



**Office of Chief Public Defender  
State of Connecticut**

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Testimony of  
Deborah Del Prete Sullivan, Legal Counsel, Director

Judiciary Committee Public Hearing March 23, 2016

**Raised Bill No. 5474  
AN ACT CONCERNING DNA TESTING FOR PERSONS ARRAIGNED  
FOR A SERIOUS FELONY**

The Office of Chief Public Defender opposes *Raised Bill No. 5474, An Act Concerning DNA Testing for Persons Arrested for Serious Felonies*. This bill requires that a DNA sample be taken from any person who has been arrested for committing certain enumerated felonies and at least one misdemeanor, "at such time and place" as Court Support Services Division or Department of Correction may specify. The bill expands from last year's proposal the offenses for which DNA will be taken. In addition, this proposal requires the DNA to be taken at arraignment after a finding of probable cause.

In *Maryland v. King*, 133 S. Ct. 1958 (2013), by a vote of 5 to 4, the United States Supreme Court did uphold Maryland's statutory scheme governing the collection of DNA samples from people that have been arrested for serious felonies. While the United States Supreme Court did find the Maryland statute which allowed the taking of DNA samples after arrest but prior to final judgment to pass constitutional muster, it did so based upon procedural protections that are not included in this proposed legislation.

Among the procedural provisions in the Maryland statute that the Court relied upon in reaching its decision are:

1. That the samples are not taken until after the arraignment where a judicial finding of probable cause has been made;
2. That the use of the DNA information is limited to "identification" purposes and that familial searches are explicitly prohibited; and,
3. That the DNA samples from arrestees when there is not a final judgment of conviction would be automatically destroyed and removed from any computerized database.

Although this bill requires DNA to be taken after a finding of probable cause at arraignment, it still does not provide all of the procedural provisions as required by the Maryland case.

Additionally, even if these constitutional infirmities are resolved, additional issues remain unresolved. Most problematic is that there is no limitation in the bill as to how the DNA can be used. Also, where will the taking occur? Is CSSD required to take the DNA the same day and in the courtroom? Issues of contamination arise as well. There is also a concern which involves a situation in which the CSSD does not have the necessary resources and/or are unwilling to take the DNA sample in a timely fashion. To the extent that such language would require the continued custody hold of an individual who has otherwise met all requirements of release in our statutes and practice, such raises constitutional issues regarding a person's right to bail.

While this agency certainly concedes that under very limited circumstances the taking of a DNA sample prior to conviction can be constitutional, the language of the current proposed bill simply would not withstand constitutional scrutiny.

For the reasons stated, the Office of Chief Public Defender requests that this bill as drafted not be adopted.