

HB 6489

Jayann Sepich Testimony Before the Connecticut Joint Judiciary Committee
March 9, 2011

Mr. Co-Chairman Senator Coleman, Mr. Co-Chairman Representative Fox, and Distinguished Members of the Judiciary Committee, thank you for allowing me to be here today to share my story with you. You have the opportunity to recommend legislation that has the power to not only *solve* crimes, but to *prevent* crimes and save lives, as well as save taxpayer dollars and exonerate the innocent.

There are many misunderstandings about arrestee DNA databasing. What it can do and what it cannot do. Hopefully today I will be able to address some of those issues.

On August 31, 2003, my family woke up to the promise of a beautiful day. We had a house bursting with friends and family and we were preparing to celebrate Labor Day weekend with a cookout. Then at 2:15 that afternoon the phone rang and our lives were shattered with just six words: Have you talked to Katie today?

Katie was my incredible, outspoken, vivacious, intelligent daughter. Katie, our first-born who filled every room with light and laughter. At 22 she had just entered the MBA program at New Mexico State University. She had gone to a party the night before, had a fight with her boyfriend, and stormed out to walk the five blocks home without her purse, her phone, or her keys. No one had seen her since. Her roommate was calling, hoping we knew where she was. She had called all of her friends, even the local hospitals, and there was no sign of Katie.

A few agonizing hours later our worst fears were realized. Target shooters had found Katie's partially clothed body at an old dumpsite. She had been brutally raped, strangled, and set on fire.

Our Katie was dead. There are no words to describe the agony. No way to express the pain. We fell into a deep, black pit with no way out. There was no tomorrow. All joy was gone.

After we buried our daughter we turned our attention to finding out who could have done this. The detective in charge of Katie's case told us that she had fought desperately for her life and that the skin and blood of her attacker had been under her fingernails. The DNA found there had been uploaded into a national database and that weekly they would cross-reference it to offenders for a match. I felt hope. I said, "This was a really bad guy, so he'll do something else to get arrested, they'll take his DNA and then we'll have him". I was stunned when the detective replied. "Oh no, Jayann, it's illegal to take DNA when someone is arrested. We have to wait until they are convicted of a felony.

I couldn't believe it. We take fingerprints when someone is arrested. We take mug shots. But we don't take DNA—the most accurate, powerful scientific tool available.

I began doing research. I read case studies and found examples of lives that could have been saved. I soon discovered that I was not interested in seeing DNA taken upon arrest merely to solve my daughter's murder. I was determined to see this happen because this simple act could literally save thousands of lives.

Let me give you a chilling example. On January 26, 1987, a man named Chester Dewayne Turner was arrested in California for assault with a deadly weapon. There was not enough evidence to convict him. His DNA was not taken. Turner was arrested a total of 21 times before being convicted of a crime that allowed his DNA to be taken. In 2003, after a rape conviction, his DNA was taken and it matched the crime scene evidence found on 12 rape and murder victims. The first of these murders was committed in March of 1987, less than two months after his first felony arrest. He raped and murdered Diane Johnson. Then he went on to rape and murder Annette Ernest, Anita Fishman, Regina Washington, Debra Williams, Mary Edwards, Andrea Triplett, Deserae Jones, Natalie Price, Mildred Beasley, Paula Vance and Brenda Bries.

These are not merely names. They 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 and convicted for the murder committed in March of 1987 and thirteen lives, including two unborn babies, could have been saved.

And, a man named David Jones had been wrongfully convicted of two of these murders and served 11 years in prison.

One DNA sample taken upon arrest could have saved 13 lives and could have prevented an innocent man spending 11 years in prison.

A study commissioned by the City of Chicago followed 8 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 arrest for 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 for five individuals.

Critics say we cannot prove that arrestee DNA will save lives that we only have antidotal evidence. But I believe that these examples in eight states showing over 100 lives that can be saved speak for themselves.

My family went to the New Mexico State Legislature in 2006, and saw "Katie's Law" pass. It mandates that DNA be taken upon felony arrest. "Katie's Law" went into effect on at midnight January 1, 2007. One hour and 14 minutes later at 1:14 am the first arrestee was swabbed for DNA under Katie's Law. His DNA matched a double homicide. He has since been convicted of both of those murders. We have now had 177 matches in New Mexico to arrestee DNA. This is in a state with a population of around million people.

Arrestee DNA also helps exonerate the innocent. In NM a match was made to the DNA found on Victoria Sandavol, an 11-yr old little girl who had been raped and murdered in her own bed. For almost three years, an innocent man had been jailed for this crime. His name was Robert Gonzales who was mentally challenged. The authorities believed he knew too much about the crime scene and even though his DNA did not match was probably there when the crime was committed. When Israel Diaz was arrested for burglary and the DNA match was made it was determined that the two men could never have met. Diaz was arrested for the rape and murder and Gonzales was set free. In New Mexico arrestee DNA has exonerated three rape/murder suspects.

In Illinois Jerry Hobbs was held in jail for five years accused with the murder of his daughter and another young woman. He was released after Jorge Torrez was arrested in Virginia, a state which takes DNA upon felony arrest. Torrez' DNA matched crime scene evidence and a resulting investigation revealed that Torrez and Hobbs had no connection, so Hobbs was released from custody after five years.

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

The human DNA molecule has over 3 billion markers. Only 13 of these are placed into CODIS, which is the DNA database. These 13 markers were specifically chosen by scientists, by DNA experts, because they contain absolutely NO genetic information except gender. There is no medical predictive information. It was specifically designed by scientists to protect privacy—to only be used for identification.

A very respected genetic scientist gave me a very good description of exactly how the system works. He asked if I remember what a 33rpm vinyl record album looks like. I do. He said that the DNA strand could be compared to a very large record album. Each band on the album corresponds to one of the markers, or locations. You can see on the album the bands where the music can be played. And you can see the spaces between the songs where there is no music. The 13 markers are from the blank spaces. No genetic information. But those 13 markers are so uniquely spaced that when all of those 13 markers match to crime scene DNA it is virtually impossible that two individuals---with the exception of identical twin---could have the same DNA.

DNA in the database can be used ONLY for criminal identification. It has no potential to reveal any genetic or medical information.

Furthermore, there are no names or social security numbers in the DNA database. Here is the ONLY information that exists on that database. (Explain) The only time this profile becomes more than a digital record deep inside a very protected computer is when all of the numbers match to crime scene DNA. At that time the originating state is notified that a match has been made. The sample is retested for accuracy. The state goes to their secured and protected offline database to match the specimen ID# in the profile to an actual name. This information can only be released to law enforcement personnel to be used as an investigative lead. If the case

proceeds to court a warrant is issued to take another DNA sample, it is retested once again and this is the evidence that is presented in court.

It is a federal offense to tamper with CODIS and since the inception of DNA databases there has never been a misuse of CODIS

Opponents say that taking DNA upon arrest violates the presumption of innocence. We take fingerprints. We take mug shots. Fingerprints and mug shots are for identification purposes. That's what DNA is for. It is just much more accurate.

Ironically, while fighting so hard to see "Katie's Law" passed, the outcome of my daughter's case proved again how important taking DNA upon arrest can be.

My daughter was murdered on August 31, 2003. Less than three months later, Gabriel Avila was arrested for aggravated burglary. But we didn't have Katie's Law at that time so his DNA was not taken. It was three years and three months after Katie was murdered that he was finally convicted of a felony and incarcerated and his DNA profile matched the DNA found in the skin and blood underneath her fingernails. Armed with this DNA match, the detectives found other incriminating evidence, including finding the diamond ring Katie had been wearing in his truck, and the fact that the tires on his truck matched the tracks found by Katie's body. Faced with this evidence Avila confessed, pled guilty and is now serving 69 years without the possibility of parole.

But what if we had had Katie's Law in 2003? He would have been caught in three months instead of three years and three months. What did he do during the eighteen months he was free? Who did he rape? Who did he murder? We may never know. What we do not is that taking DNA upon arrest has the power to solve crimes sooner, save lives and yes, absolve the innocent.

Opponents of this legislation will say it is too expensive. But what are the costs of NOT using DNA upon arrest.

According to the Dona Ana County, New Mexico, District Attorney's office over \$200,000 in investigatory costs were incurred on Katie's case between November 2003, when Avila was arrested for burglary, and December 2006, when the match, taken after his conviction was made. \$200,000 that could have been saved with one simple cheek swab.

Remember the case of Chester Turner? One cheek swab would have saved 13 lives. How much are your children's lives worth. And what about David Jones? What is the dollar value of eleven years in prison to 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 it this year. DNA is truth. Truth that identifies

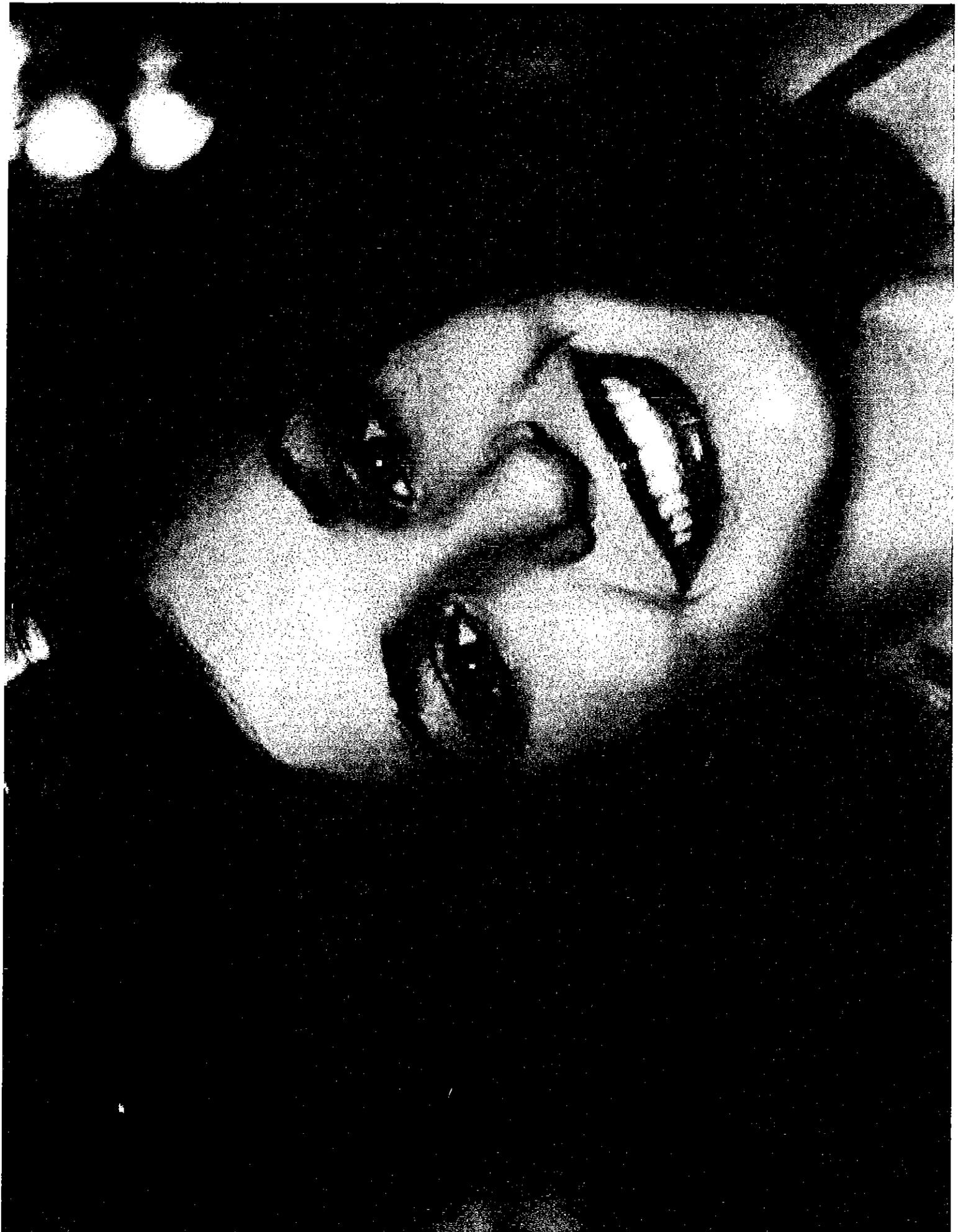
Just last week here in Connecticut, the man suspected of being the East Coast Rapist was arrested. He is suspected of at least seventeen rapes that have been committed since 1997. He was arrested due to DNA evidence. We now know he has an arrest record. In the days and weeks to come we may learn that 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 the names, the faces, the stories of the victims that could have been saved. We will know who they are. And their mothers and fathers will know they could have been saved and were not. This is our great burden I am not willing to bear. That is why I am here.

If you do pass this law, we will never know the names of those who will not become victims. We will never know. And that is our blessing
Thank you.

Mr. Chairman, I would gladly answer any questions from the committee.

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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

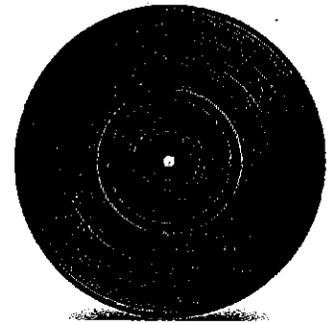
4) DHL = Analyst Identifier

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.