AMERICAN CIVIL LIBERTIES UNION of CONNECTICUT

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Good morning Senator Coleman and Representative Fox and members of the Judiciary Committee. My name is Andrew Schneider, I am Executive Director of the ACLU of Connecticut and I am here before you today to express our view that House Bill 6489, An Act Requiring the Collection of DNA From Persons Arrested For a Serious Felony should be vigorously opposed on grounds of constitutionality, safety, and cost. However, we are open to ways that would incorporate our concerns into this legislation.

The cornerstone of the American legal system - that a person is innocent until proven guilty – is turned on its head when innocent people are included in a criminal databank. There is a vast difference between using DNA as a tool in investigations – both to catch the guilty an exonerate the wrongly accused – and storing the most intimate biological information of persons who have not been convicted of any crime, even if it is only stored for the duration of the legal proceedings that ends in acquittal (which can sometimes take years).

DNA is much more than a fingerprint, in that it contains some of the most private information about a person. Our genetic code, which is contained in our DNA, determines a great deal about susceptibility to disease as well as information about one's family history. This is private information about you that should not be made available to the police or the government. Concerns of misuse of this information are driven by current laboratory practice, where each biological sample is retained along with the generated DNA profile. The risk that these samples might be accessed and used in controversial research (for example on human behaviors such as aggression, substance addiction, or criminal tendency) or in other sinister ways remains so long as those samples remain on file. There is an additional danger inherent in these databases as well, which is that they make sharing the data extremely easy. Almost weekly we hear of another government database being breached and the information being sold by identity thieves.

Massive expansion of DNA collection is unlikely to make us safer and may even undermine criminal justice. DNA is only found at a small fraction of crime scenes. The ability of law enforcement to resolve crimes using DNA evidence is limited by its ability to glean DNA from crime scenes; not by the number of people in the database. Unchecked expansion of DNA databanks will encourage law enforcement to spend a disproportionate amount of time and money mining crime scenes for DNA, when resources could be better spent on other techniques, such as community policing. A recent study has shown that enactment of Britain's arrestee testing program has actually corresponded with a slight ***decrease*** in matches with crime scene evidence – probably because they're bloating their database with people who are highly unlikely to commit the tiny number of crimes where DNA plays a role. Backlogs in DNA testing have resulted in delay in priority cases. Consider the tragic case of Christina Worthington, who was raped and murdered on Cape Cod in 2002. Although the crime lab had the DNA of her attacker, it took over a year to process the sample thanks to a backlog caused by a DNA dragnet.

DNA testing is not infallible; mistakes can and have been made in the collection and analysis of DNA and the reporting of results, sometimes resulting in innocent people serving time for crimes they did not commit. Backlogs increase the chances of these errors as lab analysts and database administrators are pressured to cut corners to meet their workload. Josiah Sutton spent nearly five years in prison, starting at age 16, for a rape he could not have committed, as a result of an error made by an analyst at the Houston Crime Lab.

Finally, unchecked expansion reinforces racial disparities. A DNA databank that includes arrestees will unfairly represent minorities, who are wrongfully arrested at a disproportionately higher rate than whites. One-third of the black population in Britain is currently represented in the UK database as a result of Britain's decision in 2001 to include arrestees in its databank.

For all these reasons, I urge the Committee to reject this bill.