



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY

JOINT COMMITTEE ON PUBLIC SAFETY AND SECURITY

In Support of H.B. No. 5341 (COMM):

An Act Requiring the Collection of DNA from Persons Arrested for a Serious Felony

February 15, 2011

The Division of Criminal Justice respectfully recommends the Committee's Joint Favorable Substitute Report for H.B. No. 5341, An Act Requiring the Collection of DNA from Persons Arrested for a Serious Felony. 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.

Given these fiscal realities, the Division would stress that there are other steps that do not carry a fiscal impact that can be taken to ensure that the 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.

Additionally, the Division would recommend the following amendments to H.B. No. 5341, reflecting the provisions of legislation we have submitted to the Judiciary Committee:

- Amend sections (a) and (b) to include the words "of sufficient quality;"
- Amend section (c) to allow the Commissioner of Mental Health and Addiction Services and 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;
- Insert a provision that will allow additional samples to be taken if the initial sample was not of sufficient quality;
- Define the term "serious felony."

These amendments will close very important gaps in the existing statute with little or no cost to the state. We agree that if the administration and legislature decide that an expansion of the pool of eligible crimes is affordable and within the ability of DPS to handle, this bill is an appropriate vehicle. We would also reiterate that if the resources are not available to allow for the expansion of DNA sampling the General Assembly still move forward with the other provisions outlined above that do not carry a fiscal impact but would further our pursuit of justice.