



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony on the Division of Criminal Justice

In Support of:

S.B. No. 692 (RAISED) An Act Requiring DNA Testing of Certain Arrested Persons

H.B. No. 5034 – An Act Concerning DNA Collection from Certain Arrestees and Convicted Persons

Joint Committee on Judiciary – March 20, 2008

The Division of Criminal Justice respectfully requests the Committee's Joint Favorable Substitute Report for legislation to expand the collection of DNA from those charged with serious crimes and to strengthen the provisions of the current DNA Data Bank law. Specifically, in addition to requiring the collection of DNA for those arrested for class A and B felony offenses, the Division would ask that the Committee incorporate several important provisions of H.B. No. 7362 of the 2007 Regular Session into the Joint Favorable Substitute.

Our reasons for supporting this concept are the same that we presented to the Joint Committee on Public Safety and Security earlier in this session in testimony supporting H.B. No. 5160, An Act Requiring DNA Testing of Certain Arrested Persons. The details of these bills may vary - and the Division stands ready to work with the various Committees and others to work out those details - but the underlying concept is the same. The expansion of DNA sampling to include all individuals arrested for Class A and B felony offenses is one of the most important steps the General Assembly can take in the pursuit of justice. DNA technology has brought about a revolution in the criminal justice system and in the identification of individuals for a variety of purposes. In the most basic terms, the collection of DNA samples is no different from the taking of fingerprints - long a standard procedure in the criminal justice system for those who are arrested.

While we fully recognize the concerns that have been raised about personal privacy, we cannot overstate the critical and increased role that DNA is playing in our system of justice. Not only is it used to identify those who commit crimes, but equally if not more important it can play the determining role in exonerating the innocent. People who are now being exonerated of crimes would never have been arrested in the first place

had today's DNA technology been in place. It has even been suggested that greater use of DNA technology is in order to help to identify missing persons and to protect those who may some day go missing. The importance and value of DNA to our Cold Case Unit and the investigation of unsolved cases cannot be understated. Without this technology, the success of our Cold Case Unit would largely have not been possible. DNA provides a genetic roadmap that is invaluable in our search for the truth and, accordingly, our pursuit of justice.

We would note that there is case law holding that the taking of a biological sample, either by way of a buccal swab or the drawing of blood, is a search within the meaning of the Fourth Amendment to the United States Constitution. Courts routinely, however, have upheld the taking of such samples, after arrest, noting that the state has compelling interests in obtaining accurate information as to the identity of persons arrested and convicted of crimes and using the information to expand the DNA Data Bank. Recently, several states, including Louisiana, Texas, Virginia, Nebraska, and California passed legislation allowing the taking of DNA samples from certain arrestees. In considering the validity of such a practice, the Supreme Court of Virginia ruled that the taking of such samples at the time of arrest did not violate the Fourth Amendment. See *Anderson v. Commonwealth*, 650 S.E.2d 702 (2007). The *Anderson* court equated the taking of a DNA sample to the taking of fingerprints and noted the minimal nature of the intrusion involved. The Division notes that the case law is not unanimous. In *United States v. Purdy*, 2005 WL 3465721 (D.Neb.), a federal district court held that a sample cannot be taken from an arrestee without an order or warrant issued by a neutral and detached magistrate. That decision, however, has not been addressed on the appellate level. The Division believes that the better view is that expressed by the Virginia Supreme Court.

To summarize this point, the Division believes the expanded collection of DNA samples from individuals who have been arrested can be accomplished in a manner that is fully consistent with all constitutional rights and guarantees. We would reiterate that the Division recognizes that there are concerns over personal privacy. We would further note that such protections have long been in place with regard to the DNA Data Bank in Connecticut and the operation of the DNA Data Bank Advisory Panel, which is chaired by the Office of the Chief State's Attorney. We stand ready to work with the Committee in this area to address any valid concerns and advance the use of this technology.

In addition, the Division requests that the Committee incorporate the provisions of H.B. No. 7362 from the 2007 Regular Session in this year's Joint Substitute Report. Specifically, we recommend that the bill:

- Make it clear that a biological sample obtained from a person who is required to give one must be of sufficient quality for DNA analysis. Current law is unclear about whether the State can obtain another sample if the previously obtained one is not sufficient for analysis.
- Increase the penalty, from a class A misdemeanor to a class D felony, for refusing to provide a biological sample for DNA analysis. In order to make the data bank work, we must have the data to input. Increasing the sanction for

failing to provide a sample to a class D felony is likely to ensure that those people who are required to provide samples actually do so.

- Allow law enforcement officials to confirm that the DNA of a specific individual is in the data bank. This provision will help the police to more quickly eliminate individuals as suspects in criminal investigations. Currently, if law enforcement officials submit a sample for comparison and no match is obtained they are told simply that there was no match. If the law enforcement officials were able to find out that a particular suspect was in the data bank at the time of the comparison they very well might be able to eliminate that person as a suspect and continue on with their investigation.
- Expand the membership of the DNA Data Bank Oversight Panel to include the Chief Court Administrator and allow the chairperson of the panel to invite representatives from other agencies involved in the collection of biological samples to serve as ad hoc members of the panel. The appointment of the Chief Court administrator is appropriate as the Judicial Branch is responsible for collecting biological samples from those individuals who are convicted of felonies and go directly to probation without entering the correctional system.
- Provide that neither the State nor any of its officers or employees is civilly liable for good faith efforts to collect biological samples for and maintain the data bank.
- Prevent an arrest or conviction from being invalidated if it is determined that the biological sample from which the DNA profile was obtained was obtained and placed in the data bank in good faith.
- Make a technical correction to clarify that the purging/removal of samples and/or other DNA Data Bank information in cases where a nolle is entered does not occur until the conclusion of the 13-month period in which the state may reopen the nolle case.

The Division of Criminal Justice believes these changes are a logical extension of the bills on today's agenda and would further enhance our ability to use DNA technology in the best interests of our state, and, most importantly, in the interests of justice. We thank the Committee for this opportunity to provide our input and recommendations on these issues and would be happy to provide any additional information or answer any questions the Committee might have.

