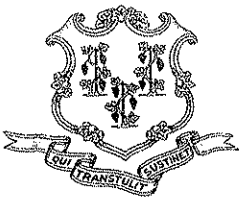

State of Connecticut

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Raised Bill No. 5341
An Act Requiring the Collection of DNA from Persons Arrested for a Serious Felony
Public Safety Committee Public Hearing
February 15, 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 not only violate the constitutional protections afforded pursuant to the 4th amendment to the United State Constitution and Section Seven Article First of Connecticut's Constitution, but may also violate a person's constitutional right to privacy. DNA reveals medical information about a person and persons who are related to him/her.

We are also concerned about the impact this legislation may have on the ability of the state forensic lab to test evidence of crimes in a timely fashion. It is our understanding that there is a current backlog of over 3,800 cases requiring testing, which often takes years depending on the nature of the offense and the immediate need of that testing for trial. The bill affects anyone arrested for "a serious felony offense." The bill does not define that term but CGS 54-82t defines: "a serious felony offense" as: ".. any felony that involves the use, attempted use or threatened use of physical force against another person or results in the serious physical injury or death of another person." 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 might make this backlog even worse.

A backlog can adversely affect public safety since it delays the testing of evidence that might identify someone already in the data base but at large. It can of course also affect an incarcerated defendant whose innocence can be demonstrated by the testing of that evidence.

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 nolled 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. However, should serious felony arrestees be included, this office would support the suggested language to require automatic expungement of the DNA profile upon a nolle or dismissal of the charge or acquittal of the person.

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.