

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
HOUSE JUDICIARY COMMITTEE

ROOM 140, MAIN CAPITOL BUILDING
HARRISBURG, PENNSYLVANIA
TUESDAY, JULY 15, 2008, 10:00 A.M.

BEFORE: HON. THOMAS CALTAGIRONE, CHAIRMAN
HON. TOM C. CREIGHTON
HON. KATHY MANDERINO
HON. DON WALKO
HON. JOHN E. PALLONE
HON. HAROLD JAMES
HON. JOHN R. EVANS
HON. CARL MANTZ
HON. DANTE SANTONI
HON. CHRIS SAINATO
HON. JEWELL WILLIAMS
HON. JOSEPH PETRARCA

ALSO PRESENT

JOHN RYAN, EXECUTIVE DIRECTOR
JIM MANN, REPUBLICAN COUNSEL

HEATHER L. ARTZ, RMR, CRR
REPORTER - NOTARY PUBLIC

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1 CHAIRMAN CALTAGIRONE: I'm Tom Caltagirone,
2 chairman of the House Judiciary Committee. We're
3 going to be holding a public hearing today on House
4 Bill 716. And I'd like the members that are present
5 right now, if they would please introduce themselves.
6 We'll start on my left, and their staff if they're
7 here. We do anticipate other members coming in.

8 REPRESENTATIVE SAINATO: Representative Chris
9 Sainato. I represent sections of Lawrence and Beaver
10 County.

11 REPRESENTATIVE EVANS: Good morning. I'm
12 Representative John Evans, I represent Fifth District
13 in Erie and Crawford counties.

14 CHAIRMAN CALTAGIRONE: And I'm Tom
15 Caltagirone. I represent Reading, Berks County.

16 MR. MANN: I'm Jim Mann, senior counsel to
17 the House Judiciary Committee, Republican side.

18 MR. RYAN: And John Ryan, executive director
19 for judiciary, Democratic side.

20 CHAIRMAN CALTAGIRONE: And with that, I'd
21 like to have the opening remarks by Jim. And just as
22 a prelude, I had promised republican leadership, along
23 with the prime sponsor of the bill who is a member of
24 the committee who was here with us yesterday but could
25 not make it today, Craig Dally, that I would hold a

1 hearing on this very issue, and ergo the hearing
2 today. And, Jim, you'd like to start off, sir.

3 MR. MANN: Thank you, Mr. Chairman. Good
4 morning, Chairman Caltagirone, members of the House
5 Judiciary Committee. On behalf of State
6 Representative Craig Dally, I'd like to thank you
7 first and foremost for scheduling the hearing on House
8 Bill 716 today.

9 This legislation was written to establish a
10 fair way to offset costs incurred by county agencies
11 that collect DNA samples from offenders pursuant to
12 the Commonwealth's DNA database law.

13 As you may know, current law requires the
14 collection of DNA samples for all persons adjudicated
15 delinquent or convicted of certain serious felony
16 offenses. For example, it's mandatory for felony sex
17 offenses; offenses under Section 2910, that's luring a
18 child into a motor vehicle; or Section 3126, which is
19 relating to indecent assault. And it also includes
20 those who are convicted of attempts or attempts to
21 commit such offenses.

22 This sample collection is done either at the
23 time of conviction while the offender is serving out
24 their sentence, or prior to release on parole or
25 probation. Current law also requires the collection

1 of a \$250 fee from offenders who are able to pay.
2 This money is deposited into a DNA Detection Fund
3 restricted account within the general fund and
4 appropriated to the Pennsylvania State Police for the
5 purposes of carrying out the requirements of the law.

6 Oftentimes county prisons and other local
7 agencies are saddled with the responsibility of
8 collecting DNA samples required under the law. These
9 agencies are tasked with satisfying the administrative
10 requirements, including the preparation of paperwork
11 and fingerprinting, but under the DNA collection law
12 receive no compensation for such services.

13 House Bill 716 would allow counties to retain
14 \$50 of the \$250 fee whenever a county agency collects
15 the DNA sample required by Title 44. This money would
16 be used to reimburse the local agency for its costs,
17 and reimbursement to the county would apply only after
18 the initial 250 -- \$200 is paid to the DNA Detection
19 Fund restricted account.

20 This legislation has received broad
21 bipartisan support from members of the House of
22 Representatives and is enthusiastically supported by
23 the representative's home Department of Corrections in
24 Northampton County. It was the representative's hope
25 that the bill would be reported from the House

1 Judiciary Committee and brought to the full House for
2 consideration when the House returns this session in
3 the fall. Again, on behalf of State Representative
4 Craig Dally, thank you, Mr. Chairman.

5 CHAIRMAN CALTAGIRONE: We've had some
6 additional members that came in once we got started.
7 If they would please introduce themselves, starting
8 with Kathy.

9 REPRESENTATIVE MANDERINO: Good morning.
10 Kathy Manderino, representing Philadelphia, Montgomery
11 counties.

12 REPRESENTATIVE WALKO: Don Walko, Allegheny
13 County.

14 REPRESENTATIVE SANTONI: Dante Santoni, Berks
15 County.

16 REPRESENTATIVE CREIGHTON: Tom Creighton,
17 Lancaster County.

18 REPRESENTATIVE MANTZ: Carl Mantz, Berks and
19 Lehigh counties.

20 CHAIRMAN CALTAGIRONE: Are there any
21 questions for Counsel Mann from any of the members on
22 the legislation? If not, we'll get right into the
23 other testifiers. And we'll start with Kristen
24 Goshorn, the governor relations manager for the County
25 Commissioners Association of Pennsylvania.

1 MS. GOSHORN: Good morning, Chairman
2 Caltagirone and members of the committee. Thanks for
3 the opportunity to be here today. Just to give you a
4 few brief comments in support of this legislation, my
5 name is Kristen Goshorn. I am the government
6 relations manager for the County Commissioners
7 Association of Pennsylvania. We represent all 67
8 counties in the Commonwealth and we provide a variety
9 of services, including legislative, insurance,
10 education, training, and technology.

11 You already heard a nice summary of what the
12 legislation entails. But we are supporting this bill
13 because it allows counties to retain \$50 of the
14 existing \$250 cost that can be assessed by the court
15 against any person that is convicted, adjudicated
16 delinquent, or granted Accelerated Rehabilitative
17 Disposition for a felony sex offense. The county
18 would receive \$50 of this fee only when the county
19 agency conducts the test. Currently all \$250 is
20 deposited in the DNA Detection restricted fund.

21 CCAP is supportive of this legislation.
22 Counties interact with the state police in obtaining
23 DNA samples. The Pennsylvania State Police provide
24 mouth swab test kits to the county jails and other
25 county agencies where staff are responsible for

1 obtaining the samples and completing necessary
2 paperwork before submitting the samples to the state
3 police for lab analysis. DNA samples are obtained by
4 probation and parole offices, and the counties have 22
5 secured juvenile detention center facilities where in
6 many cases the DNA testing is conducted by the
7 probation and parole offices, but we haven't been able
8 to confirm. There may be some county juvenile
9 detention facilities that do the testing on their own
10 in their own facilities.

11 Currently, counties don't receive any
12 compensation for conducting the DNA tests, which must
13 frequently be administered at the county jails. It
14 takes about one hour for multiple staff at the county
15 jail to process a DNA test. The process includes
16 verifying whether DNA testing is required by reviewing
17 the sentencing sheet, checking the JNET data system to
18 see if a sample has already been taken, gathering the
19 sample, and completing necessary paperwork that must
20 accompany the sample.

21 The list of crimes for which DNA testing is
22 required have continued to expand, so it may be
23 beneficial for the committee to examine the expanding
24 list of convictions for which the DNA Detection Fund
25 fee is assessed.

1 We believe this legislation will be
2 beneficial to counties by assuring that they receive a
3 portion of the fee for DNA detection whenever the
4 county agency is responsible for obtaining the sample.
5 This will offset the cost of conducting those DNA
6 tests in county agencies.

7 The overall benefit to the counties will be
8 impacted, of course, by the court's ability to collect
9 the fee. If the defendant is declared indigent, he or
10 she will not be obligated to pay the fee. And in
11 accordance with regulations pertaining to distribution
12 and disbursements of fees, fines and costs, if the
13 defendant does not pay all costs, the distribution
14 would be prorated based on the portion of costs paid.

15 So again, thank you for the opportunity. And
16 if you have any questions, I'd be happy to try to
17 answer them at this time.

18 CHAIRMAN CALTAGIRONE: Thank you, Kristen.
19 Questions from members? Kathy.

20 REPRESENTATIVE MANDERINO: Thank you. Just
21 two quick questions. I've concluded, I just want to
22 make sure correctly, from your testimony that the cost
23 to the courts -- or to your county facilities is a
24 time cost, not an equipment or pro -- kind of
25 processing the results cost, correct?

1 MS. GOSHORN: That's correct, because it's --

2 REPRESENTATIVE MANDERINO: Okay. Do you have
3 or can you get to the committee, do you have any sense
4 of the numbers by county of tests on an annual basis,
5 or however you might collect that data, are being
6 done?

7 MS. GOSHORN: I don't have that data with me
8 and I'm not sure if that's something that the state
9 police will provide or not. But we could try to get
10 at least a sample from some of the counties as to what
11 the quantity is that they're collecting on an annual
12 basis.

13 REPRESENTATIVE MANDERINO: I think that would
14 be helpful. Thank you.

15 CHAIRMAN CALTAGIRONE: Counsel.

16 MR. RYAN: Just briefly, there aren't any
17 other individuals that the probation department or the
18 corrections institution comes in contact with that
19 they normally wouldn't come in contact with, is there?

20 MS. GOSHORN: That's correct.

21 MR. RYAN: Okay. And they are required,
22 generally, to do a processing on intake of any
23 prisoner; isn't that correct?

24 MS. GOSHORN: Yes.

25 MR. RYAN: And they do, as a matter of

1 course, check the JNET record for prior records and
2 other pertinent information that would be necessary to
3 know about the person, why they're in the correctional
4 institution?

5 MS. GOSHORN: I believe that's so, yes.

6 MR. RYAN: Okay. And they also are required
7 to and receive the sentencing sheets and would
8 normally examine those as a part of the intake
9 process; isn't that correct?

10 MS. GOSHORN: Um-hum.

11 MR. RYAN: The only additional tests would be
12 actually the taking of the swab and the completion of
13 the documentation, I guess, and fingerprints, but you
14 fingerprint -- do you fingerprint in most institutions
15 as far as their entry?

16 MS. GOSHORN: Yes.

17 MR. RYAN: So you're required to take an
18 extra set of fingerprints that would be forwarded with
19 the documentation and the actual sample itself?

20 MS. GOSHORN: I believe so, yes.

21 MR. RYAN: So, I mean, those would really
22 just be the only additional things that are required
23 to be done, wouldn't it be?

24 MS. GOSHORN: Yeah, and there are a few extra
25 steps there that the county would normally be doing

1 unless they were processing the DNA tests.

2 MR. RYAN: And currently other court costs
3 are assessed by the counties or by the assessment that
4 goes to the counties for the general criminal justice
5 system.

6 MS. GOSHORN: Right.

7 MR. RYAN: All right. No further questions.
8 Thank you.

9 CHAIRMAN CALTAGIRONE: Any other questions?
10 Members of the committee? Kristen, thank you very
11 much. Appreciate your testimony. And you will get
12 that information to the committee then?

13 MS. GOSHORN: Yes.

14 CHAIRMAN CALTAGIRONE: Thank you. We'll next
15 hear from Major Nancy Burkhart Kovel, a dear friend of
16 mine, director of Bureau of Forensic Sciences,
17 Pennsylvania State Police. Anybody else you want to
18 bring up, there's extra chairs there.

19 Whenever you're ready.

20 MAJOR KOVEL: Good morning, Mr. Chairman and
21 members of the committee. I'm Major Nancy Kovel,
22 director of the Bureau of Forensic Services of the
23 Pennsylvania State Police.

24 Joining me today is Ms. Christine Tomsey.
25 She's the retired DNA manager from the Greensburg lab,

1 but I don't let her get far from me.

2 On behalf of Colonel Jeffrey B. Miller,
3 Commissioner of the Pennsylvania State Police, I want
4 to thank you for this opportunity to talk to you today
5 about DNA collection and the convicted offender
6 program and how critical it is to not reduce the
7 current allocation of funds to the DNA Detection Fund.

8 Proper identification of criminals and the
9 solving of crimes is a high priority for the
10 Commonwealth of Pennsylvania law enforcement and our
11 citizens.

12 DNA is a very strong and successful tool used
13 by law enforcement to identify persons responsible for
14 the perpetration of many crimes, and also to eliminate
15 from suspicion those who are not responsible for those
16 crimes. The combined DNA index system, or CODIS, is
17 the database in which DNA profiles are stored for
18 comparisons. In this system are stored profiles of
19 convicted offenders, forensic samples from crime scene
20 evidence, unidentified human remains, and missing
21 persons and/or relatives of the missing persons.

22 The Pennsylvania State Police DNA laboratory
23 in Greensburg is the CODIS administrator for the State
24 of Pennsylvania and processes submissions from not
25 only the Pennsylvania State Police DNA laboratories,

1 but also from the Allegheny County laboratory, as well
2 as the Philadelphia Police Department laboratory.

3 Since 1993, 1,908 investigations have been
4 aided in Pennsylvania due to matches with CODIS. Of
5 those, 1,267 investigations have been aided
6 specifically due to the matches with the convicted
7 offender submissions.

8 The success of the convicted offender DNA
9 collection program can largely be attributed to the
10 outstanding cooperative effort between the
11 Pennsylvania State Police; the Administrative Office
12 of Pennsylvania Courts, AOPC; the Pennsylvania Board
13 of Probation and Parole; state and county corrections,
14 juvenile placement facilities; as well as county adult
15 and juvenile probation and parole.

16 We have worked in cooperation with these
17 agencies since its inception and continue to
18 communicate with them to streamline and improve the
19 process. I would especially like to recognize the
20 efforts of my staff at the Greensburg DNA lab who work
21 tirelessly for the last two-plus years since Act 185
22 was passed, attacking the convicted offender
23 submissions and backlogs.

24 They are an outstanding team of individuals.
25 The collection of the convicted offender DNA in

1 Pennsylvania began with the passage of Act 14 of 1995
2 which required the collection of DNA samples from all
3 persons convicted of violent crimes or sex offenses.
4 Act 57 of 2002 then expanded the collection to include
5 other offenses, most notably burglary and robbery.

6 With the passage of Act 185 of 2004, DNA
7 samples are now collected from all convicted felons
8 and persons convicted of other articulated offenses,
9 including misdemeanor sexual assaults.

10 Since 1995, the Pennsylvania State Police
11 Bureau of Forensic Services DNA laboratory in
12 Greensburg has administered the convicted offender
13 collection program for Pennsylvania. We are the sole
14 repository for convicted offender DNA samples and are
15 responsible for the administration of the program as
16 well as the processing of all the samples. A total of
17 311 agencies are currently submitting samples for the
18 convicted offender database. These include 67
19 juvenile probation agencies, 17 state probation and
20 parole agencies, 64 county prisons, and 27 state
21 correctional institutions.

22 Pennsylvania State Police purchases and
23 provides the DNA collection kit for convicted
24 offenders to all agencies responsible for the
25 collection of the samples. Originally blood samples

1 were the standard required for DNA submission. This
2 required a trained technician or phlebotomist to
3 collect those samples. This was a complicated process
4 with specific requirements regarding the collection of
5 blood.

6 Although more costly to the Pennsylvania
7 State Police, we are now able to provide kits
8 containing buccal collectors. This is a much easier,
9 safer, and less expensive collection process for those
10 agencies. This kit contains all of the necessary
11 instructions, equipment, and paperwork to be completed
12 for a successful submission. And this in front of me
13 is a sample of the collection kit that we provide to
14 each of the agencies. And I've laid it out by piece.

15 Once the collection is complete, the kit is
16 reassembled, and shipped in a postage paid envelope
17 back to the Greensburg DNA laboratory. Once received
18 by the Greensburg DNA laboratory, our lab personnel
19 begin the process of opening, cataloguing, and
20 verification of the submissions. This includes
21 barcoding the buccal samples, collection card, and
22 inventory receipt card. The inventory receipt forms
23 are then prepared and mailed back to the submitting
24 agency for their records.

25 The fingerprint cards are forwarded to the

1 State Police Bureau of Records and Information for
2 inclusion in the criminal history record. Information
3 verification by our lab personnel involves entry into
4 the DNA lab tracking system, querying the CLEAN
5 system, contacting the submitting facility when
6 necessary, and performing a secondary witness and
7 verification system of the accessioning process.
8 Concurrently, the barcode samples are moved onto the
9 robotic platforms to assist in the recovery of DNA and
10 development of a DNA profile.

11 Forensic scientists assist during these
12 processes and then ultimately analyze the resulting
13 profiles. These profiles are then verified against
14 internal quality control samples for concurrence.

15 All profiles must be technically and
16 administratively reviewed prior to upload into the
17 state or national CODIS databases. As part of the
18 quality control process, any time a potential
19 candidate match is made in the CODIS system, the
20 specific convicted offender sample must be reanalyzed
21 and the fingerprints verified for positive
22 verification prior to the release of any information
23 to the invest -- investigating agency regarding the
24 potential match for use as probable cause to obtain a
25 final confirmatory sample for that individual. That

1 confirmatory sample is then submitted to the DNA lab,
2 processed, and confirmed as a match in the criminal
3 investigation to complete the DNA process for
4 testimony in a court case involving a convicted
5 offender sample match.

6 That's a long process. I appreciate your
7 patience.

8 The Greensburg DNA lab has received 185,477
9 convicted offender samples, of which 181,512 convicted
10 offenders have profiles have been successfully upload
11 into CODIS. The difference in these numbers is
12 largely attributable to duplicate sample submissions
13 or destructions due to nonapplicable offenses. And as
14 indicated previously, 1,267 investigations have been
15 aided due to matches with convicted offender
16 submissions.

17 Since 2005 we have expended \$3.5 million in
18 grant moneys and approximately \$130,000 in state
19 funding to expand the DNA program. Grant funding for
20 the president's DNA initiative is scheduled to end in
21 2008. Without these funds, the Pennsylvania State
22 Police will need an additional \$1.7 million per year
23 for equipment and supplies for DNA, of which
24 approximately 956,000 is in support of the convicted
25 offender program. Additionally, our personnel costs

1 for the convicted offender program are approximately
2 \$700,000 annually.

3 Act 14 of 1995 established the authority for
4 the assessment of \$250 per convicted offender to be
5 transmitted to the DNA Detection Fund. This fund is
6 then used for the costs associated with the convicted
7 offender program. Since 1995 we have received
8 approximately \$3,856,273 in the DNA Detection Fund,
9 which equates to less than 10 percent of potential
10 funds, considering the 185,477 convicted offender
11 submissions.

12 With the anticipation of approximately 30,000
13 samples received in any given year, assessed at \$250
14 per sample, we would expect to receive \$7.5 million.
15 However, at the current average rate of 10 percent per
16 year deposited into the fund, it equates to
17 approximately \$750,000, which covers only 46 percent
18 of our costs for the convicted offender program.

19 The convicted offender submissions to CODIS
20 have been a successful tool for law enforcement in
21 helping to identify those responsible for crimes that
22 may have otherwise gone unsolved. We will continue to
23 aggressively pursue all grant opportunities for all of
24 our forensic programs. However, when these grant
25 opportunities end, we will need upwards of

1 approximately a million dollars in additional state
2 funding over and above what is currently collected for
3 the convicted offender program. Therefore, it is
4 critical that the current \$250 assessment allocated to
5 the DNA Detection Fund is not reduced and that it
6 continues to support the convicted offender program.

7 Although well intended, this proposal to take
8 money away from our program in order to fund county
9 needs is clearly imprudent.

10 In conclusion, I want to thank you for the
11 opportunity to address your committee and I will be
12 happy to answer any questions you may have.

13 CHAIRMAN CALTAGIRONE: Thank you, Major.

14 MAJOR KOVEL: Thank you.

15 CHAIRMAN CALTAGIRONE: Questions from the
16 committee? Tom Creighton.

17 REPRESENTATIVE CREIGHTON: Can you give me an
18 idea of what is the cost per test or analysis?

19 MAJOR KOVEL: Just for the convicted offender
20 test itself?

21 REPRESENTATIVE CREIGHTON: No. You said a
22 sample, what's it cost to process that sample?

23 MAJOR KOVEL: It costs us approximately \$100
24 versus 400 to outsource. However, beginning -- just
25 for that portion of the process. However, from

1 beginning to end it is approximately a thousand
2 dollars per sample.

3 REPRESENTATIVE CREIGHTON: And that includes
4 all the paperwork and administrative costs?

5 MAJOR KOVEL: And equipment and maintenance
6 of that equipment, replacement and proportioning those
7 costs associated with it.

8 REPRESENTATIVE CREIGHTON: And then what is
9 the time factor? Does it take a day or half an hour
10 or five minutes?

11 MAJOR KOVEL: On average the convicted
12 offender sample, it takes us approximately 21 days to
13 complete the process.

14 REPRESENTATIVE CREIGHTON: What, do you treat
15 the sample, or why does it take so long, or is that
16 because of administration? The actual chemistry of
17 doing the process --

18 MAJOR KOVEL: I'll defer to my scientist,
19 Ms. Tomsey, if you don't mind, for those details.

20 MS. TOMSEY: It takes us a day to accession
21 those samples into the system, the barcoding, the
22 checking the offender to see if it's an applicable
23 offense. And then to accession it into our system.
24 The samples are then taken and are put into a robotic
25 platform where we go through an extraction and an

1 isolation of DNA. That takes approximately one day.
2 Then that sample, once the DNA is isolated away from
3 the saliva sample or the buccal swab, we then go and
4 isolate the particular area of the DNA molecule that
5 we look for the genetic profile. That takes use the
6 day. That then is placed onto an instrument that
7 actually goes in and does a molecular diagnostic test
8 as to what the DNA is. That takes us another two to
9 three days.

10 Once all that information comes back to us,
11 and we're getting hundreds of samples, data from
12 hundreds of samples in a day, that information is
13 where the scientists then has to go in and evaluate
14 all this data. That's what takes the whole week
15 process. It's not just the analytical process of
16 actually getting to the DNA profile. It's
17 interpreting that profile and then taking that
18 profile, placing it into the CODIS system, then it has
19 to be technically reviewed by another qualified
20 analyst, and then it has to be administratively
21 reviewed again to make sure that there's been no
22 misalignment of samples, that there's been no type of
23 contamination, none of these types of things are going
24 on.

25 And then after all of this review process

1 it's then uploaded to CODIS. It's then searched on
2 the state level and then on a weekly basis it's
3 uploaded to the national level.

4 So we're involving a lot of people, a lot of
5 checks and balances in the system. And then as we
6 said before, once a hit is made, because the
7 correctional facilities are collecting them in
8 batches, and we're analyzing them in batches, we go
9 back in and go to that sample, pull it from our
10 archives in the basement, and dust it off, and then go
11 onto reanalyzing that sample just to make sure that in
12 that assessing and batch processing of the samples,
13 because we're trying to do things as automated and as
14 inexpensively as possible, we then just analyze that
15 single sample by itself to make sure that the data
16 corresponds to that sample. And then the fingerprint
17 card is taken to our AFIS individuals who then check
18 the fingerprints to make sure that on accession from
19 the correctional facilities they match up to the
20 individual who's in the system.

21 Then they go through the technical and
22 administrative review. A report is written for the
23 police officer, and that is his probable cause. He
24 then goes and collects the sample from the person
25 because, again, the correction facilities are

1 collecting these in batch, especially at the state
2 correctional facilities. And so that they didn't make
3 a mistake in putting a name to the wrong buccal
4 collector, they then collect the sample individually
5 from that criminal or the suspect and at that point
6 that sample then is reanalyzed, technically reviewed,
7 administratively reviewed.

8 So while the analytical process is really a
9 very minor portion to the insurances that the profiles
10 are correct, the checks and balances that go into it
11 and then the equipment and the supplies that go into
12 the analysis of this are extremely expensive. They're
13 all patented pieces of equipment. And even the
14 genetic areas are patented by the manufacturing
15 company that supplies us with the biological
16 materials. And because of that, one kit in and of
17 itself costs us \$5,000. And that's a kit for just
18 several hundred samples.

19 REPRESENTATIVE CREIGHTON: Well, it sounds
20 quite thorough and quite -- to verify that you have
21 the right sample. I guess I just missed a little bit.
22 Do you keep samples for certain crimes -- you don't --
23 do you keep the sample but don't analyze?

24 MS. TOMSEY: All of the samples upon intake
25 are analyzed. They are then -- once the analysis is

1 completed, they are stored in our repository for
2 50 years.

3 REPRESENTATIVE CREIGHTON: Do we do it on
4 every criminal, every offense?

5 MS. TOMSEY: Every offense that is applicable
6 under the act, which would be all felony offenses plus
7 additional misdemeanor sexual offenses.

8 REPRESENTATIVE CREIGHTON: But if it's not
9 under those certain classifications, do we still
10 collect?

11 MS. TOMSEY: No, no. Everything that is
12 collected is analyzed and accessioned into CODIS.

13 REPRESENTATIVE CREIGHTON: Thank you.

14 CHAIRMAN CALTAGIRONE: Additional? Yes,
15 Kathy.

16 REPRESENTATIVE MANDERINO: Thank you. Thank
17 you for being here. Major Kovel, I want to focus on
18 the numbers that were towards the end of your
19 testimony. Because I'm just having trouble comparing
20 apple to apples.

21 MAJOR KOVEL: I understand.

22 REPRESENTATIVE MANDERINO: Of the
23 185,000-plus submissions, I'm assuming that's a
24 cumulative number over the life of the DNA lab?

25 MAJOR KOVEL: That's correct.

1 amount that could be collected if 250 were assessed
2 and collected by all who are convicted, in our fund
3 you will only find 10 percent of that potential
4 funding.

5 REPRESENTATIVE MANDERINO: Okay. When you're
6 figuring out which numbers, meaning what percentage of
7 your 25- to 30,000 are coming from the counties, if
8 you are able, I'm not trying to make lots of work, but
9 if you are able to tell of that percentage how the
10 collections break down as well.

11 MAJOR KOVEL: I do not have an accounting
12 that I would be able to do that.

13 REPRESENTATIVE MANDERINO: Okay. And then --
14 so then that makes sense. I couldn't figure out what
15 this 46 percent of the costs and how that related to
16 the 10 percent. So what you're telling me is if the
17 universe of collectible fees, if we collected a
18 hundred percent, we're only collecting 10 percent.

19 MAJOR KOVEL: Correct.

20 REPRESENTATIVE MANDERINO: But the 10 percent
21 that we are collecting is covering 46 percent of the
22 costs, I assume on an annual basis of running the DNA
23 lab.

24 MAJOR KOVEL: You are correct, ma'am.

25 REPRESENTATIVE MANDERINO: Okay. I am

1 following that now. Of the grant sources that you
2 have, and particularly what I will call the non-state
3 grant sources that you have that are supporting the
4 lab, are any of those on a predictable renewable basis
5 or are any of those in demonstration grants that you
6 know you're coming up on the end of the five years
7 that Pennsylvania's eligible, if you understand my
8 questioning?

9 MAJOR KOVEL: There are no current guarantees
10 that any federal DNA grants will be available for this
11 program. So there are no renewable. We will finish
12 out the grants that we have received and exhaust those
13 grants, but at this point there is no commitment to
14 further those grants.

15 MS. TOMSEY: Yeah, the other big problem that
16 people need to understand too is the grants do not
17 cover any of our personnel costs whatsoever in the
18 processing. They do give us some money towards the
19 supplies and some money towards the purchase of
20 automated equipment. It doesn't cover the maintenance
21 of those equipments; it doesn't cover the day-to-day
22 supplies; and it doesn't cover anything in the
23 personnel costs of the program. And nor is there any
24 intention on the part of any of the grant sources to
25 cover those kinds of costs.

1 MAJOR KOVEL: And if I could just correct,
2 I'm not sure that we said the percentages right on the
3 last statement. The 10 percent that is in -- that
4 shows up in our fund currently will cover
5 approximately 46 percent of just the convicted
6 offender program.

7 So that 10 percent of the overall potential
8 that could be collected is, in fact, collected and put
9 into the DNA Detection Fund and that money in that
10 fund currently can cover approximately 46 percent of
11 the convicted offender expenses that we bear.

12 REPRESENTATIVE MANDERINO: Okay. I'm hearing
13 a distinction that I'm not understanding. The
14 convicted offender expenses is some subset of the
15 whole universe of the budget that it takes to run the
16 DNA lab?

17 MAJOR KOVEL: That's correct. It is a
18 separate and distinct program within our DNA
19 laboratory.

20 REPRESENTATIVE MANDERINO: Okay. So when you
21 say none of the personnel costs are covered by any
22 grant, are we talking about the personnel costs of the
23 DNA lab or the personnel costs of the convicted
24 offender program?

25 MAJOR KOVEL: The grants from the federal

1 government cover both programs that we're currently
2 under. So the grants in general do not cover employee
3 expenses, personnel expenses incurred by the
4 Pennsylvania State Police. We cover that under our
5 general budget allocations.

6 REPRESENTATIVE MANDERINO: When we give an
7 appropriation in the budget for this state DNA lab, I
8 think that's how the appropriation is written, are we
9 covering costs for the lab and the convicted offender
10 program?

11 MAJOR KOVEL: You are. Some of the costs
12 incurred under this program as well as the primary
13 case work DNA program are covered under our general
14 budget.

15 REPRESENTATIVE MANDERINO: Thank you. Thank
16 you, Mr. Chairman.

17 CHAIRMAN CALTAGIRONE: Counsel Ryan.

18 MR. RYAN: Major, going through some of these
19 you've indicated that when you do get a hit that
20 oftentimes, whether it's by a local department or your
21 own state police investigators, there is a requirement
22 to perform the tests again on the particular
23 identified defendant, right?

24 MAJOR KOVEL: That's correct, sir.

25 MR. RYAN: And who generally performs that

1 service?

2 MAJOR KOVEL: Our DNA laboratories.

3 MR. RYAN: Okay. So you'll actually take the
4 sample? Who will actually take the sample? Will the
5 officer in the field or will it be somebody from your
6 division?

7 MAJOR KOVEL: Based on our hit on the
8 convicted offender program, we provide, after all of
9 these verifications, the probable cause to the law
10 enforcement officer to get a warrant to obtain that
11 other sample, that sample to come back. And then we
12 use that sample again to make sure we have the right
13 person connected to the right crime.

14 MR. RYAN: And you at that point have to do
15 another test of this, right?

16 MAJOR KOVEL: That's correct, sir.

17 MR. RYAN: And at that particular point do
18 you receive any compensation for that test?

19 MAJOR KOVEL: The compensation is the same
20 for the general programs that I've --

21 MR. RYAN: But what I'm talking about is that
22 specifically performing that particular test on a new
23 defendant, is there any charge or any fee that you're
24 able to collect?

25 MAJOR KOVEL: Now I understand. No, sir,

1 there is not.

2 MR. RYAN: There's not. So basically that's
3 a cost to the state police that's not covered by any
4 reimbursement from anybody?

5 MAJOR KOVEL: Yes, sir. That is correct.

6 MR. RYAN: Okay. And as a matter of course,
7 are you also required to provide experts, oftentimes
8 to go and testify in court proceedings, before
9 county -- for county prosecutors or local police
10 agencies?

11 MAJOR KOVEL: Yes, sir, we are.

12 MR. RYAN: And do you charge the counties at
13 any time for those -- providing those particular
14 services of your experts for their time, for travel,
15 or for any other expenses when they appear in court
16 proceedings?

17 MAJOR KOVEL: No, sir, we do not.

18 MR. RYAN: So that is basically a cost and
19 service provided to the prosecutors and to the
20 counties free of charge?

21 MAJOR KOVEL: That's correct. And those
22 charges were not included in these general program
23 costs.

24 MR. RYAN: So that basically is another basic
25 cost that as an agency and as a lab you have to, I

1 guess, for lack of a better term, eat?

2 MAJOR KOVEL: Yes, sir.

3 MR. RYAN: Okay. And in addition, you're in
4 charge of all forensic services; is that correct?

5 MAJOR KOVEL: That is correct, sir.

6 MR. RYAN: That includes, you know, tool
7 markings, all of ballistics and other services?

8 MAJOR KOVEL: Fingerprints, question
9 documented, yes, sir.

10 MR. RYAN: Everything. And as a matter of
11 course, in all of those particular areas when you
12 provide information and experts to go and testify in
13 court proceedings for county prosecutors on a regular
14 basis, do you ever charge them anything for that?

15 MAJOR KOVEL: No, sir, we do not.

16 MR. RYAN: So those are all services, police
17 services that are provided by the state police in
18 prosecutions that the county is never responsible for
19 reimbursing?

20 MAJOR KOVEL: That is correct, sir.

21 MR. RYAN: Thank you.

22 REPRESENTATIVE CREIGHTON: Thank you very
23 much. I'd like to -- one follow-up question. You
24 mentioned there's 1,267 cases which you have been
25 aided by matches with the convicted offender. Have

1 there been instances where proof of innocence has
2 resulted from this? And how many would that number be
3 included in that 1,267? Or, you know, give me a feel
4 for how effective this program is in working in the
5 criminal justice system.

6 MAJOR KOVEL: Sure. As I said in the
7 beginning, we both work towards identifying the
8 appropriate person to the crime as well as eliminating
9 those who have not been involved in those crimes. And
10 those numbers do involve and include both of those.
11 It's investigations aided, whether we help them to
12 eliminate a suspect or somebody from suspicion, or we
13 identify a suspect in that -- in that profile, both
14 are included in these numbers.

15 REPRESENTATIVE CREIGHTON: So it's pretty
16 subjective to try to say this person would not --
17 maybe wouldn't have gone to jail because of this
18 evidence, therefore we kept him out of jail and saved
19 money by not incarcerating him, where others have been
20 put in jail because of this evidence, it's probably a
21 wash, or even --

22 MAJOR KOVEL: I don't have the -- I don't
23 have the breakdown of percentages of exonerations or
24 eliminations versus convictions. Maybe Chris would
25 have that number.

1 MS. TOMSEY: Yeah, typically if we get a case
2 into the laboratory and a suspect profile is given to
3 it, at the time that case is processed that person is
4 either included or eliminated. And typically it is
5 those -- those where the individual -- those suspect
6 has been eliminated that the sample goes in to CODIS
7 and then the match is made.

8 So essentially most of these matches have
9 been where the -- it's been either an unknown suspect
10 from the very beginning or we have eliminated the
11 suspect and a match has been made. So of the number
12 that we're talking about, we have had to go back in
13 and reanalyze all of those samples and had to get a
14 sample for the court prosecution, if that's what
15 you're referring to. Because those samples that have
16 been exonerated or even in a cold case situation where
17 we've gone back in and postconviction testing type of
18 things, those would not have been included as an
19 investigation aided because they would have already
20 been solved.

21 REPRESENTATIVE CREIGHTON: Thank you.

22 CHAIRMAN CALTAGIRONE: Representative James.

23 REPRESENTATIVE JAMES: Thank you,
24 Mr. Chairman. Just a point of information to follow
25 up on this -- on this point. I have had two people

1 from my district that have been exonerated on DNA, you
2 know, since I've been in office. And one was on death
3 row, Harold Wilson, that was exonerated. And a
4 warrant was signed for his -- you know, to be
5 executed. And that he was released I think maybe two
6 or three years ago.

7 And then I had another one that was
8 exonerated on a sex case after he served 10 years in
9 jail. So I just wanted to point out that those two
10 people were exonerated and released from prison. And
11 I think they both went through the Innocent Project
12 out of New York. So I just wanted to let that be
13 clear. Thank you.

14 CHAIRMAN CALTAGIRONE: Thank you. Counsel
15 Mann.

16 MR. MANN: Thank you, Mr. Chairman. Major,
17 just a couple quick questions. Going through your
18 testimony, and I see you list out 67 probation
19 offices, juvenile placement facilities, adult
20 probation agencies, the parole board, county prisons,
21 and 27 correctional institutions. Is there any
22 abilities for any of these agencies to be able to, for
23 lack of a better phrase, bill back the cost of
24 providing the services for the collection of the
25 specimen and for the administrative costs for any of

1 them? Is there a line somewhere saying parole board
2 or the correctional institutions are where they can
3 kind of say okay, this is how much it costs us to do
4 this particular service?

5 I know that in some state agencies they have
6 to bill out their services somehow. And I'm wondering
7 is there any way for any of these county or state
8 agencies to recoup the cost of providing this
9 particular service?

10 MAJOR KOVEL: Not to my knowledge, sir.

11 MR. MANN: Another question I had for you,
12 maybe this is just an estimate that was provided, but
13 I usually go back to the great big book of budget
14 stuff. It's that big monster that we get every
15 February/March time frame. And I'm looking at the DNA
16 Detection Fund and it says that the assessments and
17 interest for 2006 through 2007 was \$1,036,000. That
18 number has stayed static for 2006-2007, 2007-2008 and
19 is the amount that's projected for 2008-2009. And I'm
20 wondering, if we're increasing the number of vendors
21 that we're collecting this sample from, why has that
22 number stayed static over the previous, current, and
23 next year?

24 MR. RYAN: My guess would be that they're
25 estimates. And I'm not sure the actual figures or

1 anticipated figures actually make a collection rates
2 are speculative at best.

3 MR. MANN: Well, 2006-2007 shows as actual.

4 MAJOR KOVEL: Right. What you are seeing
5 there, I believe, is our authorized amount to spend
6 from our DNA Detection Fund. Whether we reach that or
7 exceed it is in any certain year defined by how much
8 we've spent. But that's the amount that we're
9 authorized from what is in the fund, in fact, to spend
10 if we need it.

11 MR. MANN: And we went from '95 where we were
12 only collecting for certain offenders, felony
13 offenders, sex offenders, to today where that -- that
14 universe of offenders is pretty broad. Can you give
15 the committee an idea of the amount that was collected
16 from the assessments and interest from 1995 to
17 present?

18 MAJOR KOVEL: That is the total amount that I
19 have in my testimony, sir. That since 1995 the amount
20 collected is \$3,856,273. That's since 1995.

21 MR. MANN: That's all I have.

22 MR. RYAN: Additionally, do you know, you may
23 not know this, but do you know where you are on the
24 priority of collection of costs? I mean, I know that
25 victims' compensation issues, that they're paid first.

1 MAJOR KOVEL: That's correct.

2 MR. RYAN: And other county court costs are
3 paid first. I believe almost all other costs or most
4 other costs are prioritized for collection prior to
5 you receiving, I guess, dime one from any defendant.

6 MAJOR KOVEL: That is my understanding.

7 MR. RYAN: And as a DA said to me once during
8 one of these hearings when we were talking about some
9 costs, Representative Manderino brought up was well,
10 you know, you can't get blood from a rock. And that
11 still may apply. You're about the last one when it
12 comes to priority of collection, and the county
13 already gets paid first.

14 MAJOR KOVEL: That's probably very true, sir.

15 MR. RYAN: Thank you.

16 MR. MANN: And I think just to put a cap on
17 it, well, to a say, well, you eat that cost, well,
18 that's only partially true because the state police
19 have the ability to come back to the budget every year
20 at budget time to make their presentation to say,
21 look, this is costing us this much and this is what we
22 hope for in the budget. I think the Representative's
23 point in this legislation is to say that this is a
24 state program and the county resources are being used
25 to administer this state program, but they don't

1 necessarily have the ability to come to the table
2 before the General Assembly and ask for an
3 appropriation to offset their administrative costs for
4 assisting in this state program.

5 So with that I do appreciate your testimony,
6 Major. And if you could, give us an idea of where
7 those collections have been over the last, I guess,
8 13 years now, I'd appreciate it.

9 MAJOR KOVEL: I'll get that for you as
10 quickly as possible, sir.

11 CHAIRMAN CALTAGIRONE: And for the benefit of
12 the members, I talked to Kristen before she left. She
13 was the representative for the County Commissioners
14 Association. She's going to try to get us some exact
15 numbers as to what it's costing the counties. And
16 maybe there's some wiggle room or some compromised
17 area that if we can figure out a way to develop some
18 additional funding for the counties, I know we're
19 not -- it's not my suggestion that we take money away
20 from you, because we understand where you're out of
21 this.

22 MAJOR KOVEL: Thank you.

23 CHAIRMAN CALTAGIRONE: But if there's a way
24 we could develop another mechanism for helping the
25 counties, either increasing this or some other way, I

1 think when she comes back with that information we
2 might be able to figure out how we best accomplish
3 that to help the counties and not hurt the State
4 Police with the great job you guys have been doing.

5 MAJOR KOVEL: Thank you, sir.

6 CHAIRMAN CALTAGIRONE: Are there any other
7 questions? Major -- or Harold, certainly.

8 REPRESENTATIVE JAMES: Mr. Chairman, I'm not
9 sure. I came in late. I'm sorry about that. But has
10 there been any numbers put to the amount of suspects
11 or people that are convicted that can't afford to pay
12 the \$250?

13 CHAIRMAN CALTAGIRONE: I think -- you want to
14 answer that, go right ahead.

15 MAJOR KOVEL: Again, the amount that we
16 actually collect is only 10 percent of the potential
17 that could be collected.

18 REPRESENTATIVE JAMES: I understand. I
19 understand.

20 MAJOR KOVEL: So the indigent, it's up to the
21 judge, and they assess the ability to repay. And it
22 is not repaid by those who cannot.

23 REPRESENTATIVE JAMES: I understand that.
24 But do we know what those numbers are, or I think
25 that's important for us to know what those numbers

1 are, if we try to do any measuring.

2 MR. MANN: From the numbers that the Major
3 had given us, Representative, at 30,000 samples per
4 year that they're taking in, and that's just on a
5 convicted offender portion of it, that means that
6 27,000 of them have been declared or determined to be
7 indigent, unable to pay.

8 REPRESENTATIVE JAMES: Thank you.

9 MAJOR KOVEL: Or we're just at the bottom of
10 the line and we haven't received any, yes.

11 MR. MANN: You're still waiting.

12 MAJOR KOVEL: We're still waiting.

13 CHAIRMAN CALTAGIRONE: Major, thank you very
14 much for your testimony. And we'll adjourn the
15 hearing. Thank you for your help.

16 (Proceedings concluded at 10:54 a.m.)

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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me on the within proceedings and that
4 this is a correct transcript of the same.

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Heather L. Artz, RMR, CRR
Notary Public

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