes Sections 1 and 2 of Committee Bill No. 5341, *An Act Requiring the Collection of DNA From Persons Arrested for a Serious Felony*. This bill requires that a DNA sample be taken from any person who has been **arrested** for committing a serious felony, prior to being released from custody. Current law requires only persons **convicted** of certain offenses, as specified by law, to submit a DNA sample. This proposed legislation would extend the DNA sample submission requirement to anyone **accused** of committing a serious felony even though he/she has not been convicted of a crime. The person's DNA sample is a genetic profile which would then be stored in the DNA data bank.

This bill requires DNA to be taken from persons who have not been convicted and who, pursuant to the federal and state constitutional protections, are presumed innocent unless and until proven guilty in a court of law. Obtaining DNA samples from arrestees circumvents the presumption of innocence and can result in a violation of the right to due process. Requiring DNA from every person who is arrested for such offenses may violate the constitutional protections afforded pursuant to the 4th amendment to the United States' Constitution and Section Seven Article First of Connecticut's Constitution.

This process may also violate a person's constitutional right to privacy. DNA reveals vast amounts of medical information about not only that person, but also any person related to him/her. While only a portion of the genetic profile is used for forensic identification purposes, the sample taken contains the entire genetic profile of

that person. It is very important to note that the sample with the entire genetic profile of the individual is kept on a "FTA" card and is permanently retained by the state laboratory.

We are also concerned about the impact this legislation may have on the ability of the state forensic lab to test evidence of current crimes in a timely fashion. It is our understanding that there is a current backlog of over 3,800 samples related to pending cases that need testing. We would submit that that testing should be the priority in the face of limited resources. Testing evidentiary samples from current cases will assist the parties in assessing not only who might have committed the crime in question, but also establish that an accused or a suspect did not commit the crime.

The bill affects anyone arrested for "a serious felony offense." This may be a very large number of people. For example the FBI Uniform Crime Reports for 2009 indicated that Connecticut reported nearly 10,000 arrests for offenses that would seem to fall into this category (murder, forcible rape, robbery, and aggravated assault). If sufficient resources are not provided to adequately deal with this new requirement it will make the current case backlog even worse, and directly negatively impact public safety.

The Office of Chief Public Defender supports only that portion of section 3 which requires destruction of the DNA profile if a person's conviction has been reversed or in the case where the case was nolleed or dismissed or the person was acquitted of the charge. As stated above, the Office is opposed to the proposed expansion to include serious felony arrestees.

In either circumstance, the Office of Chief Public Defender requests that language be inserted in line 138-141 to also require the automatic destruction of the biological sample which was provided by the person and subsequently used to create the DNA profile.

For the reasons stated, the Office of Chief Public Defender requests that this bill as drafted not be adopted.

Committee on Judiciary
Connecticut General Assembly
March 9, 2011

Testimony of David R. Cameron in Support of

Raised Bill No. 6489, An Act Requiring DNA Testing
of Persons Arrested for the Commission of a Serious Felony

I urge that you approve Raised Bill No. 6489, which would require the taking of a blood or other biological sample for DNA (deoxyribonucleic acid) analysis from those arrested for certain serious crimes

I realize that many are opposed to such legislation. Individuals who are arrested for a crime are presumed to be innocent until proven beyond a reasonable doubt to be guilty, and many of those who are arrested later have the charges dismissed or are found to be innocent. Although few voice any objection these days to the routine fingerprinting that occurs when individuals are arrested, many believe that requiring individuals who are arrested for a felony to provide a DNA sample constitutes an invasion of their privacy and deprives them of their constitutional protection, under the Fourth Amendment of the U.S. Constitution and Article 1, section 7, of the State Constitution, against an unreasonable search and seizure.

These are serious concerns. But I believe there are at least three compelling reasons why the State should nevertheless extend the compulsory taking of a DNA sample to those arrested for a serious felony. First, extending sampling to those arrested for such a felony would increase the likelihood that at least some of the many unsolved crimes in which there is biological evidence from an unknown source, including crimes which remain unsolved for a very long time, would be solved. The State's DNA database contains two sets of DNA profiles. One consists of the profiles of those convicted of more than 30 sexual offenses and, beginning in 2003, those convicted of a felony. As of January, the F.B.I.'s Combined DNA Index System (CODIS) reported there are 78,493 offender profiles in the Connecticut database. There were also 2,457 forensic profiles belonging to unidentified individuals that were obtained at crime scenes. Some of the latter may of course be profiles of persons who were at the crime scenes but did not commit the crimes, and in some crimes multiple unidentified profiles may have been obtained. But there are many, many crimes in the state in which there is DNA evidence from an unknown source. Extending compulsory DNA sampling to those arrested for a felony might well lead to the solution of some of those crimes.

The second compelling reason for extending compulsory DNA sampling to those arrested for a felony is the likelihood that it would prevent the commission of some crimes by individuals who commit multiple crimes. Imagine, for example, that an individual commits a very serious crime -- for example, a homicide -- in which there are

no suspects but there is DNA evidence from an unidentified source who is then arrested for an unrelated and less serious felony but released on bail and then at some later time commits another very serious crime – for example, another homicide. Requiring a DNA sample from those arrested for a felony would not, of course, prevent the first homicide. But it might prevent the second one if the DNA taken at the time of arrest for the less serious crime were found to match the DNA found at the scene of the first homicide.

This scenario may sound implausible. But consider the sequence of events reported in the wake of the arrest by the State's Cold Case Unit two years ago of a New Britain man for the murders of three Hartford teen-age girls in 1986-88 and the subsequent decision to throw out the conviction of Miguel Roman for one of the murders. On the day in October 1987 the second victim, 13-year-old Mayra Cruz, disappeared, the man was arrested on a narcotics charge. He reportedly had scratches on his face he couldn't explain. Mayra's body was found several weeks later. Biological evidence was obtained from the scrapings taken from her fingernails. If the state had required a DNA sample from arrestees in October 1987 – of course, the state didn't have a DNA database at that time, let alone a statute mandating DNA sampling from arrestees -- his DNA might have been taken when he was arrested on the narcotics charge. If it had been taken at that time, it might have matched DNA evidence in the fingernail scrapings obtained after Mayra's body was found several week later and he might have been arrested for her murder – possibly in late 1987, in which case he would not have been able to murder Carmen Lopez in January 1988.

The third compelling reason for extending compulsory DNA sampling to those arrested for a felony is the likelihood that it might contribute to identifying and overturning some wrongful convictions that have already occurred and prevent some wrongful convictions in the future. The wrongful convictions of James Tillman for assaulting, raping, and kidnapping a woman and Miguel Roman for the murder of Carmen Lopez occurred despite the presence of DNA from an unidentified man at each crime scene and on each victim. Tillman spent more than 18 years in prison until he was exonerated in 2006 despite the fact that he was not the source of the semen stains on the victim's clothing. Roman spent more than 20 years in prison despite the fact that he was not the source of the DNA found in Lopez' body, on the extension cord used to strangle her, and on cigarette butts at the scene.

As in most wrongful convictions, several factors contributed to those wrongful convictions. But both shared a common feature. In both, there was DNA at the crime scene and on or in the victim that came from an unidentified man. In both, that DNA was, years later, matched with the DNA of another individual. The man who committed the sexual assault for which Mr. Tillman was wrongfully convicted and the man who is now on trial for murder for which Mr. Roman was wrongfully convicted had both been arrested prior to those crimes. If the DNA technology that now exists had existed at the time the crimes were committed, and if the state had required a DNA sample from arrestees at that time, those men would have been arrested and tried and James Tillman and Miguel Roman would not have been wrongfully convicted and incarcerated.

Over the past several years, a number of states have enacted legislation extending DNA sampling to those arrested for some or all felonies. When I testified in support of similar legislation three years ago, I mentioned that after Virginia had enacted such legislation in 2002, 10 other states had enacted similar legislation. By the end of 2008, the number of states that had enacted such legislation had increased from 11 to 15. Now the number of states that have enacted legislation mandating the taking of a DNA sample from certain arrestees is 24. I have attached a summary, obtained from the National Conference of State Legislatures' DNA Laws Database, of the provisions of the legislation enacted in those two-dozen states. As the summary suggests, most of the states that have enacted DNA sampling from arrestees limit it to those arrested for violent felonies although there appears to be a trend to extend the sampling to all those arrested for any felony.

I realize many are either ambivalent about, or opposed to, legislation that would extend the compulsory taking of a DNA sample from anyone arrested for a felony. But I believe there are compelling reasons why the state should enact such legislation. Such legislation would increase the likelihood that at least some of the many unsolved crimes in which there is biological evidence from an unknown source will be solved. It would prevent the commission of some crimes by individuals who commit multiple crimes. And it would, in all likelihood, contribute to the identification and overturning of some wrongful convictions and, hopefully, prevent some wrongful convictions that might otherwise occur in the future.

Thank you.

David R. Cameron
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Table 1. DNA Arrestee Laws

State/Jurisdiction	Statute	Probable Cause Required	Qualifying Offenses	Effective Dates (if after 1/1/2010)	Time of Collection	Expungement	Notes on Collection	Specifically Includes Juveniles
Alabama	11 B 146(2009) effective Ala Code §36-18-24 (2009)		All felony offenses	Oct 1, 2010	At booking	Upon request		
Alaska	Alaska Stat §44 41 035		All felony offenses		At booking	Automatic		
Arizona	Ariz Rev Stat §13-610 (2009)	Statute differentiates qualifying crimes for those arrested and charged	Enumerated dangerous, violent and serious offenses: murder, sex crimes, burglary		At booking	Upon request		
Arkansas	Ark Stat Ann §912-12-1006, 1105 (2009)		Enumerated offenses including murder, sex crimes and kidnapping		At booking	Upon request		
California	Cal Penal Code §§296 296 1, 299 (West 2009)		All felony offenses		At booking	Upon request		
Colorado	Colo Rev Stat §916-23-103 (2009)	Probable cause is required to upload the sample, but not for it to be taken	All felony offenses		At booking	Upon request		
Florida	Fla Stat §943 325 (2009)		All felony offenses	Progressively more felonies with all included by Jan 1, 2019	At booking	Upon request	Rules and procedures to be developed by the Department of Law Enforcement	Yes
Kansas	Kan Stat Ann §21-2511 (2009)		All felony offenses		At booking	Upon request		Yes
Louisiana	La Rev Stat Ann §15 609 (West 2009)		All felony offenses		At booking	Upon request		Yes
Maryland	Md Public Safety Code Ann §2-501.504(2009)	Yes	A crime of violence or an attempt to commit a crime of violence or burglary or an attempt to commit burglary (murder sex crimes included)	Dec 31, 2013	At booking	The DNA sample shall be immediately destroyed	Personnel who collect samples must be appointed by Director and properly trained	
Michigan	Mich Comp Laws §750 520m (2009)		Enumerated "violent felonies" (murder, sex crimes)		At booking	Upon request	Collect and transmit the samples in the manner required under the DNA identification profiling system act	

State/Jurisdiction	Statute	Probable Cause Required	Qualifying Offenses	Effective Dates (if after 1/1/2010)	Time of Collection	Expungement	Notes on Collection	Specifically Includes Juveniles
Minnesota	Minn Stat §299C 11, 105 (2009)	Yes	Enumerated offenses including murder, manslaughter, assault, sex crimes, burglary etc		At arraignment after probable cause determination	Where the charge against the person was later dismissed, the bureau shall destroy the person's biological specimen and return all records to the individual	The persons who collect specimens must be trained in bureau-established standards for collection	Yes
Missouri	Mo Rev Stat §650 055 (2009)	Yes, but the sample can be taken before	Enumerated offenses including murder, burglary, sexually violent acts etc		Upon booking or entry into a jail facility	When the state highway patrol crime laboratory receives notice it will expunge the sample	Procedures cannot conflict with the rules applicable to the Missouri DNA profiling system and the Federal Bureau of Investigation's DNA databank system	
New Mexico	N M Stat Ann §29-3-10(1978)		Felonies as defined as sex offenses or any other felony offense that involves death, great bodily harm, aggravated assault, kidnapping, burglary, larceny, robbery, aggravated stalking, use of a firearm or an explosive or a violation pursuant to the Antiterrorism Act		At booking	Upon request	Samples shall be collected in accordance with rules and procedures adopted by the DNA oversight committee, shall be subject to the confidentiality and penalty provisions of the DNA Identification Act	
North Carolina	N C House Bill 1403 (2010) amends N C Gen Stat §§15A-266 3A 502.1		First and second degree murder, manslaughter, rape, sex offenses, cyberstalking, stalking, arson, armed robbery, assault inflicting serious bodily injury etc Also includes arrests for attempt, conspiracy, and aiding and abetting these crimes					
North Dakota	N D Cent Code §31-13-03 (2009)		All felony offenses		At booking	Upon request		
Ohio	Senate Bill 77 (2010) modifying Ohio Rev Code Ann §82901 07 (Page 2009)		All felony offenses	July 1, 2011	During intake process		Enumerated staff requirements for who may take the sample	
South Carolina	§ C Code Ann §23-3-620 (Law Group 2009)		All felony offenses		At booking	Automatic	Appropriately trained persons will take samples	Yes
South Dakota	S D Codified Laws Ann §623-5A-5 2.5A-1(2009)		All felony offenses/crimes of violence, and other enumerations		At booking	Upon request		

State/Jurisdiction	Statute	Probable Cause Required	Qualifying Offenses	Effective Dates (if after 1/1/2010)	Time of Collection	Expungement	Notes on Collection	Specifically Includes
Illinois	Ill. Code Ann. §(b)-35-321(2009)	Yes	Enumerated violent felonies - murder, sex crimes, burglary		After the Magistrates determination of probable cause	Upon charges being dismissed the department shall destroy the sample and all records of the sample		Juveniles
Texas	Tex Government Code Ann. §(11 1471(Vernon 2009)	Depends on previous convictions	Indictment for enumerated felonies or arrested for enumerated felonies after having committed one previously		At arraignment and at booking depending upon previous criminal histories	Automatic		
Utah	Senatic Bill 277 (2010) modifying Utah Code Ann. §53-10-403(2009)		All violent felonies	Jan 1, 2011	At booking	If criminal charges are not filed within 90 days of booking, the department must destroy the sample	Requires consistency with FBI forensic DNA analysis procedures	
Vermont	Vt. Stat. Ann. Tit. 20 §§1932, 1933 (2009)	Yes	All felony offenses	July 1, 2011	At arraignment	Automatic		
Virginia	Va Code §19-2-310 2.1 (2009)	Yes	Person arrested for the commission or attempted commission of a violent felony as defined in statute - murder, sex crimes, burglary		At arraignment	Automatic If the charge for which the sample was taken is dismissed or the defendant is acquitted at trial, the department shall destroy the sample and all records thereof, provided there is no other pending qualifying warrant or copies for an arrest or felony conviction that would otherwise require that the sample remain in the data bank		

Note 1 States or jurisdictions that are not included have no such provisions

Source National Conference of State Legislatures, 2010

CCDLA
"Ready in the Defense of Liberty"
Founded in 1988

Connecticut Criminal Defense
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March 7, 2011

The Honorable Eric D. Coleman
The Honorable Gerald M. Fox.
Chairmen
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: **Raised Bill No. 6489**, **An Act Requiring DNA Testing of Persons Arrested for the Commission of A Serious Felony**

Dear Chairmen and Committee Members:

My name is Christopher Duby and I have my own law practice in North Haven. Since becoming a lawyer, I have focused a large part of my practice in representing defendants in criminal matters. As a part of my criminal practice, I represent indigent defendants in criminal, appellate and habeas corpus matters on a regular basis. I am also on the Executive Board of the Connecticut Criminal Defense Lawyers Association, on whose behalf I submit this testimony.

As the members of the Committee may know, the Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of 350 lawyers dedicated to defending people accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally, and that those rights are not diminished.

CCDLA opposes the passage of Raised Bill No. 6489, *An Act Requiring DNA Testing of Persons Arrested for the Commission of A Serious Felony*.

CCDLA opposes the taking of blood or other DNA samples from individuals **arrested but not yet convicted of a felony**. The Association opposes the raised bill for five reasons. They are:

- (1) the intent of the proposed legislation is in direct and immediate conflict with various Connecticut and federal constitutional guarantees;
- (2) such law, if enacted, violates the privacy of people who are arrested but whose guilt or innocence has yet to be adjudicated;
- (3) local police departments would be required to absorb the cost of collecting DNA sample, thereby imposing an additional administrative cost on already-overburdened agencies;
- (4) there is no assurance that the dismissal, nolle or other non-guilt disposition would result in any protection of the defendant's privacy rights;

(5) The Connecticut forensic lab is already over-burdened so the processing of DNA materials from those yet to be convicted will further add to the lab's work load.

The proposed legislation is similar to other legislation that has been before this Committee on prior occasions. In its present form, the proposed legislation requires, in relevant part:

Section 1. Section 54-102g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

(a) Any person who is arrested on or after the effective date of this section for the commission of a serious felony shall, prior to release from custody and at such time as the law enforcement agency that arrested such person may specify, submit to the taking of a blood or other biological sample for DNA (deoxyribonucleic acid) analysis to determine identification characteristics specific to the person. For purpose of this subsection, "serious felony" means a violation of section 53a-54a, 53a-54b, 53a-54c, 53a-54d, 53a-55, 53a-55a, 53a-56, 53a-56, 53a-56b, 53a-57, 53a-59, 53a-59a, 53a-60, 53a-60a, 53a-60b, 53a-60c, 53a-70, 53a-70a, 53a-70b, 53a-72b, 53a-92, 53a-92a, 53a-94, 53a-94a, 53a-95, 53a-100aa, 53a-101, 53a-102, 53a-102a, 53a-103a, 53a-111, 53a-112, 53a-134, 53a-135, 53a-136, 53a-167c, 53a-179b, 53a-179c, or 53a-181c.

The Association recognizes that there is a long-standing policy for law enforcement agencies to take fingerprint samples from arrestees for *purely identification* purposes. Raise Bill No. 6489 would allow police to expand the process to collect DNA samples of individuals that have not been convicted of a crime. It is axiomatic that any person arrested for any crime, even the most heinous, are innocent citizens and their guilt must be proved by the State beyond a reasonable doubt. *In Re Winship, 397 US 358 (1970) [holding that the prosecutor must prove each element of a criminal offense beyond a reasonable doubt so that such conviction is constitutionally obtained]*

The taking of DNA samples is intrusive, unnecessary for identification purposes, is ripe for abuse, permits trolling of genetic markers for family members of those arrested, risks the permanent retention of DNA material of innocent citizens and provides unprecedented access to the private lives – down to their nuclear composition – of Connecticut citizens or people who were arrested here.

1) DNA Databases

As the members of this Committee are likely aware, the Federal Bureau of Investigation maintains the Combined DNA Index System or, as it is commonly know, "CODIS." CODIS provides two searchable databanks, one containing DNA profiles from individuals who have been convicted of one of several felonies, and the other containing DNA profiles from evidence that was obtained from crime scenes. *See, A Litigator's Guide to DNA From the Laboratory to the Courtroom, R. Michaelis, R. Flanders, P. Wulf, Academic Press, 2008* The DNA evidence obtained at crime scenes, if it is of human origin, is from people present at a crime scene but whose identity is not matched with that sample.

In Connecticut, defendants convicted of a felony are required to give a DNA sample by being convicted of certain offenses. *Conn. Gen. Stat. §54-102g* A convicted defendant's failure to comply with this provision is guilty of a Class C felony.

The Association presumes that any DNA material gathered from a person *arrested* for a serious felony would become a part of CODIS and therefore "designed to aid in future investigations. . ." *Ramos v. Commissioner of Correction*, 67 Conn. App. 654, 660 (2002)

2) **Current DNA Gathering Procedure for Arrestees**

The Association asserts that there already is a functioning means by which the State may obtain DNA samples from someone arrested for a violation of Connecticut law. In such instance, if the State is able to gather DNA evidence at the crime scene, the State often moves for an order from the trial court compelling the defendant to produce a DNA sample. This process permits a defendant to object or otherwise protect his rights against searches, while also protecting the State's ability to gather needed evidence which may also serve to free the defendant from any criminal liability.

3) **The Intent of the Proposed Legislation Is in Direct and Immediate Conflict with Various Connecticut and Federal Constitutional Guarantees**

The American Constitution Society published an analysis of the privacy issues surrounding the collection of DNA samples in August 2007. In its article "A New Era of DNA Collections: At What Cost to Civil Liberties?," Tania Simoncelli, Science Advisor in the Technology and Liberty Program at the American Civil Liberties Union, and Sheldon Krinsky, Professor of Urban & Environmental Policy & Planning, School of Arts and Sciences at Tufts University, describe the increasing use by law enforcement of DNA databanks and express concern about the civil liberty ramifications of this expansion. The authors of that report include the following concerns and comments, which are supplemented by the undersigned's additional research:

A. *DNA Compared to Fingerprints*

A person's DNA contains vast amounts of highly personal information. Those who argue vigorously for collecting and data banking DNA often compare this process to that of collecting and data banking fingerprints. However, fingerprints differ *substantially* from biological samples that provide DNA. Fingerprints are two-dimensional images of the raised portion of the skin around the fingertips. Using the visible individualized characteristics of a fingerprint, it can, on occasion, be used to identify a person, with certain and growing limitations.

The ability to identify a person via fingerprint analysis has been called into question by the National Academy of Sciences, a part of the National Research Council. See, *Strengthening Forensic Science in the United States, A Path Forward*, National Research Council of the National Academies, 2009.

By contrast, DNA, which must be extracted from a tissue sample and mined for data, contains exactly the kind of information that raises privacy and civil liberty concerns. DNA samples can provide insights into familial connections, physical attributes, genetic mutations, ancestry and disease predisposition. "Many common

diseases, such as cancer, Alzheimer disease, diabetes, asthma and cardiovascular disease, are caused by the additive, multiplicative or synergistic effective of several causative factors, including functional polymorphisms in critical genes. ***Many people worry that insurance companies, employers and others may use genetic information to discriminate against them on the basis of their predicted long-term health status.*** R. Michaelis, *supra*, at 12 (*emphasis added*)

Genetic information could be used in discriminatory ways and may include information that the contributor did not even want to know. Repeated claims that human behaviors such as aggression, substance addiction, criminal tendencies and sexual orientation can be explained by genetics render law enforcement's collection, use and retention of DNA potentially prone to abuse, at worst, or, at best, will reveal about a person private and serious issues that they may have wished to live their lives without knowing.

B. Fourth Amendment Considerations

The Fourth Amendment, made applicable to Connecticut through the Fourteenth Amendment, guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

Article First, §7 of the Connecticut Constitution states: "The people shall be secure in their persons, houses, papers and possessions from unreasonable searches or seizures; and no warrant to search any place, or to seize persons or things, shall issue without describing them as nearly as may be, not without probable cause supported by oath or affirmation."

Under both constitutional schemes, the conduct of a search generally requires probable cause and a judicial warrant, or, at least, individualized suspicion.

American courts have consistently found that the collection and analysis of DNA constitutes a search for two reasons. First, bodily (or at least tissue) intrusion is necessary for DNA extraction. Second, there is a substantial and uniquely personalized nature in the information contained in the DNA itself, thereby triggering protections guaranteed under the Fourth Amendment and Article First, §7. At the same time, though, courts have upheld the operation of convicted offender DNA databanks – including the forcible extraction and banking of DNA – for two reasons: (1) because the government's interest is one of special needs beyond the need for normal law enforcement or (2) because convicted felons have a diminished expectation of privacy, as balanced against society's need to promote law and order.

The Association submits that compelling an arrestee to forcibly contribute a DNA sample violates both the federal and Connecticut guarantee against searches. At the precise moment that the sample is taken, no probable cause exists to believe that the contributor was involved in any other criminal activity. Thusly, requiring the arrestee to essentially be a witness against himself *when law enforcement may not even know he is a suspect* goes beyond that which is otherwise permitted.

C. *Extraction of Arrestee DNA Will Lead To Litigation*

The New York City Medical Examiner's Office ("NYCME") keeps a "linkage database" of DNA it gathers in the course of performing its statutorily-mandated tasks. The New York Civil Liberties Union, in conjunction with The Innocence Project, sought a court order requiring that the NYCME expunge DNA samples it gathered for anyone who was acquitted or whose conviction is reversed on appeal or otherwise vacated. This "linkage database" contained DNA samples from anyone whose DNA was obtained in the course of a NYCME investigation.

The database that Connecticut will develop should the Raised Bill be enacted will be strikingly similar to the "linkage database" kept by the NYCME. It will contain highly personal genetic information about anyone arrested for an enumerated crime. Additional searches beyond those which are needed to develop and case and are supported by probable cause violate the Fourth Amendment.

The Association submits that design of a pre-conviction DNA databank will spawn substantial litigation given the fact that the State's interest in law enforcement has never been found to overcome an individual's privacy right in matter specific to that individual's unique and personal genetic disposition until that person is *convicted* of a crime.

4) Local Police Departments Would Be Required To Absorb The Cost of Collecting DNA samples, Thereby Imposing An Additional Administrative Cost On Already-Overburdened Agencies

The Association believes that the constitutional concerns raised above are sufficient to warrant the defeat of the Raised Bill. However, in the interest of providing the Committee with the Association's full analysis, it submits the following for the Committee's consideration.

As drafted, the Raised Bill states:

Sec. 2. Subsection (a) of section 54-102h of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2011):

(a)(1) The collection of a blood or other biological sample from persons required to submit to the taking of such sample . . . shall be the responsibility of the law enforcement agency that arrested such person and shall be taken at a time and place specified by that agency prior to such person's release from custody.

Thusly, any police department of any political subdivision, the Connecticut State Police or any state agency with arrest powers would be required to obtain a DNA sample *prior to releasing the arrestee*. Such a requirement functions as an additional term of release above and beyond bond/bail requirements imposed by court.

The Raised Bill, in the undersigned's reading, provides no funding mechanism for this mandate. Such possible local expenses include: covering the cost of training police officers to obtain samples; proper storage of such samples of avoid degradation;

forwarding such samples to the appropriate examining agency; the cost of additional incarceration as samples are obtained; and any liability that may accrue to due injuries to arrestees or officers in gathering such samples.

The members of this Committee are no doubt aware of the current trying economic times. As the legislature contemplates possible concessions from public employees and increasing various taxes, mandating an additional and complex local cost – which is of questionable constitutional validity – is not appropriate.

5) The Connecticut Forensic Lab Is Already Over-Burdened So The Processing of DNA Materials From Those Yet To Be Convicted Will Further Add To The Lab's Work Load.

In all candor, the criminal bar is lucky to have the State Forensic Lab (known officially as the Division of Scientific Services within the Department of Public Safety). In the undersigned's experience, they are professional, courteous, forthright and willing to assist in answering questions and discussing cases. Though the undersigned has not practiced law in any other state, other states have private labs conduct forensic investigations per the terms of a contract or have a state lab that handles some exams and assigns others to contractors.

Having an established lab like Connecticut serves to cut down on litigation. For example, the lab's compliance with various medical, ethical and laboratory standards is relatively easy to establish when compared to a private contractor whose contract may have just started or ended.

Every agency, like any business, has a maximum workload, however. People can only do so much and do it will and properly for so long. In Connecticut, our state lab handles the analysis from every investigation conducted in all thirteen Judicial Districts. In the undersigned's experience, it can take more than a year to receive DNA results for certain cases.

The undersigned submits that this delay is due solely to the lab's workload. Its employees must be precise and correct in each case without taking short cuts. The service the lab provides is often of paramount import in a criminal case. In point of fact, the State is able to convict guilty defendants based on DNA analysis while also being able to set free those wrongfully accused based on the lab's work.

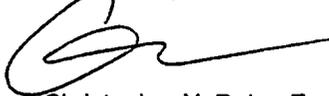
The Raised Bill will impose an additional burden on the state lab. Presumptively, the lab will be required to analyze the DNA samples submitted in accordance with the Raised Bill, as it requires the state lab to perform such testing. The undersigned submits that this cost not only is unjustified, but it would further delay the processing and prosecution of existing cases.

As a lawyer in the criminal courts, the undersigned respectfully submits that additional burdens on the forensic lab will needlessly delay existing cases and does so for reasons that are based on questionable constitutional grounds.

6) **Conclusion.**

For any and all of the foregoing reasons, CCDLA opposes the taking of blood or other DNA samples from *individuals arrested but not convicted* of a felony offense. DNA databanks should be limited to DNA profiles from persons who are convicted of serious crimes. All those presumed innocent do not have a diminished right to privacy and therefore should not have their DNA included in a forensic DNA databank.

Respectfully submitted,



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Testimony of Stephen N. Ment
Judiciary Committee Public Hearing
March 9, 2011

House Bill 6489, An Act Requiring DNA Testing Of Persons Arrested
For The Commission Of A Serious Felony

Thank you for the opportunity to submit written testimony on behalf of the Judicial Branch in regards to House Bill 6489, *An Act Requiring DNA Testing of Persons Arrested for the Violation of a Serious Felony*. While the Judicial Branch takes no position on the substance of the bill, we would respectfully note the following:

- In section 2(a)(1), we would suggest that after "release from custody" in line 103, the words "or transfer of custody" be added. This will clarify that the law enforcement agency that made the arrest is to take the sample of individuals released from custody, as well as those that are transferred to a DOC or Judicial Branch facility.
- In regards to section 3(b), the Judicial Branch currently has no mechanism to notify the State Police Forensic Science Laboratory that a dismissal, nolle, or acquittal has been entered. Furthermore, it would be difficult and costly to create an interface because we have no identifiers, such as a docket number, in common. Therefore, we would respectfully suggest that another unit within Department of Public Safety (DPS) - the State Police Bureau of Identification (SPBI) - notify the forensic lab of the outcome since we currently provide this information to SPBI.
- Also, in regards to section 3, basing the expungement on the outcome of the initial arrest charge could be problematic. Since charges are often modified by the prosecution throughout the process, it would seem to make sense to expunge the sample only if the arrest does not result in a conviction on any serious felony charge.

Thank you for the opportunity to submit written testimony.



TESTIMONY
of the
CONNECTICUT CONFERENCE OF MUNICIPALITIES
to the
JUDICIARY COMMITTEE
March 9, 2011

CCM is Connecticut's statewide association of towns and cities and the voice of local government - your partners in governing Connecticut. Our members represent over 90% of Connecticut's population.

We appreciate this opportunity to provide testimony to you on issues of concern to towns and cities.

H.B. 6489, "An Act Requiring DNA Testing of Persons Arrested for the Commission of A Serious Felony"

This bill would mandate that law enforcement personnel conduct DNA analysis on persons arrested for "serious felonies."

CCM appreciates the intent behind this proposal. However, it appears towns and cities would have to provide DNA kits. This would impose a new unfunded state mandate on already strained local budgets.

CCM urges the Committee either (1) make sure that the State provides adequate funding to implement this proposal, or (2) take no action on H.B. 6489.

★ ★ ★ ★ ★

If you have any questions, please contact Ron Thomas at rthomas@ccm-ct.org or (203) 498-3000.

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONERColonel Danny R. Stebbins
Acting CommissionerLieutenant Edwin S. Henion
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 6489 AN ACT REQUIRING DNA TESTING OF PERSONS ARRESTED FOR THE COMMISSION OF A SERIOUS FELONY**

The Department of Public Safety advises the committee that the Forensic Laboratory is understaffed and currently has backlogs of over three years in processing DNA evidence in criminal investigations. This bill will have a significant fiscal impact on the Department of Public Safety's Forensic Laboratory.

This proposed bill would require that DNA samples be taken from persons arrested for serious felonies. This is good public safety policy, but the committee should be aware that it will have significant fiscal impact and the agency's existing statutory responsibilities for DNA are not properly funded.

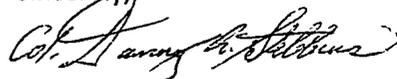
In 2003, the Connecticut General Assembly amended Connecticut General Statute 54-102g to require that all persons convicted of felonies be required to submit to the taking of DNA samples. The Connecticut Department of Public Safety received no additional staffing positions and or funding to acquire and process DNA supplies into the CODIS databank. As a result a backlog in convicted offender samples ensued, culminating in a backlog of over 22,484 unprocessed offender samples in August 2009. The State of Connecticut devoted 1.4 million dollars in American Recovery Re-Investment Justice Assistance Grant Funding to hire 9 durational positions to address this backlog and that backlog was eliminated in June 2010. These durational positions have now been diverted to address the criminal backlog of DNA evidence which continues to increase monthly and stands at over three years. Additionally, the ARRA federal grant funding is set to expire in June 2011, jeopardizing the continuation of nine durational positions.

Although the Department of Public Safety finds the expansion of DNA testing for arrested individuals for serious felony arrests highly desirable from a public safety perspective, (the Connecticut Forensic Laboratory in the last year has linked Connecticut convicted felony offenders to over 200 unsolved felony crimes throughout the United States, and an additional 100 hits are pending a confirmation), the Connecticut Forensic Laboratory would need substantial additional funding for DNA supplies and general funded positions to sustain this proposal.

Based on 2009 Connecticut Crime Index, there were over 9,175 criminal arrests for serious felonies throughout the State of Connecticut. Assuming this number is relatively constant, the Connecticut Forensic Laboratory would need an additional five examiner positions, and one clerical position to process and maintain the index. Based on current wages and fringe rates the Department of Public Safety would need an additional \$590,600 in salary and fringe costs, and \$458,750 in supplies, (it costs approximately \$50 per individual for processing DNA samples). Additionally, the state would need to purchase boucle swab kits and equip all law enforcement agencies in the state; we estimate these costs to be \$45,000 annually.

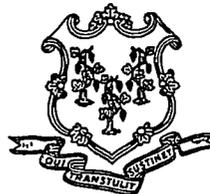
An additional consideration is the need for a computerized database/network that would need to be established in order to prevent multiple collections from the same individuals and result in duplicate processing. This database would need to be accessible to all collecting agencies in law enforcement, Department of Corrections and Judicial, and would require considerable start up time to be established.

Sincerely,



Colonel Danny R. Stebbins
ACTING COMMISSIONER

SENATOR ROBERT J. KANE
 DEPUTY MINORITY LEADER
 THIRTY-SECOND DISTRICT
 LEGISLATIVE OFFICE BUILDING
 SUITE 3400
 HARTFORD, CONNECTICUT 06106-1591



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State of Connecticut

SENATE

STATE CAPITOL
 HARTFORD, CONNECTICUT 06106-1591

March 9, 2011

Senator Coleman, Representative Fox and members of the honorable Judiciary Committee:

I write to you today to express my support for **HB 6489: AN ACT REQUIRING DNA TESTING OF PERSONS ARRESTED FOR THE COMMISSION OF A SERIOUS FELONY.**

Our criminal justice system could be best described as a search for the truth. The use of DNA technology is an important tool in that search. This bill would allow for the further development of DNA technology for use in the fight against violent crime.

DNA samples are already collected from convicted felons. This bill expands state law to require that DNA samples be collected from those arrested for any felony. Under this bill, DNA samples would be taken upon arrest from suspects in cases of rape, murder, cyber-stalking, human trafficking, armed robbery, arson, and other crimes.

DNA samples really are the modern-day version of fingerprints. Two dozen other states already have this requirement on their books and it has helped in solving rapes and murders.

It well known that the use of DNA evidence allows for rightful justice to be established when considering the guilt of a defendant. DNA evidence allows prosecutors access to new important tools for identifying criminals.

Right here in our state we have seen DNA evidence used successfully to exonerate the innocent such as the case of James Tillman who served many years in prison for a crime that DNA evidence later proved he did not commit.

Current Connecticut law effective in 2003 states that that any person convicted and sentenced of a crime may, at any time during their incarceration, petition the sentencing court for post-conviction DNA testing. However this bill will ensure that DNA be collected at the time of the crime, alleviating the cause for wrongful conviction and concrete undisputable evidence when presenting the case in court.

There are many examples of how DNA evidence has helped to solve cases that have gone cold. This new law would make it easier to catch repeat offenders, provide more evidence during investigations and present new leads in cases with not much to go on.

(over)

Statistics show that those who commit felonies are likely to have committed other crimes, so more samples in the database earlier can solve crimes more quickly. These samples will build a database that law enforcement can use to quickly identify or rule out a suspect. We need to give our law enforcement officers the most advanced tools that we can.

We need to do everything we can to solve crimes and to solve them quickly so as to prevent future crimes. Our goal is to prevent violent crime from occurring, and this proposal will move us toward that goal. We already have the technology; let's use it to our advantage so that we can identify offenders at the right time.



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

the value of DNA analysis to the pursuit of justice. We would further extend our sincere gratitude to the dedicated employees of the Department of Public Safety Forensic Science Laboratory who do such a commendable job under difficult conditions and tremendous fiscal constraints. It should also be noted that the fiscal impact of collecting samples from those arrested for serious felonies at the time of arrest may not be as great as some might expect since the reality is that many, if not most, of these individuals will eventually be convicted either through plea or trial and will be required to submit samples under current law. Essentially it may be more a question of when the sample is taken as opposed to if it is taken.

The Division would recommend that H.B. No. 6489 be amended to revise the section on the purging of DNA samples to require purging only upon the entry of a dismissal or thirteen months after the entry of a nolle and not at the time of the entry of a nolle. This recognizes the standing procedure allowing for the re-opening of a criminal case within thirteen months of the entering of a nolle

While the fiscal impact of taking samples from arrestees at the time of arrest may not be as great as some might expect, the Division recognizes the reality that providing for any additional costs may be impossible in the current economic climate. It is with this thought in mind that the Division submitted H.B. No. 6538. We thank the Committee for raising this bill and would respectfully request a Joint Favorable Report. The bill includes several actions that have no fiscal impact but which help to ensure that the DNA data bank works as it was intended. At the very least the General Assembly should take these actions this year, even if fiscal realities prevent an expansion of DNA sampling.

First among these is the modification of section 54-102g to allow the Department of Correction to use reasonable force to collect DNA from those who refuse to provide the sample required by law. There are a number of incarcerated individuals who refuse to submit to sampling. The General Assembly last year made such refusal a class D felony punishable by a maximum of five years in prison. While the Division supported this legislation and believes it is a step forward, it is still not enough to ensure that the state obtains DNA samples in a timely manner. Many convicts will accept the risk of not giving the sample and having five years added to their sentence when the alternative is being identified as the perpetrator of a more serious crime or crimes - including murder - that could mean a far longer sentence.

The Division would note that just last month a person was convicted and sentenced to an additional year in prison for refusing to submit to the taking of a DNA sample. Despite that conviction and the additional jail time, the state still has not been able to obtain a sample from this individual. The Committee should be aware that the Division is currently in the process of litigating this issue. An initial decision in the Superior Court affirms our belief that the use of reasonable force is permissible under existing law. However, we would note that the Superior Court decision is certain to be appealed and a final determination by the courts could be years away. Every day that we delay in obtaining these samples is another day that a crime may be going unsolved. Again, the issue is not limited to identifying those who have committed crimes, but it also exonerating those who did not. The expansion of DNA sampling serves the interest of justice for all involved. The time to act is now and the General Assembly has the authority to do so. The use of reasonable force is widely accepted in other jurisdictions and should be in Connecticut.

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. Henton
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

H – 1112

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2011**

**VOL.54
PART 21
6898 – 7240**

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(Chamber at ease.)

DEPUTY SPEAKER KIRKLEY-BEY:

Will the Clerk please call Calendar 355?

THE CLERK:

On page 43, Calendar 355, House Bill 6489, AN ACT
REQUIRING DNA TESTING OF PERSONS ARRESTED FOR THE
COMMISSION OF A SERIOUS FELONY, favorable report of
the Committee on Appropriations.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Hewett, you have the floor, sir.

REP. HEWETT (39th):

Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

You're welcome.

REP. HEWETT (39th):

Madam Speaker, I move acceptance of the joint
committee's favorable report and passage of the bill.

DEPUTY SPEAKER KIRKLEY-BEY:

The motion before us is acceptance of the joint
committee's favorable report and passage of the bill.

Will you comment further, sir.

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REP. HEWETT (39th):

Madam Speaker, this bill is the taking of DNA upon serious felony arrests. The previous bill that we had was the taking of DNA upon any felony arrest, but there is an amendment that will replace the language in that bill and the Clerk is in possession of amendment LCO 7900 and I ask him to call and I be permitted leave of the chambers to elaborate.

DEPUTY SPEAKER KIRKLEY-BEY:

Will the Clerk please call LCO 7900?

THE CLERK:

LCO 7900, House A offered by Representatives
Hewett, Hetherington, Senators Coleman, Kissel, et al.

DEPUTY SPEAKER KIRKLEY-BEY:

The Representative has asked leave to summarize. Is there any objection? Is there any objection to summarization? Hearing none, please proceed, Representative Hewett.

REP. HEWETT (39th):

Thank you, Madam Speaker. Madam Speaker, I'm kind of losing my voice so you've got to bear with me, I won't be talking by tomorrow morning. This amendment replaces the part in the bill when a person

is arrested of a serious felony, instead of the DNA being taken upon that arrest, he had to have had a previous arrest before his DNA will be taken. When that DNA is taken, it would be put into a state data file and it would be uploaded onto CODUS data file to be cross referenced with anything that he had done in the past. So, I move passage.

DEPUTY SPEAKER KIRKLEY-BEY:

The Representative has asked -- has moved adoption of the resolution of the amendment. Will you remark further on the amendment? Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you, Madam Speaker. I rise to support this amendment. The concept in this bill is a very sound one. It will not only enhance the opportunity to apprehend felons, but it also will prove the innocence, established innocence of people who may be falsely accused. But, the amendment I think enhances the bill because it adds further protections, it limits the class of persons to whom this applies because it requires that the person have been previously convicted and on subsequent arrests would

be subject to a DNA collection. So, Mr. Speaker, I would strongly urge adoption. Thank you.

(Deputy Speaker Ryan in the Chair)

DEPUTY SPEAKER RYAN:

Thank you. Will you remark further on the amendment? Will you remark further? Representative Rowe of the 123rd.

REP. ROWE (123rd):

Thank you, good evening, Mr. Speaker. I rise in support -- I wasn't an enthusiastic -- too enthusiastic about this in the Judiciary Committee but I'm pleased that it's been tightened up and recognize some of the concerns that folks have, so I congratulate the gentlemen on coming up with something that is tightly written I think and good for all parties. So, this is a good strike all amendment and it ought to pass. Thank you.

DEPUTY SPEAKER RYAN:

Thank you, Representative. Representative Hovey of the 112th.

REP. HOVEY (112th):

Thank you, Mr. Speaker. Through you, a question to the proponent of the amendment.

DEPUTY SPEAKER RYAN:

Please proceed, ma'am.

REP. HOVEY (223th):

Thank you, sir. First, sir I'd like to thank the good gentleman for all his hard work on this issue. But, through you, Mr. Speaker, am I to understand that this has to be the second serious felony before we're going to take DNA, through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Hewett.

REP. HEWETT (39th):

Through you, Mr. Speaker. What this bill states is, if you have been convicted of a previous felony, you had to have been convicted of a previous felony to have your DNA taken when you're arrested on a serious felony, through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, sir. Representative Hovey.

REP. HOVEY (112th):

Thank you, sir. So, still to be clear though, this individual through you, Mr. Speaker, would have

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had a previous felony arrest and this would be the second felony arrest, through you, Mr. Speaker, does this second arrest have to be a serious felony arrest, through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Hewett.

REP. HEWETT (39th):

Through you, Mr. Speaker. No, just any felony arrest before it's taken. He had to be arrested on a serious felony and had to have a previous conviction of any felony for his DNA to be taken, through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Hovey.

REP. HOVEY (112th):

Thank you, Mr. Speaker. And, I thank the gentleman once again for his efforts on this bill. In my mind I think this is one felony too many to be taking the DNA. I believe that an individual who is convicted of a felony, the statistics show that prior to that person even being caught, there's a very high probability that they have seven or more incidences of crime they've committed that they have not been caught

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for and I personally believe that the DNA should be taken on the first felony conviction. But, I thank the gentleman for his efforts and I know there's a tremendous amount of compromise going on around this issue, but hopefully we'll move forward with this and then tighten it up in the future. Thank you, sir.

DEPUTY SPEAKER RYAN:

Thank you, Representative. Representative Candelaria of the 95th.

REP. CANDELARIA (95th):

Thank you, Mr. Speaker. A quick question through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Please proceed.

REP. CANDELARIA (95th):

Quick question, when we talk about -- what do you mean by a serious felony, through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Hewett.

REP. HEWETT (39th):

Thank you, Mr. Speaker. A serious felony is considered as murder, capital felony, felony murder and arson murder, just to give you a couple of

examples of the ones in each category. First and second hand degree manslaughter, first and second degree assault, under capital felony, first and second degree manslaughter with a firearm, first and second degree assault of elderly disabled and pregnant person, felony murder, second degree manslaughter with a motor vehicle, second degree assault with a firearm and arson murder, misconduct with a motor vehicle, second degree of assault of elderly disabled and pregnant with a firearm, through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative. Representative Candelaria.

REP. CANDELARIA (95th):

I thank the gentleman for his answers. One more question through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Please proceed.

REP. CANDELARIA (95th):

Now, the collection of the DNA will be if the individual had a prior felony conviction, only if he had a prior felony conviction, then the collection would apply. It doesn't mean that he will be

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convicted on the second felony, or will it be after the conviction of the second felony, through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Hewett.

REP. HEWETT (39th):

Once the person is arrested on a serious felony and has a previous felony conviction, only then will his DNA would be collected for the data bank, through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Candelaria.

REP. CANDELARIA (95th):

Through you, Mr. Speaker. So, that means that the person doesn't have to be convicted on the second felony for the collection to happen, through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Hewett.

REP. HEWETT (39th):

Through you, Mr. Speaker, no.

DEPUTY SPEAKER RYAN:

Representative Candelaria.

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REP. CANDELARIA (95th):

So what would happen if the person is not convicted on the second felony? What would happen to that collection of DNA?

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Hewett.

REP. HEWETT (39th):

His DNA, upon him being found not guilty of the crime that he was arrested on, his DNA, upon his request, would be expunged from the system.

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Candelaria.

REP. CANDELARIA (95th):

Mr. Speaker, I thank the gentleman for his questions -- for his answers. I think this is actually a good bill. I support the bill and had a little bit of concerns with -- with the language, but now that I have some clarifying answers I'll support the underlying amendment. Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

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Representative Kupchick of the 132nd.

REP. KUPCHICK (132nd):

Thank you, Mr. Speaker.

The amendment, I too feel dilutes the bill a little bit. I -- I was very supportive actually. I was in the LOB in between committee meetings when I was watching the committee meeting on this bill in my office. And the Representative had brought in a woman from New Mexico whose daughter was murdered. And she spoke about this bill so eloquently and was so moving, and was able to answer so many questions that I immediately left my office and came down to the hearing room and signed the cosponsor form that day.

I think it's a very good bill, an important bill, a bill that protects people. But as Representative Hovey said, I would like to have seen it be a little tougher, but I am happy that the -- that the bill is coming forward, and I am looking forward to supporting it.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

Will you remark further on the amendment before

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us? Will you remark further on the amendment before
us?

Representative Klarides of the 114th.

REP. KLARIDES (114th):

Thank you, Mr. Speaker.

I also rise in support of this amendment. I would like to congratulate Representative Hewett. He took on a Herculean task with this one. And as with a lot of legislation -- I don't know, what's the phrase -- legislation and sausage, we don't like to see how they are made; we just want to see what the final result is.

Met with a lot of people, gave in, negotiated the way you would negotiate, met in the middle, and I think as Representative Kupchick mentioned, when we heard the testimony in the Judiciary Committee of that woman, and what the results of something like this reap, I think we all understand how important it is to think out of the box and think in a very creative manner in new ways that we have to make our criminal justice system as safe, as accurate as can be.

So I congratulate him again, and I support this amendment.

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DEPUTY SPEAKER RYAN:

Thank you, Representative.

Will you remark further on the amendment before us? Will you remark further? If not, I will try your minds. All those in --

Excuse me, Representative Mikutel of the 45th, at the last second.

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

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER RYAN:

Opposed, nay.

The ayes have it. The amendment is adopted.

Will you remark further on the bill as amended?

Maybe, Representative Mikutel, you'd like to speak now.

REP. MIKUTEL (45th):

Thank you, Mr. Speaker.

Yeah, I stand in strong support of this -- of this bill as amended. I feel that it will help

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protect the public safety by solving many unsolved crimes. I think it will exonerate some people who are in prison.

I think it's not quite strong enough as I would have liked it as it was originally proposed. I think it was a better bill in the original version, but I understand why the changes were made, so -- and I give credit to Representative Hewett for championing this bill.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

Will you remark further on the bill as amended?

Representative Hetherington of the 125th.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker.

I rise in strong support of this bill.

First, I want to thank and single out Representative Hewett for the dedication, commitment and the thought that went into this. He was determined from the beginning to improve our use of DNA and I believe he has effectively done that. So I'm grateful to him.

I also want to say that I think this is a demonstration of the way the process has worked and should work in the legislative work that we do. It's clear we have people who do not like the bill as it was originally drafted and maybe some don't like it the way it wound up. We have some that were opposed to it and now favor it.

In other words, we had a coming together on this in which everybody was maybe a little bit dissatisfied, but in the end, we've got a product that certainly advances the purpose for which it was intended. And so I strongly urge adoption.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative. Representative Kirkley-Bey of the 5th.

REP. KIRKLEY-BEY (5th):

I want to say thank you to Representative Hewett for all the hard work he did. While several of us put the bill in, he did all the legwork that needed to be done to bring Katie's mother here to have her testify before the Judiciary Committee, to say all the things that were necessary to enlighten folks on DNA. And

DNA has now become the new fingerprints. Fingerprints are outdated. DNA will be the way they test people in the future and that will be the way they match.

The Innocence Project proved that by finding Mr. Tillman innocent after 18 years, and I just read an article about him. He is now a student at Goodwin College studying to get a degree. And he holds no ill will in his heart for being in prison and for those years that he was there. And, I mean, I find that amazing. I don't know that I could be 18 years incarcerated for the wrong thing and not hold some ill will against the Department of Corrections.

But I want to say I think this will help other people who have been in -- in that position. We've sent -- two more men have come out because of the Innocence Project in -- in less than a year, and I think they're going to continue to do that. And by the virtue of the fact that we're using DNA more, and will be gathering more, they will be able to prove more men innocent and more people guilty, and get the right people in their right places.

DEPUTY SPEAKER RYAN:

Thank you, Representative. Representative Coutu

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of the 47th District.

REP. COUTU (47th):

Thank you, Mr. Speaker.

I want to just say I'm appreciative for the leadership of our colleague from New London. He worked very hard to make this a reality, and DNA is a wonderful thing. It exonerates people who, at times, are guilty and then proven to be innocent and it clarifies who is guilty. And this piece of legislation is very important, and I'm glad that we have this within our House, and I strongly support it and hope my colleagues to the same.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

Representative Mushinsky, the dean of the House from the 85th.

REP. MUSHINSKY (85th):

Thank you, Mr. Speaker.

I, too, rise to support this bill as amended, and thank Representative Hewett and Representative Dargan, of Public Safety Committee, who also worked on a similar version.

In Wallingford, we had a murder of a local woman, Barbara Pelkey, in 1986. And the prisoner who was accused and convicted of her murder was set free two years ago after serving 20 years of a 50-sentence, after DNA proved that he was not the right man. And he had been captured as a 16 year old and spent his entire adult life behind bars even though he had never committed the crime.

With the tools of modern science, DNA, we won't make mistakes like this. And, actually, DNA has focused on the -- on a new suspect who will now be prosecuted. So we will be able to protect lives. We will be able to bring relief to the survivors, and make it less likely that the State will make mistakes and lock up a person for decades. So I hope we will all support this bill today.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

Representative Srinivasan of the 31st.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker.

Through you, Mr. Speaker, to the proponent of the bill.

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DEPUTY SPEAKER RYAN:

Please proceed, sir.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker.

I'm definitely confused about the intent of this bill and I see this -- I'm a supporter of this bill. I've cosponsored this bill, so I support the principle of the -- of the whole concept. But I'm confused here as to what is the intent and the purpose.

The first time the person is caught, he has been convicted, he has already put -- served whatever sentence he needs to serve because he's been convicted of a felony crime, which is that sentence is done or in the process.

A second crime is committed by the same person, man or woman, and this time he's caught again, or she's caught again, and this is when we are taking the sample of blood, the second time around. But what crime are we trying to solve? Because the first time he has already been convicted and the second time he has been caught. Caught doesn't mean that he's convicted of the crime, and the DNA match is not going to make any difference at all, because it may not be -

- he already has one commitment against him anyway.

So my idea of this DNA collection was more to solve unsolved mysteries. You know, the murders that were committed where nobody has been found, nobody has been caught, but there's a sample at the crime scene, and nothing came out of that particular tragedy, but we do have a sample. And now we are able to catch this person a second time, but the first time for us because we never convicted him the first time.

And so, through you, I'm not sure if I was verbose on this. I definitely am. I can feel it myself. But the whole intent is are we thinking backboards on this bill or -- as to who are we trying to convict by taking the sample of blood.

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Hewett.

REP. HEWETT (39th):

Thank you, Mr. Speaker.

Through you, Mr. Speaker, right now, we have DNA upon conviction. We started taking DNA upon conviction in 2004.

REP. SRINIVASAN (31st):

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Right.

REP. HEWETT (39th):

Last year there was 9,200 serious felonies in the State of Connecticut. Until 2004, there's still a pool of people out there that has -- been convicted of a previous felony that their DNA was never taken. They are repeat offenders.

So what this does is when the repeat offender repeats, it gets his DNA into the system for the first time.

REP. SRINIVASAN (31st):

Right.

REP. HEWETT (39th):

Do you understand what I'm saying?

REP. SRINIVASAN (31st):

Right.

REP. HEWETT (39th):

Because he didn't get there the first -- from the other time.

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Yeah. Thank you, Mr. Speaker.

So, through you, Mr. Speaker, so the second time when a crime is committed we are collecting the sample of the DNA for the first time, and that is just being kept in the -- in the data bank in the unlikely event that it happens again.

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Hewett.

REP. HEWETT (39th):

The second time is -- through you, Mr. Speaker -- the second time his DNA will be taken will be put into the CODIS data file.

REP. SRINIVASAN (31st):

Right.

REP. HEWETT (39th):

That's where the match will be for anything that happened in the United States.

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker.

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Through you, Mr. Speaker, would it also makes sense that when the very first time the crime has been committed and the conviction has happened, at that time we are not collecting the DNA. Correct me if I'm wrong, Mr. Speaker.

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Hewett.

REP. HEWETT (39th):

Excuse me. Could you repeat that question.

Through you, Mr. Speaker.

REP. SRINIVASAN (31st):

The first time a serious felon -- felony crime has been committed and the criminal has been convicted, are we also collecting a sample of the DNA at that particular time?

Through you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Representative Hewett.

REP. HEWETT (39th):

Through you, Mr. Speaker, yes.

REP. SRINIVASAN (31st):

Okay. All right.

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DEPUTY SPEAKER RYAN:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker.

That clarifies -- I didn't realize that they were collecting it the very first time, too.

And I want to thank you and thank the good Representative for his kind answers. Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, sir.

Representative Fox of the 146th.

REP. G. FOX (146th):

Thank you. And good evening, Mr. Speaker.

I rise in support of the bill as amended. I would like to thank Representative Hewett for -- for all of his efforts in bringing this to fruition. I would also like to thank, as chairman of the Judiciary Committee, all of the -- the members of the committee who raised a number of issues with respect to -- to this bill and how it's going to work.

And I believe as a result of many of those questions, what we have before us today is a -- is a

limited approach but a -- but an approach that will allow us to evaluate how this is going to work. And Representative Hewett is correct when he states that, currently, our law does allow for DNA to be taken from anyone convicted of a felony.

And what this bill does is it would allow anyone who is arrested for a serious felony, as set out by Representative Hewett, if that individual has been previously convicted of a felony, but for some reason, whether there was a lapse or a refusal or a felony before the -- the database was -- was established, if that individual had been convicted of a felony but wasn't -- that individual's DNA was not in the data bank, what this would do is authorize law enforcement upon that -- that arrest for a serious felony to allow a DNA sample to be taken from that individual who is already a convicted felon from a previous case.

So that's -- that's the way this is laid out. I believe it will -- should it become law, it will be an opportunity for -- for law enforcement and for -- for all of us as policymakers to establish how -- whether this is working the way we want it to, if there's ways that we can improve upon it, and also, if there are

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changes that we may need to make as we go forward.

But through Representative Hewett and others in this Chamber and their hard work, we are taking a step towards -- it is all of our hope solving crimes as well as exonerating those who maybe wrongfully accused.

So thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, sir.

Representative Nicastro of the 79th.

REP. NICASTRO (79th):

Thank you, Mr. Speaker.

Mr. Speaker, I stand in strong support of this bill as amended. Mr. Speaker, I'd first like to thank Representative Hewett for his hard work and the Judiciary Committee.

Mr. Speaker, I had the opportunity to meet Mrs. Sepich when she came from out of the West Coast here to testify in front of judiciary. I sat with her through that testimony. And you could hear a pin drop when she talked. I never saw so much attention being paid to one person in the four or five years that I've been here. It was truly something remarkable.

You know, people talk about constitutional rights and things. Well, Mr. Speaker, I look at DNA testing nothing more than fingerprinting of the 21st century. That's how I look at it because it can solve a lot of problems. It can have people who are wrongly convicted released from prison. But more importantly, if we do something like this, we become the 25th state to allow things like this to happen, where we can have DNA testing on certain Class A felonies.

If you look at what happened in Chicago -- and I apologize if I'm repetitive. I was outside the chambers. In Chicago, they had a case study done of serial killers and rapists. They showed 60 violent crimes, including 53 murders and rapes which could have been prevented had DNA testing -- had been done upon the person's arrest of a serious Class A felony.

Look in Texas and California. There's women that were raped. The person who raped them was released when he was caught in the burglary -- released more -- raped more women -- was released when he was caught in a burglary. Finally, he was caught raping a woman. He ended up raping 21 women before he was caught for that crime.

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We have a responsibility to protect the females of this state, young and old alike. And this DNA testing bill, it goes a long way to do that. I strongly urge my colleagues to support this bill.

Yes, I know there's questions about constitutional rights. But if 24 other states have done it, and it's been tested in the court and upheld, then why can't Connecticut do it? I strongly urge my colleagues to support this bill and again, I congratulate Representative Hewett for the fine job he did.

Thank you.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

Representative Clemons of the 124th.

REP. CLEMONS (124th):

Thank you, Mr. Speaker.

I also stand in support of this bill as amended and also commend Representative Hewett on his hard work and diligence.

You know, it's -- what I'm about to say is this -- this bill is personal. Almost 31 years ago, my -- my son's mother was raped and murdered in Bridgeport.

Now, at that time there were several women that were raped and murdered in Bridgeport. To this day, those crimes have not been prosecuted. Nobody has been brought to justice for those crimes.

So when you talk about not having closure, I know personally and my family, but we're not the only ones. I forget, maybe, over a four or five year period there was six, seven, may be eight. Over time you have a tendency to try to put it somewhere over here and try to move on with your life. But as a family we have not had closure.

But -- so when Representative Hewett started to champion this piece of legislation, I thought -- I thought long and hard, and then I came up with the decision that I'm going to support this because maybe, just maybe, myself, my family, and the other families in Bridgeport that are in this situation might, just might find closure at one point.

We're not the only people, or families, that are in this position. I know there's people across America in our cities and towns that are in the same circumstances.

So again, this legislation, it's personal; and I

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support -- support it wholeheartedly. I thank Representative Hewett, everybody on the Judiciary Committee, and all my colleagues in here, even if you don't support it. But for those that do, I want to thank you in advance.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, sir.

Representative Holder-Winfield of the 94th.

REP. HOLDER-WINFIELD (94th):

I thank you, Mr. Speaker.

I rise, at least, initially, similar to many of the people of this Chamber giving credit to Representative Hewett for working diligently on this bill. It is always good to see a Representative who is willing to go out and do the work to move any of the bills that we have here. They are all important.

But I rise in opposition to this bill. And I can do math, and so I recognize that this bill will probably pass on this evening. But because we have decided to limit this bill to dealing with people who have a prior felony conviction does not make it, in my mind, all that much better than it was initially.

It seems to me that those people who have served their time, and for whatever reason, the State did not capture their DNA, are still innocent of a subsequent crime until they are proven guilty.

And so my argument is not a civil liberties argument. Is it an argument about the -- the fundamentals of the system that we all, in this building, say we believe in. We all say we believe in a system where you are innocent until you're proven guilty, whether you've been convicted of a crime in the past. And we are going to vote tonight in a manner that says that that's not truly what we believe.

There's a saying about the nexus of security and liberty and what we deserve when we give up one for the other. The vote we take tonight will speak to whether we believe in security or liberty, or all of those things that we say under guard what we do in this building. I'm not going to speak very long because I know where we are going to wind up tonight, but I had to go on record and say that I am opposed to doing what we are doing here, with all due respect to all of those who think that we are doing the right

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thing.

And one thing I would say to this Chamber is that some people believe that doing this will clear people of crimes. Having the DNA of a person, because you have that person in custody, is something that we already have. We have the felon. We have their DNA. If we wanted to really clear them, we could do so.

And so if we do this, let's not say that were doing this because, well, one of the things that we're going to do is make it easier to clear some people. That's not the case. If we want to do this we are doing is because we think it's the right thing to do, but it is not to clear anyone. It's because we think that where that nexus is, between security and liberty, security is more important than liberty.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative. Representative Dargan of the 115th.

REP. DARGAN (115th):

Thank you very much, Mr. Speaker.

I rise in support of this bill tonight just for the reasons that Representative Clemons talked about.

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When he had this personal conversation with me, this tool, which we call DNA, was not in existence at that time. Maybe if it was, we would find that individual.

DNA is, basically, a new tool for our law-enforcement community to protect the innocent. There's been criticism. If you listen to people in the public defender's office, the state's attorney's office, Department of Public Safety, the ACLU, the Innocence Project, that I have and Representative Hewett has heard, this actually works.

Is the bill before us here tonight perfect? No. I would like to see it a lot stricter upon conviction before sentencing. We had a bill in public safety. I had an amendment on Representative Hewett. But we call this Chamber the act of compromise, and that's what we do at times. This is a good initial step to get to that next stage.

This is not about somebody's rights. It's also about the rights of the victims. The victims' families. It also protects the innocents. It's not a perfect tool, but it works very, very well. We currently have somebody in our -- some of our finer hotels in our state right now serving over 30 years,

and we can't get is beginning right now, ladies and gentlemen.

So what do we do? We have to go back, take this individual back through our court system. And what does the court system do? Give him one more year, so now he serves 31 years in some of our finer hotels.

I don't know. That individual might have done that -- that heinous crime to Representative Clemons' family. I really don't know. But it's a tool that we, as a Legislature, should look at, because it does protect the innocent. It protects the innocent. It's been proven that it protects the innocent. And for us to stand here to say tonight that it doesn't protect the innocent, it does. In 99 percent of the cases in our country, it shows it works, at a minimum cost, ladies and gentlemen.

We have a number of people right now in our correction systems that we still can't get their DNA. We did a bill a couple weeks ago that hopefully we could get that.

You know, it's pretty funny why somebody is in some of our finer institutions in our state why they don't want to give the DNA. Because what are we going

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to do, give them a good time? We're going to give them five days off so they give us their DNA. It's a proven factor.

We have one of the finest forensics science that, hopefully, that Governor Malloy will sign the forensic science building in Middletown after Henry Lee. He has put us on the map, not only here in Connecticut, but in the United States and around the world. It's a proven that it works.

And Representative Hewett, to stand here tonight, to come this far, we need to go a little further. But Representative Hewett, I give a lot of credit in compromising. And this is a bill that will work to protect the innocent within our state.

Thank you very much, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative. Representative Morris of the 140th.

REP. MORRIS (140th):

Thank you, Mr. Speaker.

I, too, rise in support of this bill. Similar to Representative Hewett and others, last session, I opposed this bill vigorously. And it wasn't until

Representative Hewett, with his persistence, went out and brought information to me, and being open-minded enough, and he says figure analytical enough, I took a look at the information and decided, you know, I was wrong.

I was afraid when I didn't know what the science was about. I mean, you talk DNA, I got concerned. Gee, is someone going to get into my family profile and everything else?

But, certainly, as I think we even heard tonight listening to the testimony of Jan Sepich, that even more helped me to understand the science behind this DNA being simply a profile. As I understand it, it's about 13 bits of information out of 1 billion strand piece of DNA.

The protections and things that I would have been concerned about, I've been given to feel that you know what, this is a really good bill, and I cannot thank Representative Hewett enough for going back, doing the research, and making certain that he enlightened many of us.

I have a wife, two daughters, and granddaughters. I have seen enough of the research of what has

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happened in other states where, yes, rapists were caught because of this bill. People who do very harmful things were caught because this legislation was in place -- in place. Public safety is important. When I listened to Representative Clemons' story, I hope that he, and families similarly situated, will be able to have that unsolved crime determined.

Lastly, or one thing I want to add to this is, another piece of concern during these tough budget times, you begin to understand the police departments want to push this, because why? It helps them to save time on investigations. It is an effective tool.

So that being said, I encourage all of my colleagues to let's pass this bill, walk away proud. It's a new day. This is the new technology. It isn't something to be afraid of. A profile is not your DNA sitting there where somebody can tamper with it. The expungement things that are necessary are there.

Representative Hewett, I thank you. You've educated me very well.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

Representative Butler of the 72nd.

REP. BUTLER (72nd):

Thank you, Mr. Speaker.

I, too, rise in support of this bill. While others may feel it goes a little too far, or some feel it doesn't go far enough, I think they got it just right. I'd like to thank Representative Hewett and all that have worked on this bill to make it what it is.

We hear stories daily of people that are either convicted by DNA or their innocence is proven by DNA. DNA is truly the fingerprints of the present and the future. Right now we take fingerprints on anyone who's arrested. I don't see why people should be afraid of DNA being collected.

I, too, have heard the story of Representative Clemons, and it's very moving. And while we talk about the criminal element that are affected by DNA, I am truly moved by Representative Clemons and all those that are victims, the true victims, that can, maybe, somehow have closure brought to their lives by the use of this DNA.

I think that's one of the most compelling reasons

that we need to pass this bill today because there are so many people out there that just by collecting this DNA, we can solve so many unsolved crimes out there.

Again, I'd like to thank Representative Hewett and all those who worked on this bill. I think you got it just right. DNA is the present and it is the future. We need to embrace it, go forward, and pass this bill. Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative. Representative Tercyak of the 26th.

REP. TERCYAK (26th):

Thank you very much, Mr. Speaker.

I, too, rise to oppose this bill as the previous speaker has. When we talk about saving even one life and about justice, we should remember the case of Josiah Sutton who spent nearly 16 years in prison convicted at almost 16 years old of a rape he didn't commit, because humans are still fallible.

While DNA may be always accurate, the people who test it are not. There is no more reason to believe that they are less fallible in testing DNA than in anything else.

I've spoken before this bill and I mention again now, we will never have our liberties taken away by people who say we don't deserve them. We will always have a victim who can be pointed to and say, we can help that person, we can help others. Once upon a time it was don't worry about it, we are only talking about people who have been convicted of a crime who are presently in prison or under the jurisdiction of the courts and the justice system. Okay. That's all we were talking about.

Here we are today being told don't worry about it, we're only going to do this with people who are previously convicted and have -- and it was before 2004 and they should be in the system, but they're not, and we will do it just right, and it will be okay. And we are being asked to fall for it again, that this time it will be the end.

That someday -- now, fortunately, I don't believe it's tomorrow, so most of us won't be facing this question. Someday, it's going to be how much we can help people if we get everybody's DNA, and then we will know what people are susceptible to, and we can save lives by preventing diseases.

Many of you know in here one of my particular issues is breast cancer. If we used DNA, we could save people's lives who are going to die of breast cancer. Why the hell are we not testing everybody? Do we not care about the women who are going to die of breast cancer? It's because that's not the step we are taking today. We have to take some steps before we get there. And I'm not sure those are steps we want to take.

The fact that somebody has been convicted of a crime, a heinous crime, and we believe they've committed another crime, two things -- once, we had a principle that you get convicted of the crime, you do your time, and someday you're let go, do your best, welcome back to our law-abiding society. Now we're saying, if we catch you at your crime, you are never again treated like an innocent person. It will always be different.

I'm not sure that giving up our right -- our rights to not be searched, to our -- our own privacy under the fourth amendment is such a good thing.

The -- as far as I know, the Innocence Project has not taken a stand in favor of DNA testing of

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people who have been previously convicted of crimes.

I know for sure that the ACLU is against this and not in favor of it. They have, like, stood outside and handed us stuff about how much they are doing it.

It's only going to be used to convict guilty people. Come on. And when they don't find DNA at a crime scene, there's certainly going to be an attorney somewhere who is going to say, you can't convict my person. There's no DNA to compare there. Why should we think the evidence is good enough? We do DNA testing now. If you don't have that match, my client must be innocent. And the fact that you don't have that match because there was no DNA collected at the crime scene, is going to spur some people to say spend more time, spend more money. Let's collect more. It must be there. We must be able to find it. But again, we'll never be asked to give up our liberties just because we are unworthy or they are not important. It will be let's catch some people.

This is a massive -- this is a big expansion of collecting DNA. It can't be the only time we're going to be talking about this and expanding it. If it was just this and no more, we -- then that would have been

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true last time when we were told that, and we wouldn't be wrestling with this today.

Even if you've been convicted of a crime previously, if you satisfied all the conditions of your punishment and been released, and relief from all your responsibilities, in America, you are back to being an innocent person. And if those innocent people can be subject to this, it's not a big step -- to other people can be subject to this, in spite of their rights to not -- to -- excuse me -- in spite of their rights to privacy, in spite of their rights to maintain the integrity of their own -- of our own bodies.

To say that this is going to help us release innocent people is, for me, not a sufficient argument for -- for vast numbers of people giving up their rights. When we talk about taking care of this within available appropriations, we know we are setting ourselves up for pressure to appropriate more and to spend more. We know that within available appropriations there is going to be more pressure to do better at the crime scenes and find some DNA. Darn it, we need it. We can convict people. We have a

huge database.

And again, how many years do we think it will take before we say why aren't we just testing everybody? Then we will know for sure. Why do we limit ourselves to only people who have been convicted of a crime previously? We will never, ever be asked to give up our rights because we are unworthy. We will all -- there will always be a victim to point to who could have been helped by this.

And while it's true there are victims who can be helped by this, and while we may weep at their suffering, our job is not to decide based on just those emotions. Our job is to look out for the rights of everybody in our state and to think ahead to the future.

I do not think that this bill looks at the rights of everybody in our state. I think that people who have been convicted of a felony once upon a time, personally, I still believe in rehabilitation. In some quarters, I would confess I believe in redemption.

If we are ever in -- as a society, we've got more people locked up than anybody percentage-wise. If

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we're ever going to be integrating people who have turned their life around after a conviction, we are going to have to start treating them like they're just like everybody else.

We've taken away the rights to a lot of jobs. We've taken away this and that. And now, we're taking away the most basic rights to privacy, and to the -- maintaining the integrity of your own body and of your own DNA on the cellular level. We're turning it over to people who are as fallible today as they will be tomorrow and as they were yesterday.

If it -- if -- if we can say we should do this because it will keep one person from being saved, then let's not do it because we know it will keep the -- keep innocent people from being false -- falsely convicted, because we've got at least one example where we can point it out. We have no idea how many people are sitting in prison because they didn't have the resources to fight and prove that that -- that lab wasn't doing a good enough job and that, in fact, their DNA sample doesn't match.

It's not easy. Unfortunately, it's not even as popular as it should be. But I think that one of the

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things that makes us special as a country, one of the things that makes America exceptional, is because we value our rights and other people's rights above all, because we say out loud that to protect the rights of all, we know that means that sometimes we won't be able to get people who deserve to be got. This is one of those times.

This is not either we find guilty people or we don't. This is we find guilty people, and maybe we find people who are innocent, and somebody makes a mistake, and -- and we say they're guilty. This ties up resources that can be better used in other ways investigating crimes. We can't afford everything in the world.

We have at least one example of the rapist who was free for over a year because Massachusetts thinks they should test everybody who's been convicted, and that makes a pretty big list to be testing. If we've been trying to catch somebody with some other way besides we trust scientists to do our work for us, maybe, we could have locked up that rapist before more damage was done.

It's not enough for me to say we are going to

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catch somebody, and therefore, we should give up our most basic rights to privacy. I'm not happy saying that. It's -- it's hard.

But thank you very much for the opportunity to express myself on this bill, Mr. Speaker. It's a tough choice. I hope many people will join me in opposing this measure. It goes too far and it will take us even further than we say it will tonight. Thank you very much, Mr. Speaker. Excuse me for rambling so long. But we all know it's important, and I appreciate the time. Thank you. I thank my colleagues for listening.

Thank you.

DEPUTY SPEAKER RYAN:

Thank you, Representative Tercyak.

Representative Adinolfi of the 103rd.

REP. ADINOLFI (103rd):

Thank you, Mr. Speaker.

I, too, rise to support this bill, and I want to thank Representative Hewett for all the work he did on this.

In my family, we had a similar situation to Representative Clemons there. Quite a few years ago,

my 23-year-old nephew was brutally murdered along with another friend of his. To date, they never did catch the murderers. But we knew, as a family, that these criminals that committed these murders had to be arrested for some other things, as to -- type they were. They were professionals.

And had we had DNA sampling back in those days similar to what we're doing now, we would have brought closure to my family. My sister would have known what would have happened and the case would have been closed.

So I, again, thank Representative Hewett for his work on this. And, hopefully, we will bring closure to many, many families in the future. Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative.

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker.

If I may, indulge -- indulge me for a second time. I'll be very brief. It seems to me there are two points that have been made tonight in opposition

to this bill. One is that DNA is not perfect, that there will be errors made.

The fact of the matter is that there may be errors made in any human endeavor. It is true there may be errors made in DNA. There may be errors made in fingerprinting. We know there's errors made in -- in eyewitness identification. There are errors made in jury deliberations. But we do the best we can with the best we have.

And DNA, the preponderance of the evidence, certainly indicates that it is a very promising area of science, and it is sufficient to go forward knowing what we know, that it -- that it is the cutting edge. It's the best we can do.

The second point is that this violates a, somehow, a basic right against intrusion upon our persons. Well, we have to remember that we live not alone. We live as a member of a society with rights and obligations to each other. We cannot assert any single right against the -- against the -- the welfare of those who share this planet with us.

We already, for years and years and years, have done that. We take people's fingerprints on arrest.

Now why would you do that when they are arrested?
They haven't been convicted of anything. Why would
you treat someone as less of a citizen, having less
rights simply because they are arrested? We do. We
take their photograph. We take their photograph.
They can't decline to have their image taken. We take
their photograph. We ask them to appear in lineups.
We even put them in jail prior to conviction when they
are deemed to be a threat to society.

The point is that -- that every right we have as
individuals is in the context of living in a society
with one another. And over and over again our
judicial system is asked to decide whether or not the
intrusion it's made on rights is a reasonable one, or
whether it goes too far.

And by and large, over the years, we've done
pretty well. I mean, look, we have Miranda warnings.
We have the NAP rule. We have all kinds of rules
where we've developed over and over again to assure
the rights of individuals.

This is very consistent with what we've done.
That is that, in the context of a civilized society,
we have to live with certain restrictions that society

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puts on us, and which expects of us, if we are both to identify the innocent and identify the guilty.

And I think that this bill represents -- and I urge that this bill represents a very reasonable solution in this particular point in criminal justice. Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, Representative. Representative Dargan of the 115th for the second time.

Representative Hewett.

REP. HEWETT (39th):

Thank you, Mr. Speaker.

Mr. Speaker, we have the opportunity tonight to pass legislation that has the power, not only to solve crimes, but to prevent crimes and to save lives, as well as saves taxpayers and exonerate the innocent.

After posting this legislation last year, I began doing a lot of research. I read case study after case study, and found examples of lives that could have been saved. I was determined, more than ever, to see this legislation passed into law.

The first of these murders were -- the first of these murders that I'm about to mention was committed

in March of 1987, less than two months after the first felony arrest. This person by the name of Dewayne Johnson murdered Diane Johnson. Then he went on to rape and murder Annette Ernest, Anita Fishman, Regina Washington, Deborah Williams, Mary Edwards, Andrea Tripplett, Desarae Jones, Natalie Price, Mildred Beasley, Paula Vance and Brenda Bries.

These are not just merely names. These are daughters. Some are mothers. All were loved. These are young women whose lives could have been spared. And two of these young women were carrying unborn children.

If Mr. Turner's DNA had been taken when he was arrested in January of 1987, it is quite probable that he would have been arrested, convicted of the murder committed in 1987, and 13 lives would have been saved, including two unborn children. And a man named David Jones had been wrongly convicted of two of these murders and spent 11 years of his life in prison.

Remember the case of Chester Turner. One cheek swab could have saved 13 lives. How much are your children's lives worth? And what about David Jones? What is the dollar value of 11 years in prison for an

innocent man?

Twenty-four states already have similar legislation. Congress has mandated that DNA be taken upon arrest for all federal crimes. In addition to Connecticut, at least 15 more will be considering this year. DNA is the truth. Truth that identifies.

Just last week here in Connecticut, or last month, the man suspected of being the East Coast Rapist was arrested. He is suspected of at least 17 rapes that have been committed since 1987. He was arrested due to DNA evidence. We now know he has an arrest record. In the days and weeks to come, we may learn that some of these crimes could have been prevented.

Remember this list of names of those that could have been saved in California. If Connecticut does not pass this legislation in the months and years to come, there will exist a list of Connecticut names that could have been saved. We will know their names, the faces, the stories of the victims that could have been saved. We will know who they are, and their mother and fathers will know that they could have been saved and were not. This is our great burden that I

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am not willing to bear. That is why I am fighting for this legislation.

If you do pass this law, we will never know their names and they will not be victims. We will never know, and that will be our blessing. So join me to help me save some lives here in the United States of America, and especially in Connecticut. And let's pass this bill into law.

Thank you, Mr. Speaker.

DEPUTY SPEAKER RYAN:

Thank you, sir.

If not, will office staff and guests please come to the well of the House -- I'm sorry.

Will you remark further on the bill as amended?
Will you remark further on the bill as amended?

Representative Boukus, you're getting me ahead of myself. If not, will staff and guests please come to the well of the House. Members please take your seats. 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.

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DEPUTY SPEAKER RYAN:

Have all members voted? Will the members please check the board to determine if your vote is properly cast. If all members have voted, the machine will be locked and the Clerk will take a tally. The Clerk will please announce the tally.

THE CLERK:

House Bill 6489 as amended by House "A."

Total number voting	147
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Necessary for passage	74
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Those voting Yea	127
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Those voting Nay	20
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Those absent and not voting	4
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DEPUTY SPEAKER RYAN:

The bill as amended is passed.

Will the Chamber please stand at ease.

(Chamber at ease.)

DEPUTY SPEAKER RYAN:

The Chamber will come back to order.

Will the Clerk please call Calendar Number 567.

THE CLERK:

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House Bill 5068. Madam President, move to place the item on the Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Also Calendar page 18, Calendar 628, House Bill 5008; Madam President, move to place the item on the Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Also Calendar page 18, Calendar 633, House Bill 6489; Madam President, move to place the item on the Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, Calendar page 19, Calendar 640, House Bill 6559; Madam President, move to place the item on the Consent Calendar.

THE CHAIR:

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

Madam President, the items placed on the first Consent Calendar begin on Calendar page 10, Calendar Number 478, House Bill 6488; Calendar 480, House Bill 5256.

Calendar page 11, Calendar 513, substitute for House Bill 6557.

Calendar page 12, Calendar Number 535, substitute for House Bill 6226; Calendar 555, House Bill 6259.

Calendar page 13, Calendar 560, substitute for House Bill 5368; Calendar 567, substitute for House Bill 6157.

Calendar page 14, Calendar 574, substitute for House Bill 6410; Calendar 578, House Bill 6156.

Calendar page 15, Calendar 591, House Bill 6263; Calendar 594, substitute for House Bill 5508; Calendar 595, substitute for House Bill 62 -- 5263.

Calendar page 16, Calendar Number 606, substitute for House Bill 6581; Calendar 609, substitute for House Bill 6501.

Calendar page 17, Calendar 610, substitute for House Bill 6224; Calendar 613, substitute for House Bill 6453.

Calendar page 18, Calendar 614, substitute for House Bill 5068; Calendar 628, substitute for House Bill 5008; Calendars 633, House Bill 6489.

Calendar page 19, Calendar 635, substitute for House Bill 6351; Calendar 640, House Bills, 6559.

Calendar page 20, Calendar 642; House Bill 6595.

Calendar page 21, Calendar 645, substitute for House Bill 6267; Calendar 648, substitute for House Bill 5326; Calendar 650, substitute for House Bill 6344.

Calendar page 22, Calendar 651, substitute for House Bill 6540.

Calendar page 23, Calendar Number 655, substitute for House Bill 6497; Calendar 657, substitute for House Bill 6262; Calendar 658, House Bill 6364; Calendar 659, House Bill 5489.

Calendar page 24, Calendar 660, substitute for House Bill 6449.

Calendar page 36 -- correction -- Calendar page 33, Calendar Number 390, substitute for Senate Bill 1181.

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Calendar page 36, Calendar Number 481, House Bill
5472.

Calendar page 37, Calendar Number 584, substitute
for House Joint Resolution Number 34; Calendar 585,
substitute for House Joint Resolution Number 54;
Calendar 586, House Joint Resolution Number 65,
Calendar 587, House Joint Resolution Number 66.

Calendar page 38, Calendar 588, House Joint
Resolution Number 80; Calendar 589, House Joint
Resolution Number 63; Calendar 590, House Joint
Resolution Number 35; Calendar 620, substitute for
House Joint Resolution Number 45.

Calendar page 39, Calendar Number 621, substitute
for House Joint Resolution Number 47; Calendar 622,
House Joint Resolution Number 68; Calendar 623,
substitute for House Joint Resolution Number 69;
Calendar 624, substitute for House Joint Resolution
Number 73.

Calendar page 40, Calendar 625, substitute for
House Joint Resolution Number 81; Calendar 626, House
Joint Resolution Number 84.

Madam President, I believe that completes the
items placed on Consent Calendar Number 1.

THE CHAIR:

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Thank you.

SENATOR LOONEY:

Thank you, Madam President.

THE CHAIR:

Mr. Clerk, please call for a roll call vote, and the machine will be open.

THE CLERK:

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

THE CHAIR:

Senator Gomes?

If all members have voted; all members have voted? The machine shall be locked.

And, Mr. Clerk, will you please call the tally.

THE CLERK:

Motion is on adoption of 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 passes.

The Senate will stand at ease for a moment.

(Chamber at ease.)

SENATOR LOONEY:

Madam President?

THE CHAIR:

Yes, Senator.

The Senate will come to order.

SENATOR LOONEY:

Yes. Madam President, the Clerk is in possession of Senate Agenda Number 5 for today's session.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Madam President, the Clerk is in possession of Senate Agenda Number 5, dated Wednesday, June 8, 2011.

Copies have been made available.

THE CHAIR:

Senator Looney.