



State of Connecticut

OFFICE OF CHIEF PUBLIC DEFENDER

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Testimony of
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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 nolle 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.