



**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.

