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March 6, 2009

Joint Committee on Judiciary
Connecticut General Assembly
Legislative Office Building
300 Capital Avenue
Hartford, CT 06106

Re: H.B. 6573 (Raised), An Act Requiring DNA Testing of Certain Arrested Persons

To the Committee:

Good afternoon. My name is David Cameron. I am a professor of political science at Yale University. I am interested in and, from time to time write about, the operation and performance of the state's criminal justice system. I appear before you today, as I did last year, to urge that you enact legislation to require the taking of a DNA sample from those arrested for a felony.

I am aware there are many who 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 felony. First, extending sampling to those arrested for 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 45,486 offender profiles in the Connecticut database. The other set of profiles includes profiles belonging to unidentified individuals that were obtained at crime scenes. As of January, the Connecticut database contained 2,461 forensic profiles. 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 – perhaps close to 2,500 – 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.

Last year I mentioned a New Mexico law known as "Katie's Law." In August 2003, Katie Stepich, a New Mexico State graduate student, was raped and murdered. The scrapings taken from her fingernails contained skin tissue and blood with the DNA of a male whose profile was not in the state's DNA database or the CODIS system of state databases. Her parents campaigned actively for a law that would require a DNA sample to be taken from anyone arrested for a felony. The bill, known as "Katie's Law," was signed into law in 2006 and took effect in 2007. In the past two years there have been more than 30 matches between the DNA of arrestees and samples from unknown individuals obtained at crime scenes. Three of those involved homicides. (As it turned out, just before the bill took effect, forensic scientists obtained a match between the DNA found in the scrapings taken from her fingernails and that of a man who had been arrested for burglary several months after the murder, convicted, released on bond, and eventually recaptured.)

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, then is 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 homicide 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 in December by investigators of the State's Cold Case Unit 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 would contribute to identifying and overturning some

wrongful convictions and prevent some wrongful convictions from occurring in the future. There are, of course, many reasons why wrongful convictions occur and extending DNA sampling to arrestees will not eliminate all those factors. The New York-based Innocence Project reports, for example, that more than 75 per cent of the 232 wrongful convictions that have been overturned in the country through DNA testing resulted in part from eyewitness identifications that were incorrect. Unreliable or flawed forensic analyses were present in 50 per cent of the cases, false confessions in 25 per cent, the use of informants and snitches figured in 15 per cent, police and prosecutorial misconduct in many, etc. Likewise, the New York State Bar Association's Task Force on Wrongful Convictions, which issued a preliminary report last month on its examination of 53 wrongful convictions in New York, identified six root causes: identification procedures, present in 36 cases; errors by prosecutors, judges, or law enforcement, present in 31 cases; mishandling of forensic evidence or failure to use DNA testing, present in 26 cases; defense errors, present in 19 cases; the use of false confessions, present in 10 cases; and the use of jailhouse informants, present in 4 cases. (The causes sum to more than 53 because in most cases several of the root causes were present. The report is available at:

<http://www.nysba.org/AM/Template.cfm?Section=Home&TEMPLATE=/CM/ContentDisplay.cfm&CONTENTID=23959> .)

Having said that, it is also the case that the two most prominent wrongful convictions in Connecticut – those of James Tillman for assaulting, raping, and kidnapping a woman in January 1988 and Miguel Roman for the murder of Carmen Lopez, also in January 1988 – 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. Likewise, Roman spent more than 20 years in prison until his conviction was thrown out in December 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. And the contributing factors differed in the two cases. But both share 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, the DNA found at the scene was, years later and, because of the efforts of the Connecticut Innocence Project, the State Police Forensic Science Laboratory, the State's Attorney's office, and others, matched with the DNA of an individual who was subsequently arrested and now awaits trial. And in both, the men who now await trial had been arrested prior to the crimes for which Tillman and Roman were wrongfully convicted. 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 two decades ago, the two men who now await trial in the two cases would presumably have been arrested and tried and Tillman and Roman would not have been arrested, tried, and wrongfully convicted.

I mentioned earlier the state's DNA database, which as of January included 45,486 offender profiles and 2,461 forensic profiles. It is important to note how dramatically the database has increased in recent years. For the first decade of its existence, until 2003, it included among the offender profiles only those of individuals convicted of sex offenses. After 2003, it was expanded to include the profiles of those convicted of a felony. As of December 2006, there were 22,014 offender profiles in the database. By October 2007, the number had increased to 29,000 and as of January the number had increased to more than 45,000. In the past two years, then, the database has more than doubled.

While the Connecticut database has increased significantly in recent years, it nevertheless remains relatively small when compared with the state's population. Thus, even after the dramatic increase in the number of offender profiles in recent years, the database represents only 1.3 per cent of the state's population which, of course, means that 98.7 per cent of the state's population is not included in the database. 1.3 per cent is significantly better than the figure I cited in my testimony last year (0.8 per cent as of October 2007). But it still is substantially less than the ratio of offender profiles to population in such states as New Jersey (2.1), Michigan (2.6), California (3.0), and Virginia (3.7).

As I mentioned last year, the size of a state's database is important for one simple reason: The larger the database the greater the likelihood of a "cold hit" – that is, a match between an unidentified sample from a crime scene and one in the database. In other words, the larger the database the greater the likelihood that, in a crime committed by someone who left biological evidence at the scene, the person who committed the crime will be identified. Put differently, the larger the database, the less likely it will be that a crime committed by someone who left biological evidence at the scene will remain unsolved.

That the likelihood of a "cold hit" increases with the size of a state's DNA database relative to its population can be illustrated by considering the experience of Virginia, which, as I noted last year, was the first state to enact legislation extending DNA sampling to those arrested for a felony. As noted above, controlling for the difference in population, Virginia's DNA database is almost three times larger than Connecticut's. Virginia's database has yielded more than 1,000 "cold hits." Indeed, one of the "cold hits" was the match obtained between the DNA found on the clothing of the victim in the Tillman case and a former Connecticut resident who was arrested in Virginia in August 2007 on burglary charges and who now awaits trial in the crime for which Tillman was wrongly convicted. No less important, according to the FBI's CODIS data, while Connecticut's database has, as of January 2009, aided 907 investigations, Virginia's has aided 5,124 investigations.

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 last year, I mentioned that after Virginia had enacted such legislation in 2002, 10 other states had enacted similar legislation. By the end of 2008, however, the number of states that had

enacted such legislation had increased from 11 to 15. The 15 states and their provisions for sampling from arrestees are as follows:

- Alaska: from those arrested for a violent felony or domestic abuse.
- Arizona: from those arrested for one of many serious felonies.
- California: as of Jan. 1, 2009, from those arrested for any felony.
- Kansas: as of July 1, 2008, from those arrested for any felony and some drug charges.
- Maryland: from those arrested for a violent felony, burglary, and breaking and entering into a motor vehicle.
- Michigan: from those arrested for a violent crime.
- Minnesota: from those arrested for a specified violent crime after judicial finding of probable cause.
- New Mexico: from those arrested for a specified violent crime if 18 or over.
- North Dakota: as of Jan. 1, 2009, from those arrested for any felony.
- South Carolina: from those arrested for any felony punishable by five or more years in prison.
- South Dakota: from those arrested for any felony punishable by five or more years in prison.
- Tennessee: from those arrested for a violent felony after probable cause.
- Texas: from those indicted for a specified crime.
- Virginia: from those arrested for a violent felony or attempted felony.

As this summary suggests, most of the 15 states that have enacted DNA sampling from arrestees have limited it to those arrested for violent felonies. On the other hand, the recent extensions of sampling in Kansas, North Dakota, and California to those arrested for any felony suggest a possible trend toward a blanket extension to all arrestees. (The California extension, I might note, was the final step in a phased-in extension mandated by California voters when they approved Proposition 69 in 2004.) (The summary presented here is reported in National Conference of State Legislatures, "State Laws on DNA Data Banks: Qualifying Offenses, Others Who Must Provide Sample," February 2009, at: www.ncsl.org/programs/cj/dnadatabanks.htm.)

I realize there are many who are 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