

HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA

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Senate Bill 150 - DNA

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House Judiciary Committee

140 Main Capitol Building
Majority Caucus Room
Harrisburg, Pennsylvania

Tuesday, November 12, 2013 - 10:00 a.m.

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COMMITTEE MEMBERS PRESENT:

Honorable Ronald Marsico, Majority Chairman
Honorable Sheryl M. Delozier
Honorable Brian L. Ellis
Honorable Glen R. Grell
Honorable Joseph T. Hackett
Honorable Bernie O'Neill
Honorable Mike Regan
Honorable Rick Saccone
Honorable Marcy Toepel
Honorable Tarah Toohil
Honorable Thomas Caltagirone, Minority Chairman
Honorable Bryan Barbin
Honorable Matthew Bradford
Honorable Vanessa Lowery Brown
Honorable Dom Costa
Honorable Madeleine Dean
Honorable Deberah Kula
Honorable Brandon Neuman
Honorable John Sabatina

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STAFF MEMBERS PRESENT:

Thomas Dymek, Esquire
Counsel/Majority Executive Director

Michael Kane, Esquire
Counsel/Majority Research Analyst

Michelle Moore
Majority Legislative Administrative Assistant

David Vitale, Esquire
Minority Counsel for Committee

David McGlaughlin
Minority Research Analyst

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SUBMITTED WRITTEN TESTIMONY

(See other submitted testimony and handouts
online.)

1 MAJORITY CHAIRMAN MARSICO: Good
2 morning, everyone; Representative Marsico, Chair of
3 the Committee.

4 I want to welcome everyone here to the
5 House Judiciary hearing on Senate Bill 150, which
6 is sponsored by Senator Dominic Pileggi. Senate
7 Bill 150 addresses the use of DNA in stopping
8 crime. Since the General Assembly codified the
9 Pennsylvania state law enforcement DNA database in
10 1995, there have been great strides in the use of
11 DNA evidence to bring dangerous criminals to
12 justice.

13 In recent years, many other states and
14 the federal government have improved their DNA
15 collection in testing policies to reflect the
16 increased capability of forensic science and the
17 reliability of DNA testing.

18 While Pennsylvania law enforcement
19 agencies currently make effective use of DNA
20 evidence in obtaining convictions, Senate Bill 150
21 is intended to modernize those practices in
22 bringing Pennsylvania into the 21st Century with
23 regard to its use of DNA technology to fight crime.

24 The bill expands the use of DNA to
25 identify and stop violent offenders, but the bill

1 is designed to be consistent with the
2 constitutional boundaries set out by United States
3 Supreme Court earlier this year in its Maryland
4 versus King decision. In that decision, the
5 Supreme Court authorized the collection of DNA
6 identification samples from criminal defendants
7 arrested for but not yet convicted of certain
8 serious crimes.

9 The bill is meant to ensure that DNA
10 evidence is collected, analyzed and used
11 appropriately and with respect for individual
12 privacy concerns. Without a doubt, this is an
13 initiative of great importance to improving public
14 safety in Pennsylvania. But because this issue can
15 involve complicated legal issues and scientific
16 questions, the Committee is holding this hearing to
17 make sure that all members and the public can
18 receive testimony about the enhanced use of DNA
19 technology to identify criminals in Pennsylvania.

20 I am very pleased that we have a
21 first-rate group of testifiers here today to
22 address this subject, including David Freed,
23 Cumberland County District Attorney and President
24 of the Pennsylvania District Attorneys Association;
25 Bruce Beemer, Chief Deputy Attorney General of

1 Criminal Prosecutions Section of the Pennsylvania
2 Office of Attorney General; Andy Hoover,
3 Legislative Director for the ACLU; Lieutenant
4 Colonel Scott Snyder, Deputy Commissioner of Staff;
5 Major Mark Schau, Director of Bureau of Forensic
6 Sciences; and Ms. Beth Ann Marne, Director,
7 Forensic DNA Division, all with the Pennsylvania
8 State Police; Jayann Sepich of the organization DNA
9 Saves. She's here from New Mexico. Diane Moyer,
10 Legal Director for the Pennsylvania Coalition
11 Against Rape; Brian Pfleegor, CODIS Administrator
12 for the Philadelphia Police Department, Office of
13 Forensic Science, and James F. Owens, a detective
14 from the Philadelphia Police Special Victims Unit,
15 and U.S. Marshal Violent Crime Fugitive Task Force
16 of Eastern Pennsylvania. We look forward to all of
17 your testimony.

18 Before we begin, let me just mention a
19 few other things. As you can see, this hearing is
20 being recorded and broadcast. Also, that we will
21 receive much useful testimony today, but the
22 Committee will also keep the record open in order
23 to receive written comments from other interested
24 persons. And one more thing; please silence your
25 cell phones.

1 With that, I'll ask the members to
2 introduce themselves, starting on the far left side
3 corner. Representative Ellis is over there.

4 REPRESENTATIVE O'NEILL: Good morning.
5 Representative Bernie O'Neill, 29th District, Bucks
6 County.

7 REPRESENTATIVE ELLIS: Representative
8 Brian Ellis, 11th District, Butler County.

9 REPRESENTATIVE TOOHIHIL: Representative
10 Tarah Toohil, 116th District, Luzerne County. Good
11 morning.

12 REPRESENTATIVE REGAN: Good morning.
13 Mike Regan, 92nd District, York County.

14 REPRESENTATIVE DELOZIER: Sheryl
15 Delozier, 88th District, Cumberland County.

16 REPRESENTATIVE GRELL: Good morning.
17 Glen Grell, 87th District, Cumberland County.

18 REPRESENTATIVE NEUMAN: Good morning.
19 Representative Brandon Neuman from Washington
20 County.

21 REPRESENTATIVE HACKETT: Good morning.
22 Joe Hackett, Delaware County.

23 REPRESENTATIVE COSTA: Dom Costa, 21st
24 District, Allegheny County.

25 MINORITY CHAIRMAN CALTAGIRONE: Tom

1 Caltagirone, Berks County.

2 REPRESENTATIVE DEAN: Good morning.

3 Madeleine Dean, Montgomery County.

4 REPRESENTATIVE BARBIN: Bryan Barbin,
5 Cambria County.

6 REPRESENTATIVE TOEPEL: Good morning.

7 Marcy Toepel, 147th, Montgomery County.

8 REPRESENTATIVE SABATINA: Good morning.

9 John Sabatina, Philadelphia County.

10 REPRESENTATIVE SACCONI: Good morning.

11 Rick Saccone from the Washington and Allegheny
12 counties.

13 REPRESENTATIVE KULA: Good morning.

14 Deberah Kula from Fayette and Westmoreland
15 counties, 52nd District.

16 MAJORITY CHAIRMAN MARSICO: Got
17 everybody? What about staff? Do we need staff
18 introduced?

19 MR. DYMEK: Tom Dymek, Executive
20 Director of the Committee.

21 MR. VITALE: Dave Vitale, legal counsel
22 to the Committee.

23 MR. KING: Mike King, legal counsel of
24 the Committee.

25 MAJORITY CHAIRMAN MARSICO: Thank you.

1 First to testify is the Honorable David Freed and
2 Bruce Beemer. You want to come up and you can
3 proceed when you're ready. Bruce is with the
4 Attorney General's Office; and, of course, Dave is
5 the District Attorney of Cumberland County and
6 President of the D.A.s Association of Pennsylvania.
7 If you want to acknowledge who else is with you,
8 that's fine.

9 DISTRICT ATTORNEY FREED: Sure. We have
10 Amy Zapp who is the Chief Deputy Attorney General
11 for our Special Litigation Section, and Jim Barker
12 who's the Chief Deputy Attorney General for our
13 Appellate Section.

14 MAJORITY CHAIRMAN MARSICO: Good morning
15 and thanks for being here. Go ahead when you're
16 ready.

17 DISTRICT ATTORNEY FREED: Thank you.
18 Good morning, Chairman Marsico, Chairman
19 Caltagirone. Always a pleasure to be back with my
20 friends on House Judiciary. I thank my colleague,
21 Eddie Marsico, for my path across the river this
22 morning. Of course, I see some wag on the way in
23 and asked me if I was lost. I said, no, I've been
24 here before.

25 This is an incredibly important issue to

1 those of us in law enforcement. Bruce and I have
2 been doing this for pretty much the same amount of
3 time in different offices, different parts of the
4 state. I think we could both tell you that
5 something that was relatively novel at the
6 beginning of our careers is now an everyday issue
7 for us, dealing with cases involving DNA.

8 While so much of the publicity about
9 DNA when it first started related to exonerations,
10 and that's appropriate, because no reasonable
11 prosecutor wants to see someone who's innocent
12 behind bars, what has happened over the years is
13 that DNA has certainly convicted far more people
14 than it's exonerated, and it is an incredibly
15 useful tool for those of us in law enforcement.

16 As was indicated, I'm the District
17 Attorney of Cumberland County. I have the honor of
18 being the president of the Pennsylvania D.A.s
19 Association. On behalf of PDAA, I appreciate this
20 opportunity to speak to you about Senate Bill 150
21 and the merits of expanding DNA collection.

22 DNA has revolutionized the way we
23 investigate, solve and prosecute crimes. It's a
24 critical tool that allows us to identify dangerous
25 perpetrators and prevent future violent crimes.

1 The United States Department of Justice has said it
2 this way: DNA can be used to identify criminals
3 with incredible accuracy when biological evidence
4 exists. By the same token, DNA can be used to
5 clear suspects and exonerate persons mistakenly
6 accused or convicted of crimes. In all, DNA
7 technology is increasingly vital to ensuring
8 accuracy and fairness in the criminal justice
9 system.

10 The Pennsylvania District Attorneys
11 Association strongly believes arrestee DNA
12 collection would bring more offenders to justice,
13 give closure to victims and their families, and
14 protect the public by preventing future crimes.
15 For all those reasons, we strongly support Senate
16 Bill 150.

17 As you know, DNA is contained in each
18 person's cells. It's specific to each individual;
19 remains constant from birth to death. Often when a
20 crime is committed, the perpetrator inadvertently
21 leaves behind biological material in the form of
22 hair, semen, blood, saliva or skin cells. Not
23 necessarily to the extent that people who watch
24 NCIS and CSI think it's there, but it's often
25 there. Law enforcement can collect that material

1 and a DNA testing sample can be extracted and
2 analyzed.

3 That can be used for several purposes.
4 First, it can be uploaded into state and national
5 databases that are included in the FBI's Combined
6 DNA Index System, CODIS. That system can compare
7 the sample against that of known criminals. If
8 there's a match, or as we call it in law
9 enforcement more often, a CODIS hit, law
10 enforcement is notified and then begins the process
11 of confirming the match.

12 It's very important that everybody needs
13 to understand, and the public needs to understand,
14 when we get a hit or a match in CODIS, that's not
15 the end of the story. Frankly, in many cases,
16 that's the beginning of the story.

17 We just had a conviction last week in Cumberland
18 County on a homicide that occurred in 2001 and the
19 trial was in 2013. We got a DNA hit around 2008.
20 And as often happens in cold cases, and the
21 prosecutors and police in the room can tell you,
22 the focus might be on one potential suspect. And
23 then you get a CODIS hit, and it changes the focus
24 of the investigation entirely. And that's what
25 happened in this case. That, of course, can make

1 those cases more difficult to prosecute because
2 there's a built-in defense, well, what about that
3 guy you were looking at for four years?

4 But the CODIS hit was the beginning of a
5 different facet of the investigation that
6 ultimately led to identification of that offender,
7 a sample taken from him with a warrant of probable
8 cause, and then that sample is matched to the
9 sample from the crime scene. So it's not matched
10 to the sample in CODIS. CODIS is just a hit. It's
11 an investigative lead, and then more investigation
12 needs to be done to confirm that match.

13 Even if CODIS cannot identify the
14 sources of the DNA, it's capable of matching
15 profiles gathered from separate criminal
16 investigations. This is important because it
17 allows law enforcement to establish a link between
18 seemingly unrelated criminal investigations. For
19 example, in the case of multiple sexual assaults,
20 CODIS may not be able to detect the source of the
21 DNA, but it can confirm the same DNA is found at
22 each incident, indicating the same perpetrator is
23 responsible for multiple crimes.

24 Although CODIS has aided the
25 investigation of more than 129,000 cases, DNA is

1 useful even without using CODIS. If, for example,
2 a sexual assault victim believes she recognizes her
3 perpetrator, investigators, upon probable cause,
4 can request a search warrant for a sample of DNA.
5 The sample can be taken in seconds by merely
6 swabbing the inside of the suspect's mouth. The
7 DNA from the suspect can then be compared against
8 DNA recovered from the victim's body, and results
9 will quickly confirm or refute the perpetrator's
10 identity.

11 Twenty-eight states and the federal
12 government already have laws requiring the
13 collection of DNA samples from certain offenders at
14 the time of arrest. The rationale is clear. It's
15 an incredibly valuable tool to solve and prevent
16 crime. It allows law enforcement to act more
17 quickly.

18 In many states, these laws were passed
19 as a result of specific cases where serial killers
20 and rapists with prior felonies could have been
21 identified and apprehended earlier had the arrestee
22 testing been permitted. Bottom line, including the
23 arrestee profiles in CODIS, we will apprehend
24 violent criminals before they can strike again.

25 DNA collection post-arrest will have

1 positive impact on several fronts; catching violent
2 repeat offenders more quickly, preventing future
3 violent crimes, conserving resources and saving
4 money and reducing wrongful convictions.

5 Now, the case that I mentioned earlier
6 that we had a conviction on a couple weeks ago, I
7 went back and got into the files and the history of
8 this defendant. That wasn't necessarily the case
9 that post-arrest DNA would have helped. We've been
10 fortunate enough, just in my time as District
11 Attorney in Cumberland County, to have prosecuted
12 several cold cases, and we have several ongoing
13 right now.

14 There was a murder of a confidential
15 informant took place in Cumberland County in 1999.
16 We eventually got a DNA hit in 2005 and were able
17 to prosecute the defendant, and he was put away for
18 over 20 years for committing that homicide. In the
19 interim, between 1999 when the crime was committed,
20 and 2005 when we got a CODIS hit based on a
21 conviction that happened around that time, there
22 were three arrests of that defendant that could
23 have yielded DNA that we could have used to compare
24 to the scene in 1999.

25 And that's one of those examples where a

1 case would have been solved more quickly. We got
2 it done ultimately, but it wasn't post-conviction
3 DNA. It was DNA from one scene; DNA from the other
4 scene in 2005. Had we had post-arrest DNA for the
5 felony arrest that that defendant had between 1999
6 and 2005, we would have solved the case right then.
7 So, real-world example from right here in central
8 Pennsylvania of how post-arrest DNA would help us.

9 Now, there's no doubt that there are
10 fiscal implications to this, and our friends from
11 the state police are here. Pennsylvania State
12 Police does a wonderful job for us in DNA testing.
13 I remarked to one of the troopers that I was
14 sitting with back there today, that we had two
15 witnesses connected with the Pennsylvania State
16 Police who testified in the trial that we had a
17 couple weeks ago, and they did a fantastic job.

18 DNA can turn cases into a scientific
19 learning experience for jurors very quickly, and
20 the witnesses from the state police did a wonderful
21 job. Nobody in this room will be surprised to hear
22 the state police is overburdened with work. I
23 mean, there are implications to this. When you
24 weigh that against the benefits we could have down
25 the road, we believe it's something that desires

1 serious consideration. It also has the potential
2 to save us millions of dollars.

3 Congress passed an act, the Enhanced DNA
4 Collection Act last year to expand and encourage
5 arrestee DNA collection. It authorizes federal
6 funding to states that pass laws implementing DNA
7 collection; not just a token amount. Up to a
8 hundred percent of implementation costs in the
9 first year can be fully fund by the federal
10 government. It could actually save tax dollars in
11 the future.

12 Recent study, University of Virginia,
13 found that offenders who submit samples, especially
14 those under 25 and those with multiple convictions,
15 continue to commit new offenses, but are
16 apprehended at a greater rate than those not in the
17 database. While an offender whose DNA is entered
18 in the database, 23.4 percent more likely to be
19 convicted of another crime within three years than
20 their unprofiled counterparts.

21 Implementing arrestee DNA legislation in
22 Pennsylvania would have a beneficial effect.
23 Victims and taxpayers will be spared the cost of
24 crimes that could be deterred and prevented. The
25 work of law enforcement will be more efficient and

1 more accurate and will focus on the right suspect
2 sooner, save time and resources otherwise spent
3 investigating other leads and suspects. The more
4 comprehensive our DNA database, the less likely it
5 will be for wrongful convictions to result.

6 Bottom line for the Pennsylvania D.A.
7 Association is that Senate Bill 150 is an example
8 of public policy that makes sense, both fiscally
9 and socially. We believe it will save the
10 taxpayers money, but also, stop preventable crimes
11 and avoidable tragedies.

12 Thank you for the opportunity to appear
13 here today on behalf of my colleagues. And
14 certainly after my friend, Mr. Beemer, is finished,
15 I'll be happy to answer any questions anybody might
16 have.

17 CHIEF DEPUTY A.G. BEEMER: Good morning,
18 Chairman Marsico, Chairman Caltagirone, members of
19 the Committee: Thank you for the opportunity.

20 I'd like to echo many of the sentiments
21 that my good friend, Mr. Freed, has given with
22 regard to support for this Senate Bill 150 from a
23 law enforcement perspective, and we both been doing
24 this a long time. I spent 12 years in Pittsburgh
25 prosecuting some of the most violent offenders in

1 that area. And I could tell you that the practical
2 effect here for law enforcement could be profound.

3 I wanted to focus at the beginning of my
4 remarks on a case that came out of Pittsburgh, and
5 much like the case out of Cumberland County that
6 Dave just recounted, talk about what really the
7 practical effects can be of this type of
8 legislation.

9 Late one night, 1998, an individual
10 named Michael Lipinski brought into a Pittsburgh
11 home and tied up a 17-year-old girl. The sleeping
12 girl awoken to find Lipinski standing over her. He
13 raped and assaulted her. DNA evidence was
14 collected from the victim, but the crime went
15 unsolved.

16 In 2002, in Wilkinsburg, a small area
17 just outside of Pittsburgh, Lipinski pried open the
18 screen of a home and climbed through an unlocked
19 window. He kidnapped a 3-year-old girl; took her to
20 the Highland Park section of Pittsburgh where he
21 raped and sexually assaulted her; removing the
22 toddler's one-piece pajama. DNA evidence was again
23 collected from the victim, but the crime went
24 unsolved.

25 Lipinski struck again in Pittsburgh in

1 2005; this time snatching a sleeping 9-year-old
2 girl off a couch and assaulting her. This time,
3 too, the crime remained unsolved even though DNA
4 evidence was retrieved from the victim.

5 Finally in 2008, Lipinski was identified
6 as the perpetrator of all three of these previously
7 unsolved attacks when CODIS, the Combined DNA Index
8 System, matched DNA samples obtained from these
9 crime scenes with the sample that was taken from
10 him following a separate 2008 conviction for sexual
11 assault.

12 Lipinski had a lengthy history of
13 contact with the criminal justice system, including
14 a dozen or so arrests between 1989 and 2002, some
15 for sexual offenses which are contemplated under
16 this Senate bill. If it had been the law at the
17 time of those arrests, it very well may have
18 prevented the second and third vicious sexual
19 crimes. It would have been lawful for Lipinski's
20 DNA to be matched to the evidence gathered from the
21 1998 crime scene and for him to be prosecuted and
22 punished; thereby, possibly preventing the 2002 and
23 2005 assaults.

24 Sadly, this case of Michael Lipinski in
25 Pittsburgh is not unique, and we see this all

1 throughout the country as well as within this
2 Commonwealth. There's been a number of studies
3 from other jurisdictions that have established the
4 collection of DNA at the time of arrest aids the
5 timely identification of perpetrators engaged in
6 violent criminal activity.

7 A study out of Chicago detailed the
8 history of eight felons and found that if DNA had
9 been collected at the time of their first felony
10 arrest, it could have prevented 60 additional
11 violent crimes from occurring, including 22 murders
12 and 30 rapes. Sort of the unfortunate reality in
13 our business that we understand that, oftentimes,
14 with sexual offenses, with crimes of violence, they
15 are not one-time offenses. Offenders do this over
16 and over and over again until the criminal justice
17 system has the ability to stop them.

18 Similar studies in Denver and Maryland
19 have illustrated the tangible benefits for law
20 enforcement and society in identifying and stopping
21 these violent offenders. One need only look to the
22 statistics in Virginia, one of the first states
23 back in 2003 to require DNA collection at the time
24 of arrest for certain felonies to see how
25 concretely this procedure can help solve crimes.

1 Virginia authorities have received 785 hits on
2 unsolved cases just through arrestee data bank
3 alone, including 117 hits associated with sexual
4 assaults.

5 These tangible benefits to law
6 enforcement and to actual or would-be victims of
7 crime can legitimately be expected to follow from
8 the passage of Senate Bill 150. Not only would
9 this bill assist in prosecuting crimes that might
10 otherwise go unsolved, but in a number of cases it
11 would prevent specific instances of violent crime
12 altogether.

13 Maintenance of this type of database
14 would have other benefits as well. It would be a
15 value tool for law enforcement to accurately
16 identify individuals in custody. Importantly, one
17 can also appreciate the potential for such data as
18 David has indicated to exonerate those who have
19 been wrongly suspected of, or even in some cases
20 charged and convicted with certain crimes.

21 Not surprisingly, this issue of
22 post-arrest DNA has spawned much debate in the
23 courts and in our society at-large. Whether the
24 taking of a sample from someone arrested for a
25 serious crime is the sort of Fourth Amendment

1 intrusion that is permitted was ultimately settled
2 by the United States Supreme Court in June in
3 Maryland versus King. In concluding that Maryland
4 statute which permitted the taking of DNA samples
5 from those arrested for serious criminal
6 transgressions was constitutional, the courts
7 scrutinized the process involved and determined it
8 could be reasonably described as minimally
9 invasive, much like the taking of a fingerprint at
10 arrest. As Justice Kennedy noted: The process is
11 a noninvasive, painless and simple swab on the
12 inside of a person's cheek.

13 While DNA collection is a minimal
14 intrusion similar to fingerprinting, DNA is
15 actually far more reliable and precise method of
16 human identification in crime-solving for a
17 perpetrator at arrest and excluding or exonerating
18 innocent people.

19 CODIS allows DNA profiles to be compared
20 from state to state and across many crime
21 laboratories. There are several databases within
22 CODIS, including one of DNA of known individuals
23 and another containing DNA profiles recovered from
24 crime scenes. The databases are filled with a
25 series of DNA pairs from each genetic profile,

1 typically identifying 13 locations, or loci as
2 they're commonly referred to in court, on any DNA
3 molecule.

4 It's important to note that CODIS system
5 have numerous safeguards in place to prevent the
6 improper use or dissemination of private
7 information obtained through the entry of these
8 genetic loci into the system. Information obtained
9 can only be used for identification or match
10 purposes in the criminal investigation, and not to
11 decode genetic markers, or to identify personality
12 traits, illnesses or genetic ancestry.

13 I'd like to highlight just a couple of
14 important provisions that this bill contains.
15 First, like the Maryland statute that was upheld in
16 Maryland v King, it provides for the taking of
17 samples for those arrested for serious crimes; not
18 every arrestee.

19 Second, it allows for an expungement
20 procedure in the event that charges for which an
21 individual was arrested or withdrawn, dismissed or
22 resulted in a not guilty verdict.

23 I think the provision, as included in
24 Senate Bill 150, is very important because it
25 mirrors the expungement provision found in Title

1 18, which allows an individual to go to a Common
2 Pleas Court judge and ask that, based on the
3 results of their particular arrest, that the
4 expungement occur. That's an important provision
5 and an important safeguard.

6 No matter how carefully drafted and
7 well-intentioned the piece of legislation, as my
8 colleague described, ultimately only be as
9 effective as the resources that are devoted to it.
10 The Pennsylvania State Police have noted the
11 difficulties in effectively implementing certain
12 provisions without a considerable increase in
13 allocation of resources to the existing framework of
14 their crime laboratories.

15 The gap in time, which can be up to a
16 hundred days currently would only be further
17 exacerbated without the addition of more crime lab
18 equipment and analysts.

19 But, it is important to note that at
20 least one scholarly study makes a compelling case
21 that there's actually a fiscal benefit to the
22 adoption of an arrestee DNA legislation. Jay
23 Siegel, a Ph.D., Department Chair of Forensic
24 Science in Indiana University, Indianapolis,
25 conducted a study entitled, Why Arrestee DNA

1 Legislation Can Save Indiana Taxpayers Over 50
2 Million Per Year. He found that implementing DNA
3 upon arrest legislation could save Indiana
4 taxpayers, a willingness to provide the resources
5 necessary to implement this bill now can have a
6 positive fiscal impact on this Commonwealth.
7 Moving forward, our office would welcome the
8 opportunity to work with you to try and identify
9 ways to make this legislation viable in terms of
10 fiscal resources.

11 We hold firmly to the belief that this
12 legislation requiring the taking of DNA of certain
13 arrestees can help prevent the victimization of an
14 untold number of innocent people, help solve
15 previously unsolvable acts of violence and exclude
16 the truly innocent. I urge the Committee to
17 consider this enormous benefit that this could have
18 on society as a whole and to individual victims for
19 many of whom justice and closure have been too long
20 delayed. With appropriate protections in place,
21 such as the expungement from the database couple
22 with the privacy protections I mentioned earlier,
23 this law could provide law enforcement and the
24 judicial system with an incredibly powerful
25 forensic arsenal to protect the innocent and punish

1 the guilty.

2 I thank you for the opportunity to speak
3 here today and would welcome any questions the
4 Committee might have.

5 MAJORITY CHAIRMAN MARSICO: I have a
6 quick question. Senate Bill 150 provides for the
7 taking of samples for those arrested for serious
8 crimes. Can you identify some of those serious
9 crimes for the members and the public?

10 DISTRICT ATTORNEY FREED: Sure. Serious
11 sexual assaults, robberies, felony burglaries.
12 Anything else? (Looking at an audience member).
13 And misdemeanor sex crimes as well, so indecent
14 assault. Serious felonies is essentially what
15 we're talking about.

16 MAJORITY CHAIRMAN MARSICO: Okay.
17 Chairman Caltagirone.

18 MINORITY CHAIRMAN CALTAGIRONE: The
19 expungement issue, in talking with counsel, what I
20 would suggest, and maybe we could work on an
21 amendment to it; if the charges are withdrawn,
22 dismissed or resulted in a not guilty verdict,
23 rather than putting the defendant through extra
24 cost to have an attorney, shouldn't a judge be
25 allowed to automatically call for the expungement?

1 CHIEF DEPUTY A.G. BEEMER: I would
2 respectfully ask the Committee to consider that --
3 And I believe this provision almost directly
4 mirrors Section 9122 of Title 18, which is the
5 expungement provision. The reason that that
6 procedure is in place and makes a lot of sense --
7 in that situation we're talking about the
8 expungement of an arrest, including fingerprinting
9 and other things, we'd be talking about an
10 expungement of the DNA profile.

11 There are certain circumstances under
12 which it might make sense for a district attorney's
13 office, the Attorney General's office, whoever has
14 been involved in the prosecution of the case, to
15 take a position that those -- that information
16 should remain in the database, even if a conviction
17 has not been obtained. That happens not
18 infrequently in cases where we look at somebody and
19 make a determination that it's not proper to
20 expunge the record because of the underlying set of
21 circumstances involved in the matter.

22 I'd make an argument that the example I
23 gave you involving David Lipinski would be just one
24 of those situations, where you look at somebody
25 who's been arrested over and over again for what we

1 call gateway crimes. There were burglaries,
2 thefts, misdemeanors, sexual assaults, and there
3 was not a disposition. In those situations it's
4 appropriate, rather than having an automatic
5 expungement, to have a Common Pleas judge review
6 all of the facts and circumstances and determine
7 whether or not expungement is appropriate.

8 MINORITY CHAIRMAN CALTAGIRONE: Even
9 with that being said, shouldn't you allow the
10 judge, then, to make that determination for that
11 expungement to take place then? There's going to
12 be innocent people caught up in some of this.

13 DISTRICT ATTORNEY FREED: I think the
14 process is that, ultimately, the determination will
15 be made by the Court.

16 MINORITY CHAIRMAN CALTAGIRONE: That's
17 the point. The Court rules, then it should be done
18 automatically, correct?

19 DISTRICT ATTORNEY FREED: Oh, yeah. If
20 the Court rules, it's done.

21 REPRESENTATIVE CALTAGIRONE: Okay.

22 DISTRICT ATTORNEY FREED: Representative
23 Caltagirone, as you know, this is an issue that I'm
24 interested in as well on the misdemeanor side.

25 I don't want to get off topic here, but

1 expungement is an important thing for people who've
2 shown that they've modified their behavior. We
3 don't want them to come back in the criminal
4 justice system or be hurt down the road.

5 There's a case that some of you might be
6 familiar with. A number years ago we had a
7 serious, serious sexual assault case. The young
8 lady who was the victim had reported the case
9 before; believed that she wouldn't -- she didn't
10 think she'd be believed, so she essentially got her
11 assailant on the phone and recorded a conversation.
12 She even did the kind of preamble that we in law
13 enforcement do before -- Well, we do a consensual
14 phone call. Unfortunately, she hadn't gone to the
15 police yet.

16 So, we had this defendant implicating
17 himself on tape, and we couldn't use it based on
18 the law. That's been taken care of somewhat by
19 some of the great work that's been done here on
20 wire tap. But, the reason I bring this up is
21 because, we came to trial on that case. And as
22 prosecutors, we have to make decisions all the
23 time. Can this victim go forward? Is going
24 forward the best thing for the victim in this case?
25 And often, we resolve cases because the victim

1 can't go forward.

2 In this case, this is one that I pushed.
3 This young lady kept saying, I can't do it, I can't
4 do it. There were family circumstances; that she
5 was being intimidated. It was awful. Ultimately,
6 she broke down on the stand and she couldn't go
7 forward. Now, my prosecutor who's doing the case
8 was Al Charger, he said, I still want to do it. I
9 said, no, we do not have the evidence now. If she
10 can't go forward, we have to withdraw it. So we
11 withdrew it. It's the only thing in my career I've
12 ever done that; withdrawn a case after a jury was
13 picked.

14 But, I don't believe for a second that
15 the fact that that defendant was arrested, who I
16 know was guilty and who implicated himself on a
17 tape, should have his record expunged, unless he
18 goes through a process and the Court would rule
19 that way.

20 So, automatic based on withdraw or
21 dismissal, no. Goes through the process that we
22 have and a Court makes a ruling, absolutely. We
23 have to abide by that.

24 MAJORITY CHAIRMAN MARSICO: Chair
25 recognizes Representative Barbin for question.

1 REPRESENTATIVE BARBIN: Thank you, Mr.
2 Chairman. And thank you for testimony today. I
3 have a question, though, that kind of goes to the
4 expungement issue.

5 There is -- I'm sure there's 28 other
6 states that have to deal with the expungement
7 issue. Who do you believe does the best job of
8 reaching the balance on the expungement issue,
9 because you've identified two things that are going
10 on here. One is the person who has been charged
11 with the sexual crime that would be into the
12 database. It's found that he's not -- the charges
13 are dismissed, and you want to get rid of that
14 person's, basically, fingerprint, DNA sort of
15 evidence.

16 But there's another person that we're
17 gonna probably have to deal with as well, and
18 that's the person who actually was convicted of a
19 crime. It might be a misdemeanor. We have their
20 DNA now because of the bill, but they get an
21 expungement.

22 Should there be something in this bill
23 that says, if you've been convicted, even if you
24 get an expungement, you're not covered by this
25 thing? Because, to me, the expense of this thing

1 is gonna be, how many times, once we establish the
2 database, do we have to take that information out?
3 To me, it sounds like it's a whole lot like
4 fingerprints. We're not getting rid of
5 fingerprints. If your fingerprints are in a system
6 in the FBI, they stay in that system. So why
7 should it be any different here?

8 DISTRICT ATTORNEY FREED: Well, I think
9 it is very much like fingerprints. If I understand
10 the question, it would be someone's -- The DNA is
11 in and then there's a conviction. Later on down
12 the road there's an expungement, even following
13 conviction.

14 REPRESENTATIVE BARBIN: Right. That
15 person should stay in the database.

16 DISTRICT ATTORNEY FREED: I agree.

17 REPRESENTATIVE BARBIN: Okay.

18 CHIEF DEPUTY A.G. BEEMER:

19 Representative, I also think it's important to note
20 that, of the 28 states that have currently
21 implemented some form of arrestee DNA, not all of
22 them have implemented these types of safeguards
23 regarding the expungement process. There's
24 actually a number of states that have implemented
25 this type of legislation that has not included

1 that.

2 In fact, in those states when your
3 evidence is taken as a result of the specifically
4 enumerated crimes in those statutes, that stays.
5 So, this is I think one of the reasons that this
6 type of legislation actually strikes a balance
7 between an individual's liberty interest and the
8 need for public safety and law enforcement to have
9 these tools in their toolbox.

10 DISTRICT ATTORNEY FREED: Let me give
11 you one quick, real-world example; not necessarily
12 a specific example. But I don't know -- Bruce
13 worked in a much bigger office; much bigger D.A.'s
14 Office than the ones that I've worked in York and
15 Cumberland County.

16 In Cumberland County, I can tell you,
17 the expungement process for people who have charges
18 dismissed or are acquitted, that's where our
19 expungement process actually works the best,
20 because, when those petitions come in, they're
21 being reviewed. No matter what the size the office
22 is, those petitions are being review by somebody in
23 the office. In my office it's me. I look at them.
24 As often as not, I will indicate to the Court that
25 we don't have an objection. I don't think I have a

1 legitimate law enforcement reason to try to keep
2 these records in a database. So, as often as not
3 I'm saying, go ahead and do it.

4 Sometimes we fight it. I can tell you the ones I
5 fight, what's my winning percentage? Well, if I
6 was a baseball player, I'd be in the Hall of Fame,
7 but it's not much above 300.

8 MAJORITY CHAIRMAN MARSICO: Chair
9 recognizes Representative Hackett.

10 REPRESENTATIVE HACKETT: Thank you,
11 Chairman.

12 Both testifiers seem to hint at or
13 allude that there would be costs to Pennsylvania
14 State Police. Is it true -- Or maybe this isn't a
15 question for this panel; maybe another panel.
16 Isn't it true that we use private contracted labs
17 now, and would we be able to expand that in the
18 private sector?

19 DISTRICT ATTORNEY FREED: There could
20 certainly be a benefit, I would think, to the
21 private sector for this. As president of the D.A.
22 Association, we spend a lot of time talking about
23 how are we spending those precious resources that
24 were granted to us by our counties; what private
25 labs are we using.

1 I come to you from a perspective of -- I
2 actually have my own forensic lab to test drugs and
3 test blood. We think that's an efficiency in our
4 county. I can't do DNA. That's just way too far
5 out there.

6 A lot of people in your area,
7 Representative Hackett, use Natural Medical
8 Services; does a wonderful job, and they have some
9 big contracts with counties, especially in the
10 southeast. But they're working throughout the
11 state. There are labs, I know, in Allegheny County
12 that are used. So, the potential is there.

13 The example that I gave of the case
14 earlier where the state police did some great
15 testimony for us a couple weeks ago, we actually
16 had a private lab involved also and an expert from
17 the University of Pennsylvania. So, depending on
18 the case, we will send out to a private lab not
19 because we don't trust what Pennsylvania State
20 Police does--we actually do--but we understand the
21 workload they have, and sometimes we just need it
22 faster than they can give it to us. So, we're
23 sending that out. We, as the stewards of the
24 public funds, have to make those decisions. But I
25 think that opportunity is there.

1 REPRESENTATIVE HACKETT: Thank you very
2 much. If I still remember, though, the state
3 police are the only ones -- they take the profiles,
4 though, and then they submit them to CODIS.

5 DISTRICT ATTORNEY FREED: They're the
6 only ones on --

7 REPRESENTATIVE HACKETT: That's going to
8 be a little bit of delay, too.

9 DISTRICT ATTORNEY FREED: That's
10 correct.

11 REPRESENTATIVE HACKETT: Thank you very
12 much.

13 MAJORITY CHAIRMAN MARSICO:
14 Representative Saccone for a question.

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

17 I still have -- I'm a little bit
18 concerned about this expungement deal. I
19 understand your argument, but I think what
20 Representative Caltagirone was also getting at is,
21 we need to prevent the innocent people the burden
22 of having to petition to have their information
23 expunged and shift that burden back to the
24 government. Isn't there a way to do that to say,
25 look, if you've been -- if charges been dismissed

1 or you've been found innocent, why should I have to
2 come in and petition the Court to expunge my
3 information? Why shouldn't it be the other way
4 around? That should automatically be expunged.
5 Let the government, if they think there's a
6 compelling reason to keep my information, show
7 evidence as to why it should be kept.

8 I worry about that, because I know it's
9 so difficult to deal with the government and the
10 bureaucracy. Allegheny County people have to go
11 down -- Going down to Pittsburgh for them, it's a
12 big county; it is a real burden for people have to
13 go down there and work this system to get this
14 through; they get the runaround. My office deals
15 with this kind of stuff all the time with the
16 bureaucracy.

17 And preserving the whole notion of
18 presumption of innocence, this is beyond
19 presumption of innocence. If your charge has been
20 dismissed or you've been found innocent, why should
21 I then have to go in and make a case to the Court
22 as to why my information should be cleansed?

23 I don't know. I'm just looking for a
24 compromise that would do what you want to do, but
25 make it easy for people to deal with the

1 government.

2 DISTRICT ATTORNEY FREED: Of course,
3 we're always willing to have a conversation.
4 Representative Saccone, there's nobody who would
5 say you're not a friend of law enforcement. We
6 know you're a friend of law enforcement. I
7 understand that people have some very legitimate
8 philosophical troubles with these issues. We're
9 coming at this from a law enforcement perspective.
10 I think there's some room to talk.

11 What you're bringing up are actually a
12 couple of different things. Somebody who is found
13 innocent, that to me, that sounds like a full
14 acquittal. In some of the things Representative
15 Caltagirone and I have been talking about, a full
16 acquittal would be automatic. That's essentially
17 the state of the law right now.

18 Cases that are dismissed, a little bit
19 of a naughtier issue for us because, I think as we
20 both have said, there are reasons for that that
21 sometimes go beyond -- Well, we don't have the
22 evidence to go forward. So, I understand your
23 concerns, and I think it's certainly a conversation
24 we should all be having.

25 REPRESENTATIVE SACCONE: Thank you.

1 MAJORITY CHAIRMAN MARSICO:

2 Representative Dean, quick question.

3 REPRESENTATIVE DEAN: Thank you, Mr.
4 Chairman. Thank you for your testimony, gentlemen
5 and lady, today. I just -- for clarification.

6 I understand that Senate Bill 150 would
7 provide for arrestee DNA testing. Do I also
8 understand that it would provide for expanded DNA
9 testing of those who are in prison or on parole or
10 probation also under these other offenses?

11 CHIEF DEPUTY A.G. BEEMER: Yes.

12 REPRESENTATIVE DEAN: And how valuable
13 piece of this legislation is that to you and to law
14 enforcement?

15 CHIEF DEPUTY A.G. BEEMER: I think it's
16 valuable, certainly. That sort of expansion
17 certainly can lead to the sort of crime solving
18 that we're, obviously, very interested in in law
19 enforcement. I think that expansion doesn't come
20 with it the same sort of concerns that the arrestee
21 legislation comes with. We're certainly in favor
22 of and in support of that sort of expansion which
23 is contained within the bill, and expect that there
24 will be some tangible benefits to law enforcement
25 in individual cases through doing that.

1 That's sort of a consistent addition to
2 what is already existing with the conviction DNA
3 law that's currently in effect. I think it makes
4 perfect sense to expand it in that way. I think
5 we're gonna hopefully see some -- would see some
6 real benefit from that.

7 REPRESENTATIVE DEAN: Has anybody taken
8 a look at the numbers? What kinds of numbers of
9 DNA sampling, if this were to go into effect, would
10 result, if you take a look at recent history last
11 two, three, four, five years?

12 CHIEF DEPUTY A.G. BEEMER: I think in
13 the Commonwealth we're looking -- I believe the
14 state police can also speak to these numbers. I
15 believe you're talking in terms of felony arrests
16 in the Commonwealth somewhere around 80 to 85,000.

17 REPRESENTATIVE DEAN: What period of
18 time?

19 CHIEF DEPUTY A.G. BEEMER: Annually. It
20 fluctuates a little bit, but you roughly see
21 between 80 and 90,000 arrests, I believe, in the
22 Commonwealth a year --

23 REPRESENTATIVE DEAN: Okay, thank you.

24 CHIEF DEPUTY A.G. BEEMER: -- on felony
25 cases; not misdemeanors or lower-level cases.

1 REPRESENTATIVE DEAN: So we don't have
2 the numbers really captured for the others that
3 would be within this, at the felony level, 80,000
4 plus?

5 CHIEF DEPUTY A.G. BEEMER: Correct.

6 REPRESENTATIVE DEAN: Thank you very
7 much.

8 CHIEF DEPUTY A.G. BEEMER: Thank you.

9 MAJORITY CHAIRMAN MARSICO:
10 Representative Sabatina for question.

11 REPRESENTATIVE SABATINA: Thank you, Mr.
12 Chairman. Thank you, gentlemen and ladies, for
13 your testimony. Just a quick question.

14 Correct me if I'm wrong, but convictions
15 cannot be expunged; only arrests, is that
16 correct?

17 CHIEF DEPUTY A.G. BEEMER: There's
18 limited circumstances under which convictions can
19 be expunged. You have to be over the age of 70 and
20 free from the arrest or conviction for 10 years, or
21 you have to be deceased for three years, in which
22 case you can apply -- or your family could apply
23 for an expungement on your behalf. So the
24 circumstances with regard to convictions are very
25 limited.

1 REPRESENTATIVE SABATINA: And just along
2 my thinking patterns; if one is arrested for one of
3 the crimes enumerated in the bill, and DNA evidence
4 is collected, and for one reason or another the
5 case does not proceed against them; whether or not
6 there's a lack of evidence or other circumstances
7 that prevent a conviction or the case doesn't
8 result in a conviction, what happens to that DNA
9 evidence once the case is over and the person is
10 exonerated?

11 DISTRICT ATTORNEY FREED: Under the
12 current statute, that stays in unless the
13 expungement process takes place and the case is
14 expunged. I take issue with the term exonerated.
15 Just because the case is dismissed doesn't mean
16 somebody is exonerated. As it stands now, that
17 information would stay in unless it was ordered to
18 be removed, basically from the expungement process
19 that's in place.

20 REPRESENTATIVE SABATINA: So it's still
21 possible -- You're saying it's still possible to
22 remove that DNA evidence from the database upon
23 expungement?

24 DISTRICT ATTORNEY FREED: My
25 understanding is yes.

1 REPRESENTATIVE SABATINA: All right.

2 Thank you very much.

3 DISTRICT ATTORNEY FREED: Thank you.

4 MAJORITY CHAIRMAN MARSICO: Chair
5 recognizes Representative Costa.

6 REPRESENTATIVE COSTA: Thank you, Mr.
7 Chairman. Gentlemen, thank you for being here. I
8 appreciate it.

9 Question for you. I just had the
10 privilege of touring the DNA lab in Greensburg, and
11 I learned how really overburdened they are. And I
12 also learned that, when we passed another bill
13 which gave them 60 days to respond, it just slammed
14 the brakes on all the cases that were going on and
15 backlogged everything. And I also understand--as a
16 delegation chairman for Allegheny County, I've been
17 working with our county--our DNA lab may be closing
18 because of lack of funding. And talking with the
19 folks from Greensburg, it would cripple them if
20 that happened; not to say what Philadelphia may do.

21 A question for you would be: What would
22 be the problem with waiting to conviction? Like,
23 when we take fingerprints. Sometimes you go into a
24 preliminary hearing. You have to have your
25 photograph; have it once you're held for court. I

1 don't want to do something while -- We're all --
2 Every one of us here on this panel, and definitely
3 you folks, are pro-law enforcement. We want to do
4 everything we can to help law enforcement, but we
5 don't want to do a good thing that will turn into a
6 bad thing. And I think if we push this bill
7 forward the way it stands right now, that's exactly
8 what we're gonna do.

9 So, what would be your thoughts of just
10 waiting until a conviction and then going from
11 there? Because once the conviction, before
12 pre-sentence investigation, we can have the DNA and
13 everything taken. Whoever wants to respond,
14 gentlemen. Thank you. Thank you, Mr. Chairman.

15 DISTRICT ATTORNEY FREED: Well, that's
16 essentially what we have now. The post-conviction
17 testing and the post-arrest, clearly, from our
18 perspective, widens our opportunity to reap those
19 benefits that we spoke about. How to handle that
20 in terms of the workload for PSP, I think that's
21 really the toughest issue out there.

22 I was in Pittsburgh, I think three weeks
23 ago on Monday, and I was with District Attorney
24 Zappala, and he's concerned about the lab and DNA
25 out there. He is a strong believer in things like

1 using DNA evidence, GPS technology. He wants to be
2 on the cutting edge and is enthusiastic about that,
3 but he's very concerned about his ability to do
4 that.

5 I don't know that I have a great answer
6 for you. Certainly, Bruce being the Allegheny
7 County guy, I probably should let him take the
8 question. But, it's a tough issue for PSP. I know
9 they'll talk more about that, because they want to
10 do the best job they can. I think there -- Look,
11 there's a delay right now. This passes, there will
12 be a delay in getting that stuff into the system.

13 CHIEF DEPUTY A.G. BEEMER: Thank you,
14 Representative Costa. I would only add to that.
15 This is one of those things where we've had the
16 Supreme Court of the United States come down on
17 this issue. There's no doubt that it can be a very
18 important tool, not only in solving crimes --

19 I think, from my perspective and my
20 standpoint, the biggest part of it is, what can it
21 prevent? What are the really horrific crimes that
22 occur in our counties and our cities and all
23 throughout the Commonwealth that this tool could
24 prevent? I think those are significant. That's
25 the reason why to consider doing this and not just

1 relying on conviction, because of the individuals
2 that are arrested and come into the database. And
3 while their case is pending, maybe there's three,
4 four, five, six other violent cases out there that
5 could be solved as a result of this.

6 The practical implication is rather
7 enormous. I believe you're right in the sense that
8 it can be counterproductive if the resources aren't
9 put into this. What good does it do to implement
10 this kind of legislation if we're on a 200, 300-day
11 backlog and none of this stuff is ever going to get
12 looked at or analyzed or put into the system until
13 after somebody's either convicted or the case is
14 dismissed or they're exonerated?

15 If you have that big of a problem and
16 those big of a problem with resources, then you're
17 right. Then you start to wonder, you know, have we
18 bitten off more than we can chew, so to speak. I
19 think it's a legitimate question. Certainly, our
20 able representative from PSP can be probably even
21 more illustrative in that regard.

22 But, in terms of why we would want it,
23 it's the reasons I just described because, it can
24 really have an opportunity to prevent some really
25 horrific, violent crimes throughout this

1 Commonwealth, and those tools are there, and
2 they've been deemed to be constitutional.

3 REPRESENTATIVE COSTA: I completely
4 agree with you as to why we need it, and I agree
5 that it's a good thing, and I would vote for it if
6 I, indeed, knew that it wasn't gonna stifle cases
7 that are already there. Be it taking two years or
8 whatever -- because it takes two years, from my
9 understanding, just to train a technician to be on
10 their own to do this DNA processing. Now, if you
11 add the arrestees and then you turn around and add
12 the expungements to it, you've actually crippled
13 the thing we have right now. And I don't want to
14 see people getting away with something.

15 So, I don't know what the answer is.
16 Again, I'm looking forward to the PSP. I read some
17 stuff about private labs. They're not as good as
18 they claim to be with the DNA. I mean, the
19 percentage -- We can't have one mistake with DNA.
20 If we have one mistake, it's gonna give defense
21 attorneys that segue to say, what about this poor
22 guy that was convicted and they screwed up the DNA?

23 Gentlemen, thank you very much for being
24 here. I appreciate it, and it was good seeing you
25 both.

1 MAJORITY CHAIRMAN MARSICO: One last
2 question. Representative Neuman.

3 REPRESENTATIVE NEUMAN: Thank you for
4 your testimony today. I really appreciate it.
5 Thank you, Mr. Chairman, for recognizing me.

6 My question kind of goes to what
7 District Attorney Freed said. If we went to upon
8 conviction, it would essentially be the same system
9 we have currently. What serious crimes are added
10 in this bill that you cannot collect DNA from
11 currently?

12 DISTRICT ATTORNEY FREED: None.

13 REPRESENTATIVE NEUMAN: None. So,
14 any --

15 DISTRICT ATTORNEY FREED: Right. So
16 this somewhat mirrors what we have for
17 post-conviction.

18 REPRESENTATIVE NEUMAN: Okay. In the
19 current system, do you know how many samples are
20 given to the labs per year under the current
21 system?

22 DISTRICT ATTORNEY FREED: I don't have
23 those numbers. State police, I'm sure, will have
24 something.

25 REPRESENTATIVE NEUMAN: Those questions

1 will probably be better suited for the state
2 police, then.

3 The other question is, how do you
4 collect the data? Who would collect the data, and
5 how would that data be collected?

6 DISTRICT ATTORNEY FREED: I think that's
7 something that will have to be discussed as the
8 implementation goes on. I can tell you, from the
9 perspective of a county that has Central Booking,
10 it will be a buccal -- I know how we do it in
11 Cumberland County. It will be a buccal swab, a
12 cheek swab, at Central Booking, and that's the
13 ideal way to do it. Those kits are everywhere now.
14 It's, frankly, a pretty nonintrusive way to get it.

15 When somebody's arrested, especially for
16 an offense like this, they'll have to be processed,
17 and, ideally, it's done at the time of processing.

18 REPRESENTATIVE NEUMAN: And is there a
19 training involved with the cotton swab data
20 collection?

21 DISTRICT ATTORNEY FREED: Yes.

22 REPRESENTATIVE NEUMAN: Is it an
23 extensive training?

24 DISTRICT ATTORNEY FREED: I don't
25 believe so.

1 REPRESENTATIVE NEUMAN: Okay.

2 DISTRICT ATTORNEY FREED: It's
3 relatively minimal.

4 CHIEF DEPUTY A.G. BEEMER:
5 Representative, if I could just add one -- because
6 it brings up a very good point, which is sort of
7 the practical implication of this. It is much
8 easier in counties like Cumberland, Allegheny,
9 Philadelphia where they have a Central Booking
10 process where all people that are arrested for
11 crimes come and they go through the same process
12 over and over again.

13 The smaller counties, typically, where
14 there is not a Central Booking process, it becomes
15 much more difficult because then, oftentimes,
16 individual law enforcement agencies are left to the
17 devices of implementing this. And while most of
18 them over time, because it's been such a widely-
19 accepted technique for a hundred years, know how to
20 do a fingerprint and know how to get it into the
21 system.

22 That's a legitimate issue is, are the
23 D.A. swabs, A, being done by people that are
24 trained to do it; and B, how is it getting from
25 point A to point B into the system. That's a very

1 good question, and one that we'd be happy to work
2 with the Committee on and trying to deal with,
3 because there is a lot of disparity across the
4 Commonwealth.

5 REPRESENTATIVE NEUMAN: Thank you. I
6 just want to add that, we focus a lot on the cost
7 of having, maybe, increasing the data, but we also
8 have an added cost in training like you said in
9 smaller counties, especially where they're
10 eliminating municipal police forces and they can't
11 afford the training that they have now. So we need
12 to keep that in mind, the cost of training, as well
13 as the cost of increasing the database. Thank you
14 for your testimony.

15 CHIEF DEPUTY A.G. BEEMER: Thank you.

16 MAJORITY CHAIRMAN MARSICO: I believe
17 that ends our questions. Thank you very much for
18 your being here today and your expertise and your
19 time. Once again, it's good to see all of you; you
20 as well, Amy. Good to see you. Thank you and
21 appreciate it.

22 CHIEF DEPUTY A.G. BEEMER: Thank you
23 very much, Mr. Chairman.

24 DISTRICT ATTORNEY FREED: Thank you.

25 MAJORITY CHAIRMAN MARSICO: Next panel

1 is Jayann Sepich. Jayann is co-founder of DNA
2 Saves. She's here from New Mexico. She's the
3 mother of a murder victim, Katie Sepich; and also
4 Diane Moyer. As you all know, Diane is our Legal
5 Director for the Pennsylvania Coalition Against
6 Rape. Good morning. Welcome. You may proceed
7 when you wish.

8 MS. SEPICH: Good morning. Mr.
9 Chairman, Mr. Chairman, members of the Committee:
10 First of all, let me express my deep gratitude for
11 the opportunity to be here today to share my story
12 with you. I'd also like to say that I've been
13 working on this issue for the past eight years. At
14 the end of my testimony, if it would be appropriate
15 for you to ask me any questions, I would welcome
16 your questions. So, please, feel free to do that.

17 I only have a few moments this morning
18 to persuade you to join 27 other state legislatures
19 and the United States Congress who've made the
20 decision to harness the power of arrestee DNA, to
21 not only to solve crimes, but to exonerate the
22 innocent; to save taxpayers dollars; and most
23 importantly, to prevent crimes and save lives.

24 In a very short time, it will be my
25 privilege to show you how a simple cheek swab,

1 which is less invasive than brushing one's teeth
2 and takes only a few seconds, can bring victims
3 justice sooner rather than later. Also, my
4 testimony will serve to show you, in detail, why a
5 DNA profile is less invasion of privacy than a
6 fingerprint, but how it can keep families like mine
7 from being visited with horrific pain. I know this
8 pain intimately. I live it every day.

9 This is my daughter Katie (showing video
10 slides). On August 31st, 2003, my family woke up
11 to the promise of a beautiful day. It was Labor
12 Day weekend, it was Sunday, and we had plans to
13 have friends and family over for a backyard
14 cookout. At 2:15 in the afternoon the phone rang,
15 and our lives were forever shattered with just six
16 words, have you talked to Katie today?

17 Katie, my incredible, brilliant, loving,
18 vivacious, 22-year-old daughter had just started
19 working on her M.B.A. at New Mexico State
20 University. The night before she had gone to a
21 friend's house after working a full shift as a
22 server at a restaurant; had gotten into a very
23 heated argument with her boyfriend and decided to
24 walk five blocks home, in a very safe neighborhood.
25 She stormed out without her keys, without her cell

1 phone, without her purse. She never made it to her
2 house. Her roommate was calling to see if maybe we
3 knew where she was. Her roommate, Tracy, called
4 all of her friends and even called the local
5 hospitals, and there was no sign of Katie.

6 A few agonizing hours later our worst
7 fears were confirmed. Target shooters found Katie
8 in an old city dump site. She had been brutally
9 raped; she'd been sodomized and beaten; she had
10 been murdered, and she had been set on fire. There
11 are no words to explain the agony. There are no
12 words to convey 10 years later the sense of loss,
13 the depth of despair. We were plunged into a pit
14 so deep, so black, there was no hope; there was no
15 joy.

16 My husband went to the morgue to
17 identify his daughter. He later told me, when they
18 pulled back that sheet and he had to look at her
19 face bruised and contorted with pain, he literally
20 fell to his knees and asked God to take him right
21 there. No father should ever live through this
22 moment; no parent should. And the worst moment of
23 my life was when I had to leave my baby at the
24 cemetery, knowing that on this earth I would never
25 again feel her arm around me; see those big

1 beautiful eyes or hear her musical laughter. We
2 had lost our daughter to a monster, and we needed
3 justice. We needed to know who had done this; we
4 needed to know why. But most importantly, we
5 wanted to find this man and stop him so that he
6 couldn't do it to anyone else.

7 The detective in charge of Katie's case
8 told us that they really didn't have any clues; but
9 that Katie had fought so hard for her life, that
10 underneath her fingernails was the skin and blood
11 of her attacker, and a DNA profile had been
12 extracted from that skin and blood and uploaded
13 into the national forensic database called CODIS.
14 And he explained to me that once a week they would
15 run the offender CODIS DNA database against the
16 crime-scene evidence database to look for a match,
17 and this gave us such broad hope because we knew we
18 had the identity of the man that killed our
19 daughter. We had his identity. We just needed to
20 match it to a name.

21 I made the offhand comment to Detective
22 Jones that this man was such a monster that surely
23 he would be arrested for something else; they would
24 swab his cheek and we would have him. We would be
25 able to identify him and stop him. And that's

1 Detective Jones said, no, that's not how it works.
2 It's illegal in New Mexico and almost every other
3 state in this country to take DNA when we arrest
4 someone. It's illegal.

5 I have to tell you I was stunned. I
6 knew that when someone was arrested we took
7 fingerprints. I knew we took their photographs,
8 but we weren't using the most powerful accurate
9 science we had available to identify the people
10 that were actually, literally hunting down our
11 children and slaughtering them like animals. So I
12 started doing research, and over the next two
13 years, this consumed my life. I started making
14 phone calls to genetic scientists. I started
15 looking on the internet. I wanted to find out why
16 we weren't using it; why we weren't using this.

17 Some testimony has already covered some
18 of these facts today, so I'll go through them very
19 quickly. I came across a City of Chicago study
20 that showed that if eight convicted felons had had
21 their DNA taken at the time of felony arrest, 60
22 violent crimes, including 53 rapes and murders,
23 could have been prevented.

24 But it was when I found the case of
25 Chester Dewayne Turner in California that I

1 realized that arrestee DNA was not about finding
2 the man that murdered my daughter. It was about
3 saving lives. You see, Chester Turner was arrested
4 21 times over a period of 15 years without ever
5 having been convicted of a crime that would allow
6 his DNA to be taken. He finally was convicted of
7 rape, and his DNA was taken, and they found that
8 his DNA was on 12 rape and murdered victims.

9 The first victim was murdered two months
10 after that first felony arrest. He murdered Diane
11 Johnson. He went on to rape and murder Annette
12 Ernest, Anita Fishman, Regina Washington, Debra
13 Williams, Mary Edwards, Andrea Triplett, Desarae
14 Jones, Natalie Price, Mildred Beasley, Paula Vance
15 and Brenda Bries in that period of 15 years; in
16 that period of which he was being arrested again
17 and again and again.

18 These are not names. These are
19 daughters. Every one of these women had people
20 that loved them. Thirteen lives could have been
21 spared, because there were 12 lives--we couldn't
22 save the first life, but there were 11 more, and
23 two of those women were very heavily pregnant at
24 the time they were murdered. Thirteen lives could
25 have been saved with one cheek swab. And to make

1 matters worse, a man named David Jones had been
2 wrongly convicted of two of those murders and had
3 been in prison for nine years when that DNA match
4 was finally taken. One DNA sample taken upon
5 arrest; 11 women saved; and prevented an innocent
6 man from spending nine years in prison.

7 After I found this case, I stopped
8 thinking about arrestee DNA and started doing
9 something about it. I went to my state
10 legislature, and Katie's Law was enacted in 2006.
11 It went into effect January 1st, 2007.

12 At 1:14 a.m., they brought in the first
13 man who was arrested under Katie's Law and they
14 swabbed his cheek, one hour and 14 minutes after
15 the law went into effect. His name was James
16 Monsuco (phonetic), and it matched to a double
17 homicide and he has now been convicted of both of
18 those murders. In New Mexico since our law went
19 into effect, we've had 530 crimes matched to our
20 arrestee DNA database.

21 One of the ones that I am most proud of
22 is the match to an 11-year-old rape and murder
23 victim. Her name was Victoria Sandoval. She was
24 murdered in her own bed in her own home on
25 Halloween night. But what makes this case

1 particularly wonderful is that, it also served to
2 exonerate Robert Gonzales who had been in jail for
3 almost three years wrongfully convicted. They
4 thought -- Excuse me. He was wrongly accused. He
5 was not convicted. They thought that he was
6 involved in the murder even though his DNA did not
7 match. Because he had so much knowledge of the
8 crime scene, they had arrested him and put him in
9 jail. But when they got that DNA match, they found
10 that he did not even know the murderer, so he was
11 released from jail.

12 In New Mexico we have had three men
13 exonerated directly as a result of our arrestee DNA
14 database.

15 It's working all across the country.
16 I'd like to highlight some of the really wonderful
17 successes. California is averaging hits to their
18 DNA database 10 crimes per day. They're averaging
19 300 per month. I think this highlights why it's
20 important to take it upon arrest; not wait until
21 conviction. There's been more matches with
22 arrestee DNA in California in the four years that
23 their system has been than in the last 25 years
24 with convicted DNA alone. More matches in four
25 years with arrestee DNA than 25 years with

1 convicted DNA alone.

2 In California the rate of cases cleared,
3 and investigations aided has increased from 35
4 percent to 67 point 9 percent since going from
5 convicted to arrestee DNA.

6 I also want to talk about a case right
7 here in Pennsylvania. June 4th, 2010, a man named
8 Antonio Rodriquez was arrested for a felony. If
9 arrestee DNA had been the law in Pennsylvania at
10 that time as it is in 27 other states -- And I want
11 to clarify. Some people are saying 28 states. I
12 think they're counting Connecticut, which I don't
13 count, because Connecticut does take DNA upon
14 arrest, but only if someone has a prior conviction
15 for a felony, so I don't count Connecticut, so
16 that's the difference between the 27 and the 28.

17 But, had Pennsylvania had arrestee DNA
18 law, DNA would have been taken at the time of that
19 arrest. Based on the time that it takes arrestee
20 profiles to get into the database, the profile
21 would have been in CODIS by mid-September of 2010.

22 On November 3rd, 2010, 21-year-old
23 Elaine Goldberg was raped and murdered. On
24 November 13th, 2010, Nicole Piacentini was raped
25 and murdered. And on December 15th, 2010, Casey

1 Mahoney was raped and murdered. DNA evidence was
2 available in all three crimes and showed that all
3 three were victimized by the same man.

4 On October 21st, 2010, Rodriguez pled
5 guilty for the felony crime for which he was
6 arrested. But something very interesting happened
7 on December 10th. This was after the first two
8 murders. Vigilantes surrounded the home of a man
9 that they believed was responsible for these crimes
10 based on eyewitness identification. The man in his
11 home was so fearful for his life that he called
12 police and asked them to please come help him,
13 because he was afraid this mob was going to break
14 in and do bodily harm to him. Then he demanded
15 that his DNA be taken, and that DNA sample cleared
16 him of the crime. When Rodriguez pled guilty, his
17 DNA sample was taken because he had been convicted;
18 when he was convicted of the crime. In mid-
19 January, the DNA matched to the evidence on those
20 three murder cases.

21 So what would have been different if
22 we'd had arrestee DNA? It is possible, based on
23 the timeline, that two of these women's lives could
24 have been saved, and that innocent man would have
25 spared the terror of that vigilante mob.

1 Thousands of hours of investigation that
2 went into these rapes and murders would have
3 avoided, saving taxpayers' dollars, and allowing
4 detectives to concentrate their precious resources
5 and time on other crimes that needed to be solved.

6 You will be told reasons why DNA should
7 not be taken upon arrest. One of these is fears
8 that it is invasion of privacy. One of the things
9 that I learned when I was doing research is that,
10 it is not our DNA that goes into CODIS. It is a
11 DNA profile, and that is a very, very different
12 thing. The DNA strand has over 3 billion markers.
13 Only 13 of those go into CODIS, and those are
14 selected specifically by genetic scientists because
15 they have absolutely no ability to disclose any
16 private genetic information other than gender.

17 A very renowned DNA forensic scientist,
18 Doctor Arthur Eisenberg explained it to me this
19 way, because I called him and I said, you know, I'm
20 not a scientist. I'm a mom. I don't understand
21 it. Please explain to me why it's truly not an
22 invasion of privacy. And he asked me if I knew
23 what a 33 rpm vinyl record album looked like. I
24 said absolutely; that's what I had in high school.
25 And he said, if you look at that record album you

1 see the bans where the music is played and you see
2 the spaces where there's no music. When you put
3 the needle down in those spaces, you hear no music.
4 He said, those are the 13 markers that we have
5 selected to put into CODIS, because there's no
6 information in those markers, so there's no
7 capacity to reveal anything private about anyone
8 with that DNA profile. DNA in the database can
9 only be used for criminal identification. It has
10 no potential to reveal any genetic or medical
11 information.

12 Nine of the most revered genetic
13 scientists in the country submitted a legal brief
14 to the United States Supreme Court in the Maryland
15 v King case, and their brief said: The Court
16 should recognize that CODIS profiling is not the
17 type of genetic testing that supplies significant
18 information on disease risk or other physical or
19 behavioral genetic traits.

20 This is actually what exists in CODIS.
21 That's the information that exists in CODIS.
22 There's a lab identifier. In other words, it
23 identifies what lab originated the information.
24 There's a specimen I.D. number, and then there are
25 the markers. There are 26 numbers because two

1 numbers denote each marker, and then there's the
2 analyst's initials that actually did the work.
3 You'll notice there are no names, no Social
4 Security numbers in CODIS; no identifying
5 information whatsoever.

6 And those markers, those markers that I
7 just showed you, those are my markers. I had my
8 DNA profile done and I have my markers on the back
9 of my business card. I hand this out to everyone
10 that I meet. Now, I wouldn't put my Social
11 Security number on my business card. You won't
12 even find my home address on my business card, but
13 my complete DNA profile is on the back of my
14 business card. If you'd like, go ahead and write
15 it down. I don't mind. There's nothing private in
16 a DNA CODIS profile.

17 So, how do we find out who that person
18 is that there's no identifying information? Once a
19 match is made between crime scene DNA and the CODIS
20 profile, the originating state is notified and they
21 re-analyze to verify accuracy. They have to
22 re-analyze it. They have to make sure it was
23 correct; that there were errors. Once that is
24 done, they go to their secure off-line database
25 which contains the specimen I.D. number and the

1 name, and they get that name. They can only
2 release that name to law enforcement that's working
3 on that case. They are prohibited by law from
4 releasing that information to anyone else.

5 And this was testified earlier today,
6 that DNA matches only an investigative lead. Once
7 the decision is made to prosecute that person in
8 court, there has to be a court order to go get
9 another DNA sample. It has to be tested again, and
10 that's what's used as evidence in court. It's a
11 federal offense to tamper with CODIS. It carries
12 very heavy fines, jail time, and there has never
13 been, not once, since CODIS was established, a
14 breach or a misuse of CODIS.

15 Also, in 2008, Congress passed the
16 Genetic Nondiscrimination Act which makes it a
17 crime for employers or health insurance to acquire
18 or use genetic information for hiring or health-
19 coverage decisions.

20 We've already talked about that this is
21 only for serious crimes. It is taken -- The DNA
22 profile is taken during the formal booking process;
23 when fingerprints and mug shots are taken. DNA
24 profiles are not available outside of CODIS. Your
25 fingerprints are. Your fingerprints become part of

1 your permanent arrest record. Your fingerprints
2 can be searched by potential employers. Your DNA
3 profile only exists in that database. It is only a
4 computer record deep inside that database.

5 I'd also like to bring up that, when
6 someone's arrested for a crime, you can held again
7 your will. This is merely arrested; not convicted.
8 You can be strip-searched. Everything on your
9 person can be searched, including your cell phones.
10 If you're arrested for a crime, they can take your
11 cell phone and go through it, and mind, every bit
12 of information they can get out of that cell phone.
13 I would so much rather they get these numbers than
14 look inside my cell phone, but they have the right
15 to look inside my cell phone.

16 And also, when they take your
17 photograph, how many times have you opened up your
18 local newspaper and see someone's picture and their
19 name saying that they have been arrested for a
20 crime? They haven't been convicted, but their
21 picture is there; their name is there. I'd rather
22 have these numbers on the front page of a paper
23 saying this DNA profile is suspected of a crime.

24 CODIS is a closed secure system. It is
25 not available online. It is not available to the

1 public. It is not even available to law
2 enforcement for queries, and it's not available to
3 employers to check for background checks. There
4 has never been an error on the database. There has
5 been an error in crime-scene evidence, but there
6 has never been an error on the database.

7 As a matter of fact, in Nevada, the
8 database served to show that there was an error in
9 crime-scene evidence, because there was a hit that
10 could not have happened; and so, they notified the
11 crime lab, and they found out that there had been
12 error in crime-scene evidence.

13 There are people involved in this. So,
14 I'm not gonna sit here and tell you that there's
15 not a possibility to have errors in DNA crime
16 evidence. It has happened. But there's never been
17 an error on the database.

18 I want to talk a little bit more than I
19 planned to on expungement since there was so much
20 interest in this. Federal law requires that if an
21 arrestee DNA is uploaded in the CODIS, there must
22 be a provision for expungement. That is a federal
23 requirement. There is a regulation, and here it is
24 if you want it in your notes, that require that
25 expungements be absolutely thorough, and there are

1 penalties for not doing so.

2 The Office of the Inspector General of
3 the United States conducts audits to ensure that
4 the expungement is thorough and complete, and those
5 audits are available for review online. These are
6 done periodically and randomly.

7 The question was asked, which state
8 maybe has the balance or the best expungement. I
9 have to tell you I'm very, very proud of New
10 Mexico. We do have expungement upon request. It
11 is not automatic. But, when someone is arrested in
12 New Mexico, they are given -- When their DNA is in
13 the process of being taken, they are given a piece
14 of paper that says, if you are not ultimately
15 convicted for the crime for which you've been
16 arrested, you have the right for expungement, and
17 here's the process that you follow. It's a very
18 simple process. You do not need to hire an
19 attorney. You do not need to appear in court. You
20 merely write a letter requesting that the
21 expungement be done, and then it is reviewed. And
22 if you have the right for expungement, it is done.

23 I'm going to talk about the federal
24 grant money in just a minute that's available for
25 states to implement their programs, and that grant

1 is named after my daughter. It's called the Katie
2 Sepich Enhanced DNA Collection Act. And One of the
3 things that we had put in the provisions of that
4 is, in order for a state to receive the funds to
5 implement their program, they must notify the
6 arrestee in writing at the time their DNA is being
7 taken of their rights and the process, and there
8 also has to be a public website available to help
9 them through that process. In order to get the
10 federal funding to implement this DNA program, that
11 has to be done.

12 There have been zero instances of DNA
13 being manipulated or queried for any purposes other
14 than is lawfully directed since the implementation
15 of CODIS.

16 I also want to talk about backlogs
17 because that was a concern. First of all, it's
18 really important that it is understood that there
19 are two separate kinds of DNA processing. There's
20 the crime-scene evidence processing and there's the
21 offender processing, and these are done by
22 different people with different equipment; totally
23 separate.

24 Crime scene DNA processing is very labor
25 intensive. It's something that has to be done

1 hands-on. It's very labor intensive.

2 Offender DNA processing where they take
3 the cheek swab and they get the offenders and they
4 upload that into CODIS, that can be automated.
5 That can be actually robotic. It's cut and dry,
6 and there are two different sections that handle
7 this.

8 When we add more arrestee DNA profiling;
9 when we take that cheek swab, we're only adding to
10 that side of the equation. We're not adding to the
11 other side. Now, yes, we have the same pot of
12 funding; yes, I understand that. But in states
13 that have implemented arrestee DNA programs, in
14 several different states--I can give you specific
15 samples--we've seen reduction of backlogs. Why?
16 Because they got funding from federal grants to buy
17 robotic equipment to make that DNA offender
18 processing quicker, and because they could take
19 resources and put it more into that hands-on DNA
20 evidence processing.

21 Colorado has reduced their backlogs.
22 California has reduced their backlogs, because
23 they're streamlining the process. So, when you're
24 told that backlogs are going to increase, that's
25 not necessarily true.

1 I do want to talk a little bit about
2 Maryland v King. This was the landmark Supreme
3 Court case that was just this year, because there
4 were those that said it is a violation of Fourth
5 Amendment rights, so we did have a test case. My
6 family was very privileged to be able to travel to
7 Washington D.C. and be there during oral arguments.

8 One of the things that I want to say,
9 too, is that, the Attorneys General of all 50
10 states, joined by Puerto Rico and the District of
11 Columbia, signed a brief in support of arrestee
12 DNA. And this is something that doesn't happened
13 very often when you get all 50 Attorneys General
14 saying, this is the right thing to do.

15 Justice Alito said during oral arguments
16 that this was, perhaps, the most important criminal
17 procedure this Court had heard in decades. And, of
18 course, on June 3rd, the Court found that arrestee
19 DNA does not violent the Fourth Amendment, saying,
20 DNA is like fingerprinting and photographing; a
21 legitimate police booking procedure that is
22 reasonable under the Fourth Amendment.

23 And what do the voters think? The one
24 state where this became law because of voters'
25 initiative was California, and voters supported it

1 62 percent. So that's what voters think.

2 I'm gonna quickly talk about arrestee
3 DNA saving money. My daughter's case is a great
4 example. The man that murdered my daughter was
5 arrested three months for an unrelated -- after he
6 murdered my daughter for an unrelated burglary. We
7 didn't have arrestee DNA then. So, he was finally
8 convicted of a crime three and a half years later,
9 and he was sentenced for 69 years with no parole.
10 But, we could have had him over three years sooner;
11 three years sooner with arrestee DNA.

12 Now, what does that mean? That means
13 that \$200,000 would have been saved that was spent
14 investigating just her case. And that's not
15 salaries; that's not regular -- just regular
16 operating money. That's additional money they
17 spent investigating my daughter's case; \$200,000
18 that could have been saved in just one case.

19 The University of Virginia study has
20 been talked about. One of the things they found is
21 that, nationwide, it's about a 30-dollar cost for a
22 DNA sample to get into CODIS. They found that for
23 every 30-dollar sample that goes into CODIS, it
24 results in a savings of \$27,000. There was also a
25 study done under the auspices of the United States

1 Department of Justice by the City of Denver that
2 found for every dollar that's invested in DNA, \$90
3 is saved.

4 I do want to talk about the federal
5 grant money that is available now for specifically
6 arrestee DNA programs, authorized by Congress this
7 year. It was signed by the President in January.
8 What this does, what this authorizes is that, if a
9 state takes advantage of this, they can be
10 reimbursed for 100 percent of their first year's
11 costs to implement an arrestee DNA program. What
12 this means is that, the robotic equipment that they
13 need, the training, those costs can be reimbursed,
14 but it's very important -- I do want to tell you
15 that this was voted on by unanimous consent of the
16 United States Senate, by two-thirds of the United
17 States House of Representatives funding this
18 implementation.

19 But this federal grant money is only
20 available through 2015. So, if you decide not to
21 do this this year, that grant money is not going to
22 be around forever. So, I would say that, to be
23 fiscally responsible, join those 27 other states;
24 get this passed and take advantage of that federal
25 grant money.

1 We all know what happens when a state
2 decides to implement arrestee DNA programs. Cold
3 cases are solved; crimes are prevented; lives are
4 saved, and the innocent are exonerated, and
5 taxpayers' dollars are saved.

6 We also know what happens when a state
7 decides not to implement an arrestee DNA testing
8 program. Innocent lives are lost.

9 I would urge you to pass this this year,
10 now, before one more life is lost; before one more
11 family goes through unbearable grief. Join 100
12 United States Senators, two-thirds of the House of
13 Representatives, 50 states' Attorneys General, and
14 our President, to say yes, this is right thing to
15 do; the right thing to do now.

16 Remember these names. These are the
17 names of the women whose lives could have been
18 saved in California with arrestee DNA, and there
19 are also names now in Pennsylvania.

20 When someone tells you that it's a
21 violation of someone's rights to take arrestee DNA,
22 I want you to think of my daughter Katie, and all
23 the other lovely young women who lost their most
24 basic right; their right to live.

25 Someone once asked me, when we were

1 looking at pictures of my daughter, what were my
2 favorite pictures of my Katie. I have to tell you,
3 my favorite pictures of Katie are the ones that
4 were never taken: The picture of her getting her
5 M.B.A.; the picture of her walking down the aisle
6 on her daddy's arm to her groom; the picture of her
7 holding her first-born child, or maybe teaching
8 that child to ride a bike. These are pictures that
9 I only get to see in my imagination.

10 I would do anything to have my daughter
11 back, but I don't get to choose. My only choice is
12 how to move forward, and our family has been
13 blessed to be able to move forward in a way that,
14 perhaps, will make it possible for other families
15 to have those complete photo albums; to have their
16 daughters to experience those wonderful things that
17 we will not get to experience with Katie.

18 So I'm asking you, do the right thing.
19 Join the other 27 states that have passed this
20 legislation; save those lives; pass bill 150.

21 Thank you so much for your time and
22 attention today, and I would gladly answer any
23 questions that you might have.

24 MS. MOYER: Having had some time to
25 spend this morning with this courageous woman who

1 just testified, I'm honestly hard pressed to think
2 of any part of my testimony that could be more
3 relevant than what we just heard. But I will, on
4 behalf of Pennsylvania Coalition Against Rape, and
5 rape victims and their families across the
6 Commonwealth, I would like to tell the members,
7 Chairman Marsico, Chairman Caltagirone, and members
8 who have stayed with us how important this is to
9 victims of sexual assault.

10 One of the most terrifying prospects
11 that a victim has to face is not knowing who their
12 offender is or where that offender is. There's a
13 part of victimization that changes your world view,
14 in that, the world never looks the same way again.
15 I remember a courageous young man testifying on
16 sexual assault awareness month that after he had
17 been attacked when he was abroad, he said, I
18 finally realized what it was like to be a woman;
19 wake up every day and move through the world with
20 fear. I thought that was so telling because, we
21 all -- as women are socialized to fear walking
22 alone after dark, being in parking lots and hotels,
23 it shouldn't be that way, of course.

24 For a victim there's an extra vigilance
25 when walking or driving or going to a new place.

1 There's a mistrust of one's visceral judgment of
2 the trustworthiness of people. There are sights,
3 sounds and smells that can trigger a reliving of
4 the experience. Victims have told me they would
5 never feel safe again.

6 This feeling of fearfulness is
7 particularly intense and unrelenting if an offender
8 is a serial rapist or has not been found. One of
9 the ways in which public policy can remedy this
10 grim-world vision is to use modern technology to
11 identify and process offenders.

12 Many rapists also commit other crimes.
13 Rapists often lack empathy and have an exaggerated
14 sense of what they are entitled to; engage in
15 socially inappropriate behavior and blurred
16 personal boundaries. These factors, when taken
17 together, often result in the appearance of these
18 individuals in criminal justice databases,
19 fingerprint or DNA.

20 I would ask you to imagine for a moment
21 what a relief it would be to a victim to discover
22 prior to trial that the offender can be held for
23 prior unresolved crimes. This bill would certainly
24 help to mitigate the fear of not being believed,
25 which is one of the most intense fears of a victim

1 of sexual assault. Also, how many cold hits will
2 law enforcement be able to pursue to stop an
3 offender who has moved from state to state. We
4 revised our Megan's Law to reflect the cunning of
5 sex offenders when they travel state to state to
6 actually shop the law; the best law for them in
7 each state.

8 I do not believe that law enforcement
9 arrests individuals for serious crimes without just
10 cause. They're simply too professional, too well-
11 trained, and too caring about victims to arrest
12 someone without the proper information.

13 The simple matter is, with
14 pre-conviction DNA testing, the Commonwealth can
15 catch serial offenders, mitigate the emotional
16 horror of victimization, and all with a simple
17 swab. And I'd like to remind the members of the
18 Committee and the public what a rape victim goes
19 through in terms of physical and emotional
20 intrusion when they submit to the riggers of a rape
21 kit. If anyone would like to discuss what that
22 involves, you can all imagine, I'd be happy to
23 discuss that with folks later.

24 DNA testing, to the best of my
25 knowledge, is a more accurate method of

1 identification and can serve to exonerate the
2 innocent due to the highly specific scientific
3 analysis. Although I'm not an expert in science, I
4 can truly see how important this testing will be
5 for law enforcement, for victims, for prosecution
6 and for families. Any method to ensure the safety
7 of our communities from predators must be our
8 highest duty and priority.

9 Thank you for your attention. I humbly
10 ask for swift passage of this critical legislation.

11 MAJORITY CHAIRMAN MARSICO: Thank you.
12 Questions from members? Representative Vanessa
13 Brown.

14 REPRESENTATIVE BROWN: Thank you, Mr.
15 Chairman.

16 To Miss Jayann. I had the pleasure of
17 attending NCSL for two years, and I saw your booth.
18 I think I got to speak to your husband. I just
19 want to say, thank you so much for your dedication
20 and your courage; to not just affect your area
21 where you live, but the entire nation. I think
22 that you are courageous and truly a role model for
23 so many of us. I just couldn't let this moment go
24 by without just saying thank you for what you're
25 doing. It's much needed. Thank you so much for

1 standing up for your daughter.

2 MS. SEPICH: Thank you so much.

3 MAJORITY CHAIRMAN MARSICO: Chair
4 recognizes Counsel Kane.

5 MR. KANE: Thank you, Mr. Chairman.

6 Thank you so much, Miss Sepich, for your
7 testimony and your courage to come in and talk
8 about something that, I'm sure, is very difficult
9 every time you have to make a presentation like
10 this.

11 The one question I wanted to ask, you
12 said the individual who murdered your daughter two
13 months or three months later was arrested, but DNA
14 wasn't taken until he was ultimately convicted of
15 another crime. Can you quantify it? But could you
16 just talk a little bit about, as a family member of
17 someone who's been murdered and especially under
18 these circumstances, what those -- almost more than
19 three years, between that two month later and three
20 and a half year later, what your life was like not
21 knowing who had done this to your daughter?

22 MS. SEPICH: I can tell you very
23 distinctly the difference that it made in our
24 lives. I have a son who is now 29 years old. He
25 and his sister were best friends; very, very good

1 friends. My son had been away from home one week
2 at college when his sister was murdered. My son
3 had graduated at the top of his class and was
4 attending college on a full-ride academic
5 scholarship. If we had identified --

6 First of all, let me tell you that the
7 day that Gabriel Avila was sentenced to 69 years
8 without possibility of parole, which was every
9 second he could have gotten under our law, that was
10 the day that my son said to me, mom, I think I'm
11 going to be okay. If he could have said that to me
12 three months or even six months after his sister
13 was murdered, my son's life would be so different.

14 See, my son went from being an
15 incredibly happy, dedicated young man to being a
16 man with demons. He was arrested twice for DUI. I
17 was called by his roommate because he was locked in
18 a room with a gun. And, fortunately, we talked him
19 out of taking his own life. That all happened in
20 that period of time.

21 I don't generally talk about this, but
22 since you asked, that's the difference that it
23 makes to families, that time spread. What a
24 difference it would have made in my son's life if
25 we would have identified Gabriel Avila in three

1 months instead of three and a half years. What a
2 difference it would have made to our family. And
3 there are others, but that is the most profound
4 effect that it had on our family.

5 MAJORITY CHAIRMAN MARSICO:

6 Representative Barbin.

7 REPRESENTATIVE BARBIN: Thank you, Mr.
8 Chairman. Thank you for your testimony. I had a
9 question.

10 In the last written testimony, it said
11 that it was accepted as a fact that 70 percent of
12 the crime is coming from 6 percent of the people.
13 I'm just wondering, in your -- in going -- you
14 spent three years or more reaching out to the rest
15 of the country to explain how important this is.
16 You should be thanked for doing this because you
17 are stopping murders.

18 How many people of the group, 28, have
19 actually imposed a cost in their expungement system
20 to avoid the startup cost? Because, right now,
21 even if we don't pass this, we already have a
22 backlog. Your testimony proves that if you get rid
23 of this backlog, what you're going to do is save
24 lives, so we should be getting rid of the backlog,
25 period. We shouldn't really have any question

1 about that. How to do it, though.

2 Have any of the 28 states -- Instead of
3 waiting for the grant, have any of the 28 states
4 said, we're going to put expungement in, but we're
5 also gonna put it in with a cost?

6 MS. SEPICH: I'd be happy to answer that
7 question. Many, many states have funded their
8 arrestee DNA programs up front. The most common
9 method that's being used now, that we're seeing
10 now, is the method that was just passed by Nevada
11 this year; the method that's used by Colorado; the
12 method that's used by California, and that's a
13 public safety assessment.

14 For example, what Colorado does is,
15 anyone that's convicted of a crime, any crime; that
16 they're convicted of a crime, they're assessed a
17 two-dollar-and-fifty-cent charge to help pay for
18 this arrestee DNA program. It varies state to
19 state, but I know Alabama has a public assessment
20 fee. That's what's being done now.

21 I can tell you this. Colorado's
22 assessment is more than paying for their system.
23 They have the money they need to do this. That is
24 one of the reasons that Colorado has experienced a
25 great reduction in their backlog.

1 I would like to clarify when I say a
2 reduction in backlog, I'm talking about a reduction
3 in the offender portion of the backlog. There are
4 still states that are having backlogs, of course,
5 in their crime-scene processing. But, the
6 reduction in the offender backlog has been
7 significant, and a lot of this is due to that new
8 funding stream.

9 REPRESENTATIVE BARBIN: Thank you.
10 Because, 20 years ago there was a serial murder in
11 Harrisburg. That person went to Johnstown and was
12 convicted of a crime. They never proved that he
13 was connected to five or six other crimes. If they
14 had this in place back in the '80's, I believe that
15 we would have been able to solve a lot of crimes
16 that happened. So, from my perspective, this is a
17 serial killer bill. Thank you.

18 MS. SEPICH: Thank you.

19 MAJORITY CHAIRMAN MARSICO: Any other
20 questions?

21 (No response).

22 MAJORITY CHAIRMAN MARSICO: Thank you,
23 Diane and Jayann. Thank you very much for being
24 here. We certainly appreciate your expertise and
25 your time. Like Representative Barbin said, you

1 have prevented murders and you're still saving
2 lives. So we thank you. On behalf of the
3 Committee, we thank you; commend you for what
4 you're doing; your dedication, your courage. And
5 on behalf of the Committee, we're sorry for your
6 loss.

7 MS. SEPICH: Thank you so much.

8 MAJORITY CHAIRMAN MARSICO: The next
9 testifier is Andy Hoover. Andy is the Legislative
10 Director for the ACLU, the Pennsylvania Chapter.
11 Welcome, Andy.

12 MR. HOOVER: Good morning, Chairman.
13 Chairman Marsico, Chairman Caltagirone, members of
14 the Committee: Thank you for the opportunity to be
15 here today. My name is Andy Hoover. I'm the
16 Legislator Director of the American Civil Liberties
17 Union of Pennsylvania. ACLU was founded in 1920,
18 and currently includes 600,000 members nationwide,
19 including 20,000 here in Pennsylvania.

20 Chairman, I'll apologize in advance. I
21 have a slight cough, so I may pause occasionally to
22 take some water.

23 As you know and as you heard discussed
24 this morning, Senate Bill 150 would expand
25 Pennsylvania's current DNA collection statute by

1 taking DNA samples from people who have been
2 arrested but not convicted of a felony or one of
3 several enumerated misdemeanors. Under current
4 law, DNA is collected from those persons convicted
5 of one of those crimes.

6 Once the DNA sample is collected and
7 analyzed, the DNA profile is submitted to databases
8 managed by the Pennsylvania State Police and the
9 Federal Bureau of Investigation. At that point,
10 the profile is available for comparison with
11 unsolved crimes and future crimes that involve DNA
12 evidence. This high-tech storage of a person's DNA
13 profile turns the person into a de facto suspect
14 indefinitely.

15 SB 150 also authorizes what are known as
16 familial searches. This provision allows DNA
17 analysts to disclose to investigators that DNA
18 profile is a close enough match to a person in the
19 database that the profile may belong to a close
20 family member. In other words, when a person's
21 profile is submitted to the state database, his
22 family members are also now permanent suspects,
23 constantly being check against unsolved and future
24 crimes. And I may note, that last year when this
25 bill was debated, the state House actually passed

1 an amendment to delete that provision from the
2 bill.

3 The ACLU of Pennsylvania opposes Senate
4 Bill 150. Last year we agreed with 132 House
5 members, including the Speaker of the House, who
6 voted yes to an amendment that removed the DNA
7 collection provision from a similar bill.

8 There are a few things more private than
9 our biological identity. DNA comprises an
10 individual's entire genetic blueprint and is not
11 simply an identifier. Our DNA reveals more than
12 one thousand genetic conditions or traits,
13 including susceptibility to many diseases and
14 mental illness, ancestry, and personality traits.
15 DNA collection is far different from finger-
16 printing.

17 Because SB 150 mandates the collection
18 of DNA from persons who have been arrested but not
19 convicted of a crime, it turns a fundamental
20 concept of our criminal justice system, innocent
21 until proven guilty, on its head. Certainly, a
22 person who has been convicted of a crime has
23 diminished privacy rights. There's consensus
24 around that. That's not controversial. But a
25 person who is arrested is still innocent under the

1 law, and many are factually innocent. As such,
2 fundamental American principles demand that the
3 government seek a search warrant with
4 individualized suspicion before it can search a
5 person in this way.

6 The collection of the DNA sample
7 involves an invasive process. To collect the
8 sample, typically, as you've heard discussed, the
9 government agent swabs the inside of the person's
10 mouth. Any reasonable person would agree that it
11 is a search when a government agent penetrates the
12 bodily integrity of another person. In fact, in
13 the Maryland v King decision, the majority
14 acknowledged that that is a search. The debate was
15 over whether or not that was reasonable or
16 unreasonable.

17 As you know, as discussed, the Supreme
18 Court upheld a similar law in Maryland earlier this
19 year. In a powerful dissent, Justice Antonin
20 Scalia had noted that the majority opinion in
21 Maryland v King leaves a gaping hole in the Fourth
22 Amendment. Justice Scalia wrote:

23 Whenever this Court has allowed a
24 suspicionless search, it has insisted upon a
25 justifying motive apart from the investigation of a

1 crime. It is obvious that no such noninvestigative
2 motive exists in this case. The Court's assertion
3 that DNA is being taken, not to solve crimes, but
4 to identify those in the state's custody, taxes the
5 credulity of the credulous. And the Court's
6 comparison of Maryland's DNA searches to other
7 techniques, such as fingerprinting, can seem apt
8 only to those who know no more than today's opinion
9 has chosen to tell them about how those DNA
10 searches actually work, closed quote.

11 I do want to make a comment about the
12 King case because of the previous witnesses.
13 There's something not in my written testimony. The
14 Court did acknowledge it was allowing this type of
15 collection for serious crimes, although the Court
16 was not clear on what they meant by serious crimes.
17 The Maryland law is, in fact, narrower than what's
18 in Senate Bill 150. The Maryland DNA collection
19 law takes DNA samples from arrestees who have been
20 arrested for crimes of violence, felony burglary or
21 attempted felony burglary. As you know, Senate
22 Bill 150 takes samples from a person who's been
23 arrested for any felony or one of several
24 enumerated misdemeanors.

25 The Supreme Court may have found that

1 DNA collection of arrestees passes federal
2 constitutional muster, but SB 150 does not get a
3 constitutional pass yet. It is possible that this
4 type of warrantless search would face hurdles under
5 the State Constitution. The language of the Fourth
6 Amendment of the Federal Constitution and of
7 Article I, Section VIII of the State Constitution
8 is nearly identical. But Pennsylvania courts have
9 historically ruled that the State Constitution
10 provides greater privacy protections than the
11 Federal Constitution.

12 To be clear, there is no state case law
13 that is directly related to the situation at hand
14 that we are aware of. And there have been some
15 cases in which the state Supreme Court has ruled
16 that Article I, Section VIII is in parity with the
17 Fourth Amendment. But, there are several cases
18 related to enhanced protections in the State
19 Constitution that at least allow for speculation
20 that warrantless DNA collection may not pass state
21 constitutional muster.

22 In at least five instances, the
23 Pennsylvania Supreme Court has ruled that the State
24 Constitution provides greater protection in search
25 and seizure than the Federal Constitution. I would

1 like to highlight two of those cases.

2 In Commonwealth v Matos, the
3 Pennsylvania Supreme Court held that Article I,
4 Section VIII does not permit the seizure of
5 contraband that Matos had discarded while fleeing
6 from the police. Matos ran at the sight of two
7 officers. The Court found that the subsequent
8 chase by the police was a seizure under Article I,
9 Section VIII; and that in order for the seizure to
10 be lawful, the police needed to demonstrate
11 probable cause to make the seizure. Running from
12 the police constitutes neither the reasonable
13 suspicion necessary to stop a person nor the
14 probable cause that would justify a warrantless
15 search of that person. The Court concluded that
16 the police coerced Matos to discard the contraband
17 through an unlawful seizure, and the evidence could
18 not be admitted under Article I, Section VIII.

19 Under California v Hodari D. from 1991,
20 the police actions would not violate the Fourth
21 Amendment.

22 In Commonwealth v Polo, Polo was
23 arrested after police found crack cocaine in his
24 bag following a routine drug interdiction on a bus.
25 The Court found that Article I, Section VIII

1 prevented the police from conducting such
2 interdictions when there was neither reasonable
3 suspicion to justify the stop nor probable cause to
4 sustain a warrantless search. The federal Supreme
5 Court reached the opposite conclusion, permitting
6 such interdictions under the Fourth Amendment in
7 Florida v Bostick.

8 Supporters of SB 150 argue that
9 warrantless DNA collection from arrestees will
10 solve crimes. And it is true. This type of
11 collection will solve some crimes. But the
12 Maryland's experience suggests that the number of
13 crimes that will be solved is miniscule.

14 In 2009, the Maryland State Police
15 collected 11,600 samples from persons who had been
16 charged with the eligible crimes. The new
17 collection law led to one additional conviction for
18 an unsolved crime. In 2010, MSP collected 11,486
19 samples, leading to three additional convictions.
20 In 2011, 10,666 samples were collected, which led
21 to nine additional convictions.

22 In total, in a three-year period, from
23 2009 to 2011, Maryland collected 33,752 DNA
24 samples, leading to 13 additional convictions.
25 That is a percentage of 0.039 percent. To use Mr.

1 Freed's baseball metaphor, if that was a player's
2 hitting average, he would not even be in the low
3 A ball. The payoff of pre-conviction DNA
4 collection does not outweigh the massive costs and
5 burden of this type of law.

6 Of course, it is possible that solving
7 unsolved crimes is only a secondary goal of the
8 supporters. It has been estimated that annual DNA
9 collection in Pennsylvania will increase by 400 to
10 500 percent if SB 150 is implemented. And there
11 has been some press coverage of this issue.

12 Representative Dean asked about it. The state
13 police can, obviously, do a better job of
14 articulating this, but it's been reported in the
15 media that, right now, we're collecting about
16 20,000 samples per year, and that would go up to
17 anywhere from 80,000 to 120,000. This would
18 massively expand the existing DNA database and
19 would annually add tens of thousands of
20 Pennsylvanians who are not currently in it.

21 As long as large DNA databases are
22 maintained, the temptation will be to use them for
23 other purposes, as demonstrated by the expanded use
24 of the Social Security Administration database.
25 This could include accessing stored DNA samples for

1 research on criminality or other human behavioral
2 traits. The expansion of DNA databases to the
3 innocent paves the way for a universal database,
4 where DNA is collected at birth, placing every
5 citizen under lifelong genetic surveillance.

6 I want to reemphasize this point because
7 it is true that much of what you've heard today is
8 about the fact we're sending the identifier
9 information through the DNA profile, that is
10 accurate. But our concern is that expansion leads
11 to further and further use down the line. I refer
12 to the Social Security Administration database
13 because that started as a benefits program. Now
14 you can't get a job unless you're in a Social
15 Security Administration database. The driver's
16 license started as a license to drive. Now, in
17 Pennsylvania, you can't vote unless you have a
18 driver's license, although the ACLU is trying to
19 change that.

20 There are also localized, rogue DNA
21 databanks that are operating outside of a state's
22 jurisdiction, which include the personal genetic
23 material of innocent people and the exonerated.
24 Some local municipalities are collecting and
25 storing DNA samples without a warrant from

1 witnesses and suspects. The New York Times
2 reported on these local DNA databases in June, and
3 Bensalem Township, Bucks County, was among the
4 municipalities highlighted in the Times' reporting.
5 And this goes to my point, that expansion just
6 leads to more expansion. Expansion of databases to
7 arrestees may serve to legitimize these local
8 databases.

9 I did not write anything about
10 innocence, but since that has been raised by
11 previous witnesses, I want to address this issue as
12 well, because it is important, and the ACLU of
13 Pennsylvania has been a strong advocate of best
14 practices for ensuring that innocent people are not
15 convicted, and those who are convicted are cleared.

16 The state House of Representatives and
17 the state Senate have both had legislation before
18 them to implement best practices in investigations
19 to ensure that innocent people do not end up being
20 convicted. That legislation has been introduced by
21 Representative McGeehan, Senator Ferlo and Senator
22 Greenleaf, and those bills have not come before the
23 House or the Senate.

24 Why have they not come before the House
25 or the Senate? Unfortunately, a point of that

1 legislation has included the Pennsylvania District
2 Attorneys Association, and historically, although I
3 don't know this about Attorney General Kane, the
4 Office of the Attorney General. If there is
5 genuine interest in clearing innocent people, then
6 I would hope that we can all work together to bring
7 that legislation to the floor of the House and to
8 the floor of the Senate.

9 It also should be noted that you do not
10 need DNA from an arrestee to clear an innocent
11 person. If there is biological evidence from a
12 crime scene, and if investigators have a suspect in
13 mind, they can very easily go to a Court, show a
14 finding of probable cause and get a sample from
15 that person. They can then try to match or show
16 the person is not a match to the crime scene.

17 I also want to note, this idea of
18 clearing people post-conviction; traditionally, in
19 Pennsylvania--And I have a list of cases that I can
20 get to you--I don't have them in front of me--
21 prosecutors have fought efforts by people to,
22 first, by those who are in prison to get
23 post-conviction DNA tests. That would clear or
24 confirm convictions. And yet, when you look at the
25 appeals process; when you talk to appeals

1 attorneys, you find out that prosecutors in
2 Pennsylvania, almost without fail, fight those
3 appeals. If there is interest in clearing people
4 post-conviction, then let's do that. Let's test
5 that DNA to ensure that innocent people are not
6 sitting in our prisons right now.

7 You will hear more from other witnesses
8 about the costs of expansion of DNA collection and
9 of the impact on the workload analysts, and I will
10 not go into detail about those issues here. But it
11 is noteworthy that the increase in the workload of
12 the state's DNA labs could actually lead to less
13 solved crime, or at least a slowdown in the ability
14 to solve crimes.

15 In addition, PSP remains hundreds of
16 troopers below its preferred staffing levels.
17 Expansion of DNA collection might lead to solving
18 an unsolved crime 0.039 percent of the time, but
19 spending that money instead on putting hundreds of
20 additional troopers on the streets may prevent
21 crime from occurring in the first place.

22 And, Chairman, I'm going to submit a
23 rewritten version of my testimony because there's a
24 sentence in that last paragraph that I need to
25 revise. Those of you reading along may have

1 noticed.

2 Expansion of DNA collection to include
3 people who have not been convicted of a crime is a
4 massive ballooning of the total information
5 society. It is expensive. It causes backlogs in
6 DNA labs. It does little to solve crime, and it
7 may be unconstitutional under the State
8 Constitution. The ACLU of Pennsylvania encourages
9 the members of this Committee and the members of
10 the House to reject Senate Bill 150, as the House
11 did last year.

12 Chairman Marsico, thank you for the
13 opportunity to be here today.

14 MAJORITY CHAIRMAN MARSICO: Well, thank
15 you, Andy. It's always good to hear your --
16 interesting to hear your perspective on these
17 issues that come forward to the Committee. We
18 appreciate your time.

19 You made a statement about rogue DNA
20 labs.

21 MR. HOOVER: Sure.

22 MAJORITY CHAIRMAN MARSICO: Rogue DNA
23 databanks that are operating outside of the state's
24 jurisdiction, can you identify any of those in
25 Pennsylvania?

1 MR. HOOVER: Sure. Bensalem Township,
2 Bucks County for sure. That was reported by the
3 New York Times this summer. I am not aware of
4 others in Pennsylvania, although, if Bensalem is
5 doing it, I would not be surprised if there are
6 others. But if you're interested in that, we can
7 certainly look into it. That's one that I'm aware
8 of.

9 MAJORITY CHAIRMAN MARSICO: If you get
10 more information on that and provide it to the
11 Committee.

12 MR. HOOVER: Sure, absolutely. And the
13 way this was reported, apparently, some of these
14 local databanks will collect DNA from, essentially,
15 anybody that walks into the station. If they're
16 interviewing suspects, they're interviewing
17 witnesses, they actually sometimes will collect DNA
18 from them and store that.

19 MAJORITY CHAIRMAN MARSICO:
20 Representative Barbin, question?

21 REPRESENTATIVE BARBIN: Thank you, Mr.
22 Chairman. Thank you, Mr. Hoover, for your
23 perspective. I have a question, though.

24 You stated in your testimony that the
25 DNA collection -- And I just want to make sure

1 we're clear on the record. We're not here on a
2 public hearing today for what the Bucks County DNA
3 banks may or may not do. We're here today is about
4 a bill to say, provide additional resources, take
5 arrestee samples. And if you do those things, you
6 will help solve crimes; you will help exonerate
7 innocent people. That's the testimony that's been
8 provided.

9 You provided testimony that was in
10 conflict with the previous speaker that said that
11 DNA collection was the collection of biological
12 information. And I believe the prior speaker made
13 it perfectly clear, to me at least, that the DNA
14 samples that are taken in the CODIS system were
15 taken by state police at our DNA lab; are taking
16 nonmarker information that has no biographical
17 markers in it. Do you care to comment on that?

18 MR. HOOVER: Sure. Representative, I
19 apologize if that was not clear.

20 That is correct. Previous witnesses are
21 correct. Essentially, the DNA sample at its core
22 contains that information. And then when the
23 analysis is done, you get the identifying
24 information which was discussed earlier.

25 REPRESENTATIVE BARBIN: All right. If

1 that's true, then my question is this: I don't
2 believe the State Constitution requires us to do
3 anything more than the Federal Constitution
4 required Maryland versus King to do. And we can
5 just have a difference of opinion on that.

6 MR. HOOVER: Sure.

7 REPRESENTATIVE BARBIN: Can you sit here
8 and tell the Committee today that this type of
9 database addition, taking arrestee information and
10 putting it into the database, won't make us safer?
11 Because, even your testimony says that there is
12 additional crimes that are solved in Maryland with
13 this additional information. I don't know how
14 you've used your statistics. But, from my
15 perspective, if you put arrestee information into
16 this database system, and you solve one more murder
17 or one more rape that doesn't occur because you
18 have the system, then that's enough.

19 So, from my perspective, what you're
20 testifying to is polemic. You're making an
21 academic argument about something that has real
22 consequences. The real consequences may seem to be
23 minor to you or a minor percentage, but we have to
24 make decisions of public policy on the basis of
25 whether something actually will help. And it

1 appears that in the 28 other states that have done
2 this, they've helped solve additional crimes.

3 So, I don't accept your basis for
4 argument in this case. And unless you can provide
5 some specific information to the Committee, a study
6 that says that the Chicago study is wrong; the
7 Virginia study is wrong; the California study is
8 wrong; unless you can do that, you really can't
9 testify that this is -- that this is a
10 constitutional violation, because people take
11 pictures of arrested people every day. And there's
12 no way that you get to go back to the newspaper and
13 say, take out every picture that you clicked when I
14 was arrested because somebody decided not to
15 testify against me. If they did that, Al Capone
16 would never be known as a mobster. And that's
17 really what we're trying to deal with today.

18 Should we take back out of this database
19 13 markers out of a computer card that says you
20 might be a match for another crime that we haven't
21 yet solved.

22 MR. HOOVER: Thank you, Representative.
23 I appreciate that. There are multiple layers
24 there, and I can't decide where to start.

25 You're right. As I acknowledged, there

1 will be some crimes that are solved. My data comes
2 from the Maryland State Police Annual Report.
3 33,000 samples collected over a three-year period;
4 13 additional convictions. Now, if you believe
5 that's enough to vote yes on this bill, then I
6 respect your opinion.

7 REPRESENTATIVE BARBIN: I do.

8 MR. HOOVER: Okay. I completely respect
9 your opinion and I appreciate it.

10 Your comments suggest that the
11 constitutional issue is about the storage and the
12 database. That may be one part of it, because this
13 person has been arrested for one crime. And so, if
14 they're charged ultimately, there's probable cause
15 to hold them over for court for that one crime.
16 Putting them into the database makes them a -- The
17 government has no other evidence that they are a
18 suspect in any other crime. But putting them into
19 the database makes them a suspect indefinitely; the
20 fact they're a suspect in unsolved or future
21 crimes.

22 REPRESENTATIVE BARBIN: How is that any
23 different than a fingerprint?

24 MR. HOOVER: It's different because
25 fingerprints are used for identifying purposes and

1 not --

2 REPRESENTATIVE BARBIN: So is a card
3 with numbers on it.

4 MR. HOOVER: Okay. The other piece I
5 wanted to mention is that, the other issue about
6 the constitutional issue is the way the search is
7 done. That the swabbing of the inside of the
8 mouth, that's a government agent protruding the
9 bodily integrity of another person for the purpose
10 of putting them in a database. If the government
11 wants to do that, they need to have probable cause.
12 They need to have individualized suspicion that the
13 person may have committed another crime.

14 REPRESENTATIVE BARBIN: I don't see how
15 that's much different than making somebody stick
16 their finger in ink and rubbing it on a card.

17 MR. HOOVER: I understand.

18 MAJORITY CHAIRMAN MARSICO: Are we
19 finished?

20 A VOICE: Maybe.

21 MAJORITY CHAIRMAN MARSICO:
22 Representative Costa.

23 REPRESENTATIVE COSTA: Thank you, Mr.
24 Chairman. Mr. Hoover, it's always a pleasure. As
25 often, we're on opposite sides of the fence here.

1 What I don't understand is, it seems
2 like your view is counterproductive to law
3 enforcement, in the manner that saying -- As a
4 matter of fact, Major Martin and I just talked
5 about it. We get into a police cruiser today, both
6 of us -- Obviously, he's still law enforcement. I
7 was law enforcement. Getting into a police cruiser
8 today, it looks like an airplane. I mean, you have
9 computers; everything you need for our law
10 enforcement officers to do their job.

11 My question is, why is the ACLU opposed
12 to tools that would allow them to do this? This
13 DNA is no different than fingerprinting, okay?
14 When I see an officer pull somebody over on the
15 side of the road, I find comfort in knowing that
16 they have a computer that can tell them that this
17 person has a criminal record, no criminal record
18 before they get out of the car in most cases. We
19 did not have that ability to do that. We would
20 have to wait, wait and wait. The ACLU at that time
21 complained about computers going into cars because
22 of the same thing; back our local branch, back, you
23 know, because of the same thing. They didn't want
24 cameras on the cars; then they did want cameras on
25 the cars.

1 So, I mean, these are all tools for our
2 law enforcement to do a better job and to solve
3 crimes. And that's the bottom line.

4 Again, we go back -- You look at the
5 young lady's DNA, and we're looking at numbers. I
6 can give you my fingerprints on another card and
7 not say it, and you're going to look at these two
8 things and say, these belong to so and so? I don't
9 believe that these data -- I think we're looking at
10 what if's too much. I think we are looking at
11 conspiracies too much.

12 You go back to the NSA. The rumor is
13 they're looking at all our cell phones and stuff
14 like that. If they're looking at mine, they're
15 very bored because of the information that comes
16 through. But, they're not.

17 So, we have to sometimes balance out
18 what we do, how we do it. This will solve crimes.
19 My concern here is that, I don't want to overburden
20 the good work that we're doing now until we have it
21 right. When I say have it right, I mean have
22 enough technicians to do it and do it in the
23 appropriate manner. Let the Courts decide later.
24 But, when this bill comes up, if we can tweak the
25 idea that the state police can do these testing and

1 not backlog other cases, I'm gonna vote for it.

2 Thank you for your testimony.

3 MR. HOOVER: Sure. Thanks,
4 Representative. Just a couple response.

5 First of all, some of what you're
6 referencing is before my time, and I'm not sure
7 what went on previously. But, I do take exception
8 with your suggestion that we oppose tools to help
9 law enforcement. I actually had a discussion
10 before this hearing with a representative from the
11 Fraternal Order of Police about lapel cameras.

12 The ACLU of Pennsylvania, under certain
13 parameters, can support that concept because it
14 provides accountability both for the officer and
15 for the person they encounter on the street. So,
16 if that is done right, that is a good tool for
17 investigation and ensuring accountability.

18 Number 2. We currently have litigation
19 in Norristown in which we're fighting an ordinance
20 in which landlords will be fined if at least three
21 police calls come from a particular property. We
22 have litigation in that case because our client is
23 a victim of domestic violence. She was stabbed in
24 the neck by her boyfriend or her ex-boyfriend. She
25 was not going to call police because it would have

1 been her third call. She was a victim of domestic
2 violation. Fortunately, a neighbor called the
3 police and she survived.

4 However, we brought litigation under the
5 First Amendment that people have a right to
6 petition the government, in this case calling the
7 police, for help. Representative Stephens has a
8 bill to preempt those kinds of local ordinances,
9 House Bill 1796, which we support.

10 Finally, if you want to look at the
11 difference between fingerprints and DNA, I would
12 suggest looking at page 14 of Justice Scalia's
13 dissent in which he has a chart that shows the
14 differences between fingerprints and DNA.

15 REPRESENTATIVE COSTA: Thank you, Mr.
16 Hoover. We are on the same page with the other
17 ordinance.

18 MR. HOOVER: Okay.

19 MAJORITY CHAIRMAN MARSICO:
20 Representative Brown for question.

21 REPRESENTATIVE BROWN: Thank you. Thank
22 you, Mr. Hoover. I just want to say, I've always
23 appreciated the dialogue that we've been able to
24 have and the partnership and the fight on voter
25 I.D. was astounding. I really consider the ACLU a

1 great asset in this Commonwealth. But, I'd like to
2 further the conversation about proving innocence.

3 MR. HOOVER: Sure.

4 REPRESENTATIVE BROWN: So often I have
5 constituents that come to me are most likely
6 they're their moms, who come to me and say, my son
7 has been incarcerated and he took the plea because
8 that was encouraged to -- He was innocent, but they
9 said, if you go through the full trial, you could
10 be proven guilty. And if you do, you'll get much
11 more time than if you plead out the case.

12 When I was listening to the testimonies
13 previous to you, I just thought, this would be a
14 great way to prove innocence and to not have so
15 many people plea out their cases.

16 Could you speak a little bit about that;
17 whether you agree or you disagree?

18 MR. HOOVER: Sure. First of all, I
19 should note that the Pennsylvania Innocence Project
20 opposes this legislation. They have sent
21 statements to both the House -- The House for sure.
22 I'm not sure about the Senate, but the House
23 members have had statements from the Pennsylvania
24 Innocence Project in opposition to this legislation
25 previously.

1 They agree with us that the best
2 practices that have been put out by Representative
3 McGeehan, Senator Ferlo and Senator Greenleaf are
4 the way to do; things like sequential photo
5 lineups, preservation of biological evidence.
6 Recording interrogations is not just recording
7 confessions. So, we agree with them that those are
8 best practices to ensure that innocent people do
9 not end up in prison.

10 Getting back to more directly to the
11 question and the bill, we do not believe that the
12 bill is necessary to get to what you want to get.
13 The reason is because, if there is DNA evidence
14 from the crime at hand; and if investigators
15 believe they are narrowed in on a suspect, they can
16 get a sample from that person by getting a court
17 order. Then they can look at the sample and see --
18 they can analyze and determine, wait, this person
19 does not match the scene. I think D.A. Freed
20 actually, maybe, referenced some of those cases.
21 They can see then, wait, we have the wrong person
22 here. We need to go in another direction.

23 REPRESENTATIVE BROWN: When you talk
24 about subpoenaing -- putting in a subpoena to get
25 the DNA evidence, that is usually initiated by the

1 prosecutor.

2 MR. HOOVER: Correct; a search warrant.

3 REPRESENTATIVE BROWN: So what I
4 normally find that most the defendants that I would
5 serve are poor and cannot always afford the best
6 representation. So, if it was only prompted from
7 that end, most likely it wouldn't be for those
8 particular individuals.

9 So, I understand your point 100 percent.
10 But on the other side of it, there's a few lives
11 that I think we could save and not be incarcerated
12 if we did have DNA. When we talk about biological
13 evidence, and you can correct me if I'm wrong, that
14 has an expiration date on. I don't know how long
15 that biological evidence will be viable. DNA
16 evidence I don't think has an expiration date
17 because they're markers, and they will forever and
18 eternally be that marker will never disappear.

19 MR. HOOVER: Right.

20 REPRESENTATIVE BROWN: So, as I'm
21 thinking about this legislation and where I'd like
22 to be on this, the innocence side of this is really
23 crucial for the folks that I serve, and you know
24 the population I'm talking about.

25 MR. HOOVER: Yeah.

1 REPRESENTATIVE BROWN: We have to come
2 up with some kind of way to keep innocent people
3 from being incarcerated, because I just can't visit
4 another prison and hear these stories. I would
5 like to find some type of solution that's long
6 term. I agree with those other bills as well, but
7 I like to see every tool possible that can save
8 someone and their innocence from being wrongfully
9 incarcerated.

10 MR. HOOVER: Thanks, Representative. I
11 appreciate that. That is a vexing problem.

12 Biological evidence actually can be
13 preserved. Some states have done that. But, it is
14 an issue of, when someone's been arrested, they get
15 strong-armed and intimidated into pleading and
16 maybe they were innocent. They may plead down to
17 something less than what they were arrested for.
18 We certainly would be open to continuing to explore
19 that, because this innocence issue is significant
20 and important.

21 MAJORITY CHAIRMAN MARSICO: Counsel
22 Kane.

23 MR. KANE: I just want to quickly, a
24 couple times -- Mr. Hoover, we appreciate your
25 testimony. We've had good conversation outside of

1 this hearing on this issue and I've always
2 appreciated that.

3 You said a couple of times of having
4 somebody's profile in the database makes them a
5 suspect forever. I just want to ask you, you're
6 not suggesting that there's any identification,
7 information that's contained in a forensic profile,
8 are you? I mean, I can't look at a profile and
9 say, oh, that guy has 12 toes.

10 MR. HOOVER: It has 12 what?

11 MR. KANE: 12 toes or --

12 MR. HOOVER: No, no.

13 MR. KANE: In a lot of ways it's
14 analogous to a phone number which probably does
15 tell you a little bit about the person, at least,
16 the region they live in based on the area code;
17 wouldn't you think?

18 MR. HOOVER: I suppose so. Although, I
19 don't know if the D.A.s and the Attorney General
20 would be pursuing it if it didn't help them
21 identify people.

22 MR. KANE: I just want to make an
23 analogy. If an extortion is committed and the
24 police know the phone number of the individual that
25 made the call; they don't know who it was; they

1 just have a phone number from caller I.D., and they
2 go to a database--and we'll call it a phone
3 book--and that database has my phone number in it,
4 am I a suspect because my phone number is in that
5 phone book when it doesn't match the phone number
6 from the extortion?

7 MR. HOOVER: Hmmm. That's a good
8 question, but I actually --

9 MR. KANE: In fact, I'm eliminated --

10 MR. HOOVER: -- follow the analogy, but
11 I kind of follow you.

12 MR. KANE: In fact, I'm eliminated as a
13 suspect because I'm in that database --

14 MR. HOOVER: Right.

15 MR. KANE -- because it doesn't match the
16 phone.

17 MR. HOOVER: Yeah. I don't know if the
18 analogy completely works, though, because a phone
19 number is public. It's information that's held by
20 a third party, although, frankly, this is at the
21 heart of the whole NSA thing because those records
22 are held by a third party; the communications
23 company.

24 MR. KANE: Regardless of whether it's
25 public or not, the phone company has the number.

1 The point is that, you said that it makes you a
2 suspect. But, actually, it's quite the opposite,
3 isn't it? If the police go to the phone company
4 and say, we've got a number and they give the
5 10-digit number, do you have that in your database?
6 And they look through 3 hundred million phone
7 numbers in that database, and one of them is yours
8 and one of them is mine, and it doesn't match,
9 doesn't that eliminate us as opposed to make us a
10 suspect?

11 MR. HOOVER: My point -- a couple of
12 things. One you're comparing a log of phone
13 numbers held by a private company with a database
14 that's maintained by the government. And when it
15 comes to constitutional issues, that's a
16 significant distinction.

17 Number 2. The reason why I say it makes
18 a person a suspect indefinitely is because their
19 profile is always going to be checked against new
20 profiles that are submitted -- crime scene evidence
21 that's submitted into the state police and the FBI
22 databases. So that's what -- I guess that's what I
23 mean when I say the person is a de facto suspect;
24 that any time evidence is put into those databases,
25 it's going to be checked against that person, and

1 the other millions of people that are in there as
2 well.

3 MR. KANE: And when it's checked and it
4 doesn't match, there's an elimination. I'm not in
5 the database. So if there's a murder in Harrisburg
6 and I'm suspect, but the person's whose DNA is in
7 the database that doesn't match, they're no longer
8 a suspect. So, doesn't it make that that person
9 actually protects that person more than it protects
10 me, because I haven't been eliminated?

11 MR. HOOVER: It protects them if they're
12 going to be permanently held in a government
13 database? That's an interesting concept. I don't
14 know. I have to think of -- I don't have an answer
15 to that.

16 MAJORITY CHAIRMAN MARSICO: Give that
17 some thought. We'll give you some time to think
18 about that one.

19 MR. HOOVER: Thanks, Chairman.

20 MAJORITY CHAIRMAN MARSICO: Andy, thanks
21 a lot for being here. We appreciate seeing you.

22 Our next testifiers are Lieutenant
23 Colonel Scott Snyder, Deputy Commissioner of Staff,
24 Pennsylvania State Police; Major Mark Schau,
25 Director of the Bureau of Forensic Sciences,

1 Pennsylvania State Police; and Beth Ann Marne,
2 Director of Forensic DNA Division, Pennsylvania
3 State Police. Welcome and thanks for your
4 patience. Thanks for being here. You may proceed.

5 LT. COLONEL SNYDER: Good afternoon.

6 Chairman Marsico and Chairman Caltagirone, and the
7 members of the House Judiciary Committee. My name
8 is Lieutenant Colonel Scott Snyder. I'm the Deputy
9 Commissioner of Staff for the Pennsylvania State
10 Police. With me today are Major Mark Schau, who is
11 the Director of our Bureau of Forensic Services;
12 and Ms. Beth Ann Marne, who is the Director of our
13 Forensic DNA Division. I want to thank you for the
14 opportunity to appear before you today and discuss
15 Senate Bill 150 and, of course, DNA.

16 The Pennsylvania State Police Bureau of
17 Forensic Services is an ASCLD/LAB internationally
18 accredited laboratory system, consisting of six
19 regional forensic laboratories and one DNA
20 laboratory. The primary mission of the Bureau is
21 to serve the criminal justice community and the
22 citizens of the Commonwealth of Pennsylvania by
23 providing the highest quality scientific,
24 technical, and investigative support to law
25 enforcement agencies for processing of crime-

1 related evidence.

2 The Forensic DNA Division performs both
3 casework DNA, which are DNA samples that have been
4 submitted by law enforcement in an active criminal
5 investigation, and convicted offender DNA testing
6 of individuals convicted of a felony or specific
7 misdemeanor offense. The division also has the
8 responsibility for administrating the state DNA
9 database and providing DNA records to the FBI for
10 storage and maintenance by the Combined DNA Index
11 System, or CODIS.

12 DNA is an increasingly vital component
13 for solving crime. Over the years, there have been
14 great strides in DNA technology that have brought
15 thousands of criminals to justice and exonerated
16 many mistakenly accused or convicted of crimes.
17 Critical to the operation of the DNA laboratory is
18 the efficiency in which DNA samples could be
19 collected, analyzed and reported.

20 A number of states have sought to
21 increase the collection requirements from offenders
22 to include only those arrested for certain crimes.
23 Senate Bill 150 seeks to require the collection of
24 samples from those arrested for all felony
25 offenses.

1 On its face, this expansion would seem
2 to lead to an increase in the ability of law
3 enforcement to identify criminals involved in
4 serious crimes, and over time, lead to less of a
5 burden on traditional law enforcement services.
6 However, there are broader questions of whether
7 this process is worthwhile or cost-effective, as
8 this broad approach may not be the best from an
9 efficiency standpoint.

10 The most significant concern of Senate
11 Bill 150 is the lack of a direct funding source for
12 this vast expansion of laboratory services, which
13 will inevitably result in a perpetual funding
14 struggle.

15 In 2012, the laboratory completed
16 approximately 46,000 total cases. The Forensic DNA
17 Division alone analyzed 20,238 convicted offender
18 samples and 2,472 forensic cases. Senate Bill 150
19 is estimated to add some 60,000 arrest samples,
20 necessitating the hiring of approximately 30
21 additional personnel, and the building or leasing
22 of a new laboratory facility. The reimbursement
23 rate for analyzing forensic evidence is notoriously
24 low. The PSP estimates only 10 percent of lab fees
25 are recovered for general casework, and only 40

1 percent for DNA collection fees from convicted
2 felons. Regardless, collection from those simply
3 arrested for felony charges and not convicted will
4 result in no revenue. Expansion of DNA collection
5 without dedicated funding has in the past, and will
6 inevitably in the future, result in increased
7 backlogs of casework, potentially jeopardizing
8 public safety.

9 While the value of collecting DNA from
10 felony arrestees can certainly be helpful to law
11 enforcement, its value can be overstated. If an
12 arrestee sample is analyzed in a timely fashion and
13 it hits on a past crime, it may help solve that
14 crime, may cause incarceration; and thus, prevent
15 future crime. However, since expungements
16 significantly influence the number of profiles that
17 are retained in the database, the value is realized
18 only if a match exists, and only if it occurs in
19 the interval between arrest and conviction. In
20 fact, as many as 75 percent of DNA profiles could
21 be expunged during plea agreements.

22 The advantage to having the DNA for this
23 short period of time has to be weighed against the
24 significant costs of collection, processing and
25 potential destruction through expungement, which is

1 a process that is tedious, time-consuming and
2 costly. Most importantly, destruction of arrestee
3 samples through expungement could hinder
4 investigations by preventing the identification or
5 exoneration of individuals involved in future
6 crimes.

7 It is logical that any expansion of DNA
8 databases may trigger an associated increase in
9 crimes being solved. You undoubtedly have heard of
10 the anecdotal cases describing situations in which
11 felonies would have been solved if the police had a
12 suspect's DNA at the time of arrest. However, what
13 is often not mentioned is that the suspect actually
14 committed a number of felonies before being caught
15 and arrested for one.

16 Furthermore, many felons have criminal
17 careers long before committing more egregious
18 crimes such as rape, robbery or murder. Had the
19 police obtained the suspect's DNA earlier for their
20 lower grade of crimes, many of their felony crimes
21 may have been prevented.

22 The Maryland Governor's Office of Crime
23 Control and Prevention conducted a study to
24 determine if there were any misdemeanor crimes that
25 were precursors to offenders committing more

1 serious violent crimes in the future. Using the
2 DNA hit database, the criminal histories of all
3 offenders who were convicted as a result of
4 convicted offender DNA hits were examined for any
5 trends or common convictions of minor misdemeanor
6 crimes amongst the violent offenders earlier in
7 their criminal careers. A criminal history match
8 identified 203 offenders. While it's hard to gauge
9 exactly which misdemeanor crimes are precursors to
10 more violent offenses, theft was the most common
11 conviction among the group, at 39.5 percent.

12 The Pennsylvania State Police, Bureau of
13 Forensic Services, conducted a review to examine
14 the prior criminal history of certain convicted
15 felons whose DNA hit in 2012. In sexual assault
16 cases, in which a hit came from an individual with
17 a prior offense, 64 percent of those offenders'
18 records involved a previous misdemeanor.
19 Approximately half of those were related to a drug
20 offense, and 15 percent involved a theft-related
21 offense.

22 In robbery or attempted robbery cases in
23 which a hit came from an individual with a prior
24 offense, 84 percent involved a prior misdemeanor.
25 Of those misdemeanors offenses, drug offenses

1 accounted for 36 percent, and 31 percent involved
2 theft.

3 New York State recently amended its
4 statutes to include samples taken from all
5 convicted offenders. It does not collect
6 pre-conviction arrestee samples. Most interesting
7 was the expansion to include those convicted of
8 petit larceny. Between 2006 and 2012, this
9 collection effort resulted in 1,078 hits, including
10 57 in homicide cases, 137 in robbery cases, and 238
11 in sexual assault cases.

12 The direction of public policy for
13 Pennsylvania, as it relates to the collection of
14 DNA from offenders, is at a crossroads. While
15 initial legal concerns surrounding collection of
16 DNA at time of arrest appear to have been settled
17 on the national level, questions remain about its
18 effectiveness, particularly in light of the
19 administrative costs and burdens associated with
20 pre-conviction collection.

21 Our laboratories are committed to
22 ensuring a timely analysis and response to criminal
23 casework we receive from the 1,200 police
24 departments we serve, and promptly entering
25 convicted offender DNA samples into the state and

1 national databases. Over the last few years, we
2 have realized backlog reductions by streamlining
3 internal processes. But most significantly, they
4 were realized by the hiring of additional
5 scientists and the significant use of overtime.

6 If, however, there is a desire to expand
7 DNA collection, we recommend a measured approach at
8 this time. Legislation must take into account the
9 funding, personnel, equipment, facilities, and
10 implementation time necessary to make the new
11 provisions a reality. Failure to properly plan and
12 fund any new legislation would potentially cripple
13 the existing DNA laboratory system; creating larger
14 backlogs than we experience today, and adversely
15 affecting our ability to adequately serve the
16 criminal justice community and the citizens of the
17 Commonwealth.

18 While the PSP supports the concept of
19 increasing the DNA offender database, we feel there
20 are sufficient reasons to pause and more carefully
21 consider expanding convicted offender laws to
22 misdemeanants. The concept of collection at
23 conviction from individuals earlier in their
24 criminal career for selected crimes such as theft
25 and other gateway crimes makes sense to us. It is

1 not only less expensive and more efficient, but
2 more importantly, is consistent with the past
3 expansion of the statute and represents a proactive
4 approach to reducing career criminality.

5 I thank you for your attention, and
6 certainly be happy to answer any questions you may
7 have.

8 MAJORITY CHAIRMAN MARSICO: Just a quick
9 question. Do you have an estimated cost of
10 implementation yearly? Is there a fiscal -- Do we
11 have a fiscal analysis of that?

12 LT. COLONEL SNYDER: Yes. At the end of
13 the three-year implementation, we estimate the cost
14 to be approximately -- with the billing of --

15 Well, the operational costs would be
16 approximately 6.7 million. A new laboratory would
17 be an additional 29 million. The operational costs
18 would be recurring. It's not a one-time expense.

19 MAJORITY CHAIRMAN MARSICO: Then how
20 much -- If this bill was passed into law, what
21 implementation time -- what are you looking at in
22 terms of an estimated time to implement something
23 like -- With the expansion, hiring new employees,
24 et cetera, how long will that take you?

25 LT. COLONEL SNYDER: Well, the

1 construction of a new laboratory is a three-year
2 timeline for that alone. Training of scientists is
3 a two-year process. So, it would probably be a
4 little bit beyond that three-year implementation
5 period.

6 MAJORITY CHAIRMAN MARSICO: Okay.
7 Chairman Caltagirone.

8 MINORITY CHAIRMAN CALTAGIRONE: As a
9 follow-up to Chairman Marsico, could you not
10 contract that out? Has that been looked at as an
11 alternative?

12 LT. COLONEL SNYDER: That's a great
13 question. In the past -- And Beth Ann Marne might
14 be able to expand on this. In the past we had
15 explored the operation of contracting DNA analysis
16 out to an outside source. We did that. We found
17 that the validation process isn't procedures that
18 are required. Just to proceed with that process
19 are just as inclusive and almost as time-consuming
20 as doing it ourselves. We found the results, the
21 number of identifiers on the percentage of samples
22 that came back from these outside labs were not as
23 high a percentage as they would be within our own
24 laboratory system. Plus, there's some additional
25 costs involved. It's much more expensive to

1 outsource the processing of the DNA samples to an
2 outside lab.

3 MINORITY CHAIRMAN CALTAGIRONE: I
4 respect your opinions because you belong to us.
5 You're our state police, and we respect what you
6 do. What I'm hearing now from you is that, are you
7 suggesting we should slow down the implementation
8 in order for you to get the startup; first of all,
9 the money -- We're gonna have to figure out a way
10 to get the money in the budget, things being as
11 tight as they have been over the last several
12 budgets.

13 I know working very closely with the
14 state police with this Committee over all these
15 years, you're down in your complement. We're
16 trying to get additional monies to make sure you
17 can bring that complement up to where it should be.
18 This is another layer of expense on top of what
19 we're doing, hopefully, to get your complement up
20 to where we think it should be.

21 I hate to put you on the spot like this,
22 but dealing with this legislation, it sounds like
23 you're saying slow down, guys; slow down. We're
24 not going to be able to implement this as quickly
25 as you'd like us to. First of all, we don't have

1 the wherewithal financially, let alone the
2 personnel or the facility that would have to be
3 built. What do you suggest we do?

4 LT. COLONEL SNYDER: Well, the value of
5 DNA is undeniable. We recognize that, certainly.
6 We are planning for the future. We see that
7 expansion of DNA is going to happen one way or the
8 other.

9 We're planning on the construction of a
10 new laboratory. There was a Capital Projects bill
11 which contained funding for a new laboratory, which
12 was just recently passed. Going through the
13 process of that Capital Project construction to get
14 it built, staffed, will take some time, and we're
15 working toward that.

16 Part of our concern with this particular
17 bill is the expungement component of it, because
18 processing an expungement for us is almost as much
19 work as processing the initial DNA sample. We're
20 concerned about the volume of expungements that may
21 occur as a result of this bill; and feel that,
22 perhaps, expanding the DNA sampling for conviction
23 of certain misdemeanors might be a better way to
24 go.

25 MINORITY CHAIRMAN CALTAGIRONE: With the

1 increased numbers that are gonna come from the
2 number of arrests, or those that are serving in
3 prison, you're going to get swamped. Dom Costa had
4 pointed out, I think, specifically, we don't want
5 your system to crash. Because, if you get so
6 overwhelmed -- Is that a potential for happening?
7 I guess it is. Do we need to look at a phase-in
8 procedure?

9 We really need to be guided by what you
10 think is in the best interest of the Commonwealth;
11 and, of course, certainly the taxpayers and the
12 criminal justice system so that we can get to where
13 we want to go with some reasonable sensibilities in
14 dealing with this issue.

15 LT. COLONEL SNYDER: We certainly
16 appreciate your concern and recognition of our
17 concern. We certainly would be willing to work
18 with you to kind of iron out some of the details
19 and the timeline that might be more appropriate.

20 MINORITY CHAIRMAN CALTAGIRONE: Thank
21 you. Thank you, Mr. Chairman.

22 MAJORITY CHAIRMAN MARSICO:
23 Representative Hackett, a question.

24 REPRESENTATIVE HACKETT: Thank you, Mr.
25 Chairman, and thank you, Lieutenant Colonel, for

1 testifying here today.

2 Lieutenant, I'm a pretty blunt guy.
3 Basically the best way I can put it out there, does
4 Pennsylvania State Police want to be in this DNA
5 business, just like other businesses that we ask
6 our Pennsylvania State Police to be in: Towing,
7 municipal police academy. We're asking them to do
8 a lot of things other than locking up the bad guys.

9 If there's one day that a bad guy is
10 still out there on the street and we can stop it,
11 I'd rather have all your troopers on the street
12 doing that. And if we can get that DNA handled
13 somewhere else, that's where I'm gonna have to put
14 my weight.

15 I realize the struggles that you guys
16 are up against. We ask you to do everything. I
17 want you to lock up the bad guys. That's what I
18 want you to do.

19 I appreciate working with you hand in
20 hand with this. I think if one day passes, Mr.
21 Chairman, that we have a problem -- It's a ticking
22 time bomb. We have the technology now. Let's jump
23 on this technology and let's lock up some more bad
24 guys.

25 Thank you, Lieutenant.

1 LT. COLONEL SNYDER: Thank you, sir.

2 MAJORITY CHAIRMAN MARSICO:

3 Representative Barbin, a question.

4 REPRESENTATIVE BARBIN: Thank you.

5 Thank you, Lieutenant Colonel.

6 There was testimony before that
7 indicated the other states that have dealt with
8 this expungement issue and funding issue, have
9 indicated both that there's federal funds available
10 but only until 2015. And they've also indicated
11 that there is -- The other states have used fees
12 upon conviction. It was a two-dollar-fifty-cent
13 charge per convicted felon.

14 Is there any reason why this bill
15 shouldn't be amended to provide that type of
16 assessment so that we don't have to wait two years
17 to get this moving forward, and then whatever the
18 additional cost? It sounds like -- You've
19 indicated there's already capital budget money.
20 That's the 29 million.

21 So, really, what we're talking about is,
22 we're down a complement of a hundred troopers right
23 now. I don't know if that's 10 million, but that's
24 a substantial amount of money. You have estimated
25 it will cost \$6.9 million to have the people

1 necessary to not have a backlog. So, to me, if
2 other states have used these assessment fees on
3 conviction, and we're talking about a number that
4 is probably less than \$7 million a year to operate
5 additional capabilities at the lab, is there a
6 practical reason why we can't amend this bill to
7 put a conviction assessment fee that would take
8 care of this \$7 million?

9 LT. COLONEL SNYDER: Yeah. Right now we
10 do have a convicted offender fee of \$250.00.
11 Unfortunately, I think I mentioned, it was only
12 collected about 40 percent of the time.

13 REPRESENTATIVE BARBIN: It's only paid
14 40 percent of the time?

15 LT. COLONEL SNYDER: Yes.

16 REPRESENTATIVE BARBIN: So, is it
17 possible to have a processing fee before conviction
18 for \$2.50 a person and could that be used? Is
19 there any obstacle that you know of that would keep
20 us -- that would preclude us from putting that up
21 front as a charge? What you need is enough money
22 to cover \$7 million.

23 LT. COLONEL SNYDER: Yes, sir.

24 REPRESENTATIVE BARBIN: Is there
25 anything in the practice of -- the process of

1 moving people from arrest to conviction that would
2 preclude us from collecting that money up front at
3 the magistrate level?

4 LT. COLONEL SNYDER: Again, that's a
5 question for the legislature to kind of decide
6 whether or not you want to implement a fee.

7 REPRESENTATIVE BARBIN: Are there any
8 other fees other than the 250-dollar conviction fee
9 that you're aware of that are charged in the
10 system?

11 LT. COLONEL SNYDER: Well, we charge a
12 lab user fee when we process evidence related to
13 criminal investigations. Of course, it's supposed
14 to be tacked on to the court costs. That's
15 separate from DNA, but that's another fee in which
16 we collect only about 10 percent.

17 REPRESENTATIVE BARBIN: All right. So
18 maybe the thing is, we need to look at how the
19 court is collecting fees up front. Thank you.

20 LT. COLONEL SNYDER: Yes, sir. Thank
21 you.

22 MAJORITY CHAIRMAN MARSICO: Any other
23 questions? Representative Costa.

24 REPRESENTATIVE COSTA: Thank you, Mr.
25 Chairman. Thank you, Lieutenant Colonel, for being

1 here. Just a couple things you can clarify for me.

2 CODIS, when a private lab does that, and
3 we get the results back to enter into the system,
4 am I correct in believing that you guys have to do
5 it again before it goes back into the system from a
6 private lab?

7 MS. MARNE: There is a review process
8 upon receipt of the develop profiles; that there is
9 a hundred percent technical review that must be
10 conducted by the PSP laboratory staff. Prior to
11 those samples being released to a private lab,
12 there are criteria and procedures that have to be
13 put into place and a data set of evaluation samples
14 done.

15 REPRESENTATIVE COSTA: So, in other
16 words, we're better off just doing it ourselves?

17 MS. MARNE: It only removes a small
18 portion of the middle of the analysis, but the
19 receipt, accessioning of those samples for release;
20 the release of -- the review of the ultimate data
21 and entering to CODIS, those tasks still fall upon
22 the state police.

23 REPRESENTATIVE COSTA: Am I correct in
24 saying that we keep those samples; I guess the life
25 expectancy of 75 years, all DNA samples?

1 MS. MARNE: Currently, it's mandated to
2 maintain the samples for 75 years.

3 REPRESENTATIVE COSTA: Okay. And let me
4 ask you, in firing up this new lab and stuff, I
5 understand that the Civil Service list -- In other
6 words, if I'm a scientist and I put in -- I have to
7 take a Civil Service test, and there's like three
8 qualifications that you need, and a lot of people
9 that are on top of the list have two of the
10 qualifications, but you may go down and
11 Representative Hackett here may be 500 on the list
12 and have the three that you may need, is there
13 anything we can do to make sure that you're able to
14 go down and get the people from that list, rather
15 than following the 1 and 4, 1 and 3 list?

16 MS. MARNE: We have been working with
17 the Civil Service Commission and identified the
18 special educational requirements for DNA analyst,
19 so that they are -- there's a separate test to
20 allow those candidates to come to the list. We
21 have identified the course work for them to look
22 for to identify candidates that may be eligible.

23 But, ultimately, the list that we're
24 given for interviews is controlled by the Civil
25 Service Commission.

1 REPRESENTATIVE COSTA: I want to make
2 sure that you're able to go get the best people
3 from that list no matter where they sit on the
4 list. If you pass the test, like in Allegheny
5 County, the sheriff, if you pass 75 percent, he can
6 pick anywhere from the list. I think it may be
7 appropriate in order to expedite this. Again, make
8 sure you have the funding you need; make sure you
9 have facilities you need, and the people you need
10 to do the job.

11 I was very impressed when I was up in
12 Greensburg. I want to thank Major Mark for that
13 tour and stuff and the Committee here. I want to
14 thank you very much for your services. If I can be
15 of any assistance, please let me know. Thank you.

16 Thank you, Chairman.

17 MS. MARNE: Thank you.

18 MAJORITY CHAIRMAN MARSICO: Counsel
19 Kane.

20 MR. KANE: Just a follow-up on the
21 process where you have a private lab. Private labs
22 have to be accredited to the same extent as a state
23 police lab under the federal law before it can be
24 uploaded into CODIS; is that correct?

25 MS. MARNE: Yes, they must be an

1 accredited laboratory.

2 MR. KANE: And, usually, when you're
3 talking about having another laboratory, correct me
4 if I'm wrong, you're talking about a laboratory
5 that's been retained maybe by a D.A.'s office or
6 local police department to do forensic work,
7 casework, where they have a crime; they have
8 suspected DNA, and it might be degraded; it might
9 be a mixture. So there's a lot of labor that goes
10 into doing that kind of analysis; isn't there?

11 MS. MARNE: Private laboratories can do
12 the analysis of crime scene samples. It may
13 involve mixtures or difficult samples.

14 MR. KANE: So your process is to make
15 sure that that was all done correctly. But, we're
16 talking here -- Isn't a single-source reference
17 sample, a swab that's not degraded; it's only one
18 person that's contributed; the analysis of that
19 DNA, even though it may be technically the same,
20 the labor intensity and the quality checking of
21 that is an entirely different matter, isn't it,
22 from a case sample?

23 MS. MARNE: I would say that it is quite
24 a quality-controlled process as well, because
25 you're dealing in volumes as opposed to

1 concentrating on one select group of samples.

2 You're dealing with volume. And when you deal with
3 volume, you have to put into place tighter
4 controls.

5 There's still these same federal
6 requirements for data review, an evaluation,
7 regardless of whether it's a crime scene sample or
8 a database sample.

9 MR. KANE: Thank you.

10 MAJORITY CHAIRMAN MARSICO: Thank you
11 very much for your time and your testimony --

12 LT. COLONEL SNYDER: Thank you.

13 MAJORITY CHAIRMAN MARSICO: -- and
14 service. Thank you.

15 Next panel--thank you for your
16 patience--is James Owens, Special Investigations
17 Division, Detective, Philadelphia Department
18 Police, Special Victims Unit; and Brian Pfleegor,
19 CODIS Administrator, Philadelphia Police
20 Department's Office of Forensic Scientists. Once
21 again, thanks for your patience, and you may
22 proceed.

23 MR. OWENS: Good morning, Chairman
24 Marsico, Chairman Caltagirone, and members of the
25 House Judiciary Committee. My name is James Owens.

1 I'm a detective with the Philadelphia Police
2 Department, Special Victims Unit. I'm assigned to
3 the Special Investigations Division within that
4 unit. I have been a police officer for 19 years.
5 Fourteen of those years -- almost 14 years; it will
6 be 14 years December 1st, I've been assigned to the
7 Special Victims Unit.

8 I have a prepared statement here, but
9 the advantage of going last, I was able to sit and
10 listen to everybody else's testimony, so I'm going
11 to alter from that a little bit.

12 Generally, the Special Victims Unit, we
13 investigate sexual assault and child abuse cases in
14 Philadelphia. Within that unit, the Special
15 Investigations Division, which I'm part of, we
16 handle high-profile cases, cold cases, the CODIS
17 hits that you hear about and cases of serial
18 offenders.

19 DNA evidence is the backbone of many of
20 these cases. DNA collection analysis is a critical
21 tool in our investigations, and I'm honored to
22 testify before you on this important topic. This
23 topic is important to myself and all of my
24 co-workers because this is something we deal with
25 every day.

1 Expanding DNA collection will have a
2 significant impact on the work of law enforcement.
3 It would aid in our efforts to investigate and
4 solve cases and help get violent criminals off the
5 streets. As violent criminals are apprehended more
6 quickly, victims and communities can be at rest; be
7 put at ease. DNA collection limits the opportunity
8 for criminal to re-offend, which contributes to
9 public safety.

10 I have seven cases I want to speak
11 about. Most of them I was either assigned or took
12 part in, all but one. All of these cases involved
13 DNA evidence. I also heard Miss, I believe her
14 name was Sepich. I heard her story. I never met
15 her today, but she referenced a case in
16 Philadelphia. I'm not going to mention the
17 murderer's name. She mentioned three women in
18 Philadelphia. I was very much a part of that case.

19 The third, just so you can understand
20 from a ground perspective, the third victim in this
21 case, when her body was found I was at the scene.
22 I was one of the first detectives on the scene. At
23 that point we knew we had two cases that were
24 matched; two murders, that were matched by DNA that
25 had gone to CODIS and no offenders were matched.

1 So, as soon as I arrived at that scene
2 and I saw the victim's body and the way the scene
3 was, I knew we had a third case. That was just a
4 total helpless feeling, because at this point we've
5 been investigate two; now we have a third body, as
6 well as later we determined there were other
7 assaults that this man was responsible for as well.

8 So, in that case his DNA identifying him
9 stopped this from happening. There would have
10 probably been more bodies had he not been
11 identified through DNA.

12 One case I want to speak to you about is
13 a male by the name of Dominique Wilson. Dominique
14 Wilson was a Philadelphia resident. He affected
15 citizens of Philadelphia as well as Clinton County,
16 Pennsylvania. In the fall of 2008, one evening,
17 Dominique Wilson, he broke into a center city
18 apartment. While he was inside the apartment
19 building he waited. As a young couple returned
20 home to their apartment, he forced them inside. He
21 tied up and bound the boyfriend; robbed him. And
22 then while he was tied up, he raped his girlfriend.
23 He fled the scene and later used their ATM cards at
24 an ATM machine in southwest Philadelphia. There
25 was a DNA profile; our lab prioritized the case.

1 They developed a profile. It was submitted to
2 CODIS, and there were no matches.

3 Approximately two months later--it was
4 right before Christmas break--I responded to Thomas
5 Jefferson Hospital. There had been another sexual
6 assault of two women; one was raped; the other
7 woman was bound and tied. These girls were
8 students at the University of Pennsylvania. They
9 lived in an off-campus apartment. It was right
10 before they were going home for Christmas break.
11 Their one roommate had already gone home.

12 As the one female returned home to her
13 apartment, inside the hallway Mr. Wilson forced her
14 into the apartment; he bound her; took possession
15 of her credit cards, her bank cards, and then
16 waited for her roommate to return. When the
17 roommate returned, he repeatedly raped the
18 roommate. When I met them at the hospital, I
19 didn't need the DNA lab telling me that this was
20 related to the prior incident just by all the
21 similarities. However, within a short period of
22 time, our lab did match both cases through DNA.
23 Once again, we had no identified offender.

24 After the second assault, this male went
25 to the same ATM machine and withdrew funds from one

1 of the victim's account. We canvassed the area
2 where the ATM machine was. We used composite
3 drawings, sketches of the subject, and we weren't
4 really getting any luck. We were getting a large
5 number of tips where we were getting names of
6 people that fit the description or people that had
7 been arrested in the area.

8 When I get these tips, the first thing
9 I'll do when I know I have DNA on file and I'm
10 looking for someone who's not a convicted offender,
11 I'll do a computer check. A simple computer check
12 will tell me if that person is a convicted
13 offender. Well, in this case I knew I wasn't
14 looking for a convicted offender. I was looking
15 for someone that did not have a DNA qualifying
16 conviction. So I was able to exclude a lot of
17 types, a lot of suspects through that process.

18 When we would get a tip on a person
19 that did not have DNA on file in CODIS, we would go
20 out; we'd approach that person. We would conduct
21 our investigation. In many cases when I explained
22 what was going on, the people were more than
23 willing to consent and provide a DNA sample. Out
24 of all of these samples that were provided to me,
25 these people were excluded by DNA.

1 Later, in the early part of 2009, we
2 received a call from someone who notified us that
3 there had been an assault very similar to the one
4 that we had put out through the media up in Lock
5 Haven, Pennsylvania. Right away I contacted
6 detectives up in Lock Haven. I spoke to a
7 detective named Keith Kibler. He was the assigned
8 investigator up there. I determined that they had
9 arrested a male for a similar incident. He broke
10 into an off-campus apartment. He tied up one
11 female -- tied up two, raped the third, and then
12 raped one of the other females. So there were
13 three victims; two which were raped. They were
14 able to develop a suspect pretty quickly. Once
15 they went to the local media, and they took a male
16 into custody based on circumstantial evidence as
17 well as a bench warrant.

18 The next day I traveled to Lock Haven.
19 I met with them. I went to the Clinton County
20 Prison. I served the search warrant; collecting a
21 DNA reference sample from Dominique Wilson. We
22 returned to Philadelphia, and our lab processed the
23 sample. On top of that, Dominique Wilson fit the
24 physical description, and he only lived two blocks
25 from the ATM machine that was used after both

1 incidents in Philadelphia.

2 A short time later, our lab had
3 processed his reference sample, and there was a
4 match to both cases in Philadelphia, and the state
5 police later also matched his reference sample to
6 the case in Lock Haven.

7 These victims, I dealt with these women.
8 The best news I could provide for them was when we
9 told them that we had identified the person
10 responsible. That gives me the most amount of
11 satisfaction when I can go to a victim and tell
12 them that we have -- not that we've arrested a
13 person, but we've arrested the right person, which
14 most important for me is getting it right, and DNA
15 evidence does that.

16 Next case involved someone that -- it's
17 a more notorious case. This is the one that I did
18 not work on. It was clear by arrest around the
19 same time I was in the Special Victims Unit. It's
20 Troy Graves. He was dubbed The Center City Rapist.
21 Troy Graves raped six women; murdering one in
22 Philadelphia over a course of two years in the late
23 1990's. DNA test linked the Philadelphia crimes to
24 one another, but were unable to identify the
25 perpetrator since Graves had no prior convictions,

1 and his DNA profile was not in CODIS.

2 The break in the case came when CODIS
3 connected the Philadelphia forensic profiles to a
4 series of rapes in Fort Collins, Colorado. The
5 investigators that I worked with who worked on this
6 case, they worked with the Fort Collins'
7 detectives, and they were able to develop a suspect
8 who moved from Philadelphia up to Fort Collins.
9 DNA sample was obtained, and he was linked to all
10 the cases in both Philadelphia and Fort Collins.

11 Another case that I worked on involved a
12 male named Otis Wilkerson. Otis Wilkerson is a
13 serial rapist. He committed three attacks between
14 2002 between 2005. Two of them involved strangers;
15 women off the street he followed and forced at
16 knife point into a vacant area, a secluded area,
17 and sexually assaulted. The cases were linked by
18 DNA with no identified offender.

19 Having the information from the two
20 cases being linked by DNA, we were able to study
21 both cases. One of the cases made reference to a
22 tattoo, a specific tattoo on his body. We were
23 able to find an individual with that tattoo;
24 execute a search warrant for his DNA; and he was
25 later linked to that, as well as a third case

1 involving a woman that he was an acquaintance of.

2 Next case involves a male named Steve
3 Wooden. Early one morning in 2007, Steve Wooden
4 walked into a neighborhood dry cleaning store in
5 the northern Liberty section of Philadelphia. He
6 found a 54-year-old Korean female owner alone. He
7 robbed her of a hundred dollars that was in the
8 cash register drawer. At that time, when we
9 realized nobody else was in the store with her, he
10 forced her to the rear of the store where he
11 violently raped her. He fled the scene.

12 This case was extremely tough for us
13 because the victim only spoke Korean. Initially,
14 we're using her son as an interpreter at the
15 hospital and early on in the investigation. She
16 provided very detailed description of the offender.
17 She was able to meet with the police graphic artist
18 and help make a sketch of the suspect, but the case
19 kind of died there. We had no developments, no
20 leads, no information, until her rape kit was
21 processed and a DNA sample profile was developed.
22 It was placed in the CODIS and a hit to a case in
23 Wilmington, Delaware.

24 That case was an active rape case. When
25 I contacted the detective in Wilmington, he

1 informed me that he did not have enough evidence to
2 pursue his case, but he had a suspect and that
3 suspect was someone from Philadelphia.

4 When he provided me with that name, I
5 conducted a records check. I saw he had a criminal
6 history with several arrests, including a prior
7 sexual assault that occurred just north of the
8 location where the dry cleaners was. When I looked
9 at his picture, he looked like he posed for a
10 composite sketch. We showed a photo array to the
11 victim. She positively identified him. We went
12 out, executed a search warrant; obtained a DNA
13 sample. He later confessed to the crime and was
14 arrested and convicted.

15 Another case we have is Lionel Rivera.
16 In 2007, Lionel Rivera raped two young women within
17 months of each other. Neither woman was able to
18 identify her attacker. We're even unaware that the
19 rapes were committed by the same person.
20 Fortunately, DNA was recovered in both cases. It
21 was entered into the CODIS system, which not only
22 provided the link between the two assaults, but the
23 identity of the perpetrator.

24 Once we realized who we were looking
25 for, he was already out on the streets. He had

1 given a DNA sample post-conviction as he was being
2 released from county jail and reported to
3 probation. When we went to look for him, a manhunt
4 had ensued, and he was later arrested July 4th of
5 that year up in Princeton, New Jersey, hiding out
6 in a hotel room.

7 The last case I'm gonna talk about is
8 Derrick Cook. In August, 2008, a 23-year-old woman
9 was walking down the street in the northern Liberty
10 section of Philadelphia. She was grabbed from
11 behind and forced by gun point to a nearby lot.
12 Her attacker raped and physically assaulted her.
13 The victim was unable to identify her attacker.
14 She did meet with a graphic artist and provided a
15 good composite sketch. She was treated at a
16 hospital. DNA evidence was obtained from her rape
17 kit. It was entered into the CODIS with no
18 matches.

19 Approximately three months later, a
20 second young woman was raped and stabbed by Derrick
21 Cook inside her residence nearby. Derrick Cook was
22 apprehended when he sought medical treatment for a
23 stab wound at Hahnemann University Hospital. When
24 I became aware of his arrest, I looked at his
25 arrest photo, and he was someone that wouldn't even

1 come up on my radar for this crime because our
2 victim had described an adult male with tattoos.
3 It turned out that Derrick Cook, although he had the
4 physical built of an adult male and did have
5 tattoos, he was only 14 years old.

6 We went -- executed -- showed a photo
7 array. The complainant positively I.D'd him. We
8 executed a search warrant; obtained a DNA sample,
9 and his DNA ended up matching both the first
10 complainant's rape kit, as well as evidence from
11 the second crime scene.

12 I hope these cases provide some insight
13 on how essential the CODIS system is to our work.
14 As with any database success, the CODIS database
15 depends largely on the amount of information it
16 contains. It's only logical that the more DNA
17 profile is entered into the CODIS, the greater the
18 likelihood of hits or matches. The only way you're
19 going to decrease the number of unknown criminal
20 profiles in CODIS is to increase the number of
21 known reference samples.

22 Myself and all the investigators I work
23 with, we have a long list of crime, so we would
24 love to see solved by DNA. We have the profiles.
25 We don't have an identified offender. These are

1 violent crimes, one of which is the Fairmont Park
2 rapist. That's a case that I have swabbed
3 personally somewhere around, probably, a hundred
4 different people based on tips over the past
5 several years; all have been excluded. The lab, as
6 well as our homicide unit, that we are constantly
7 swabbing people; taking buccal swabs.

8 Just one more point I'd like to make
9 with reference to fingerprints, photographs, and
10 the whole process is, I've been through the process
11 of obtaining fingerprints from people. I swab
12 people all the time; buccal swabs. I carry them in
13 my work vehicle. I have them in my personal
14 vehicle. I have consent forms. I carry them in my
15 jacket pocket because I never know when I'm gonna
16 be called somewhere where I need to take a
17 reference sample from someone.

18 The last time I had a case where a
19 suspect was identified by fingerprint evidence was
20 a male named Jose Caraskio (phonetic) in 2010 three
21 years ago. It was a pristine bloody fingerprint in
22 a back alley crime scene where an 11-year-old girl
23 was brutally raped on her way to school. That
24 fingerprint did help identify him immediately, but
25 ultimately, his DNA is what led to him pleading

1 guilty.

2 Every day I solve cases involving DNA;
3 not fingerprints. The next arrest I'll make later
4 this week will be based on DNA. I can't stress
5 anymore how important DNA is to work that I do. If
6 we can take the time to take fingerprints from
7 people at the time of arrest, DNA is, despite what
8 anybody else says, it's a less intrusive procedure.
9 I've done it. I can take DNA samples from four
10 people in the time it takes a qualified person to
11 do 10 fingerprints and palm prints on a live scan
12 machine. It's so much easier. I do it right on
13 the street corner.

14 When the Kensington strangler
15 investigation occurred, after the murder of those
16 three women, I was out riding the streets of
17 Kensington with my partner, three, four o'clock in
18 the morning as part of a task force. We were
19 coming into contact with people that were being
20 arrested; people that fit the description of what
21 we were looking for.

22 We were telling the people why we were
23 out there. We met very little resistance from
24 anyone not willing to help us. People were willing
25 to provide us with their DNA samples right out on

1 the street; from signing consent forms. We
2 obtained over a hundred samples in that case, and
3 all those people were excluded through DNA. In the
4 end, the right person was identified and arrested.

5 I'd like to thank you again for the
6 opportunity to testify before you today. I'm happy
7 to discuss comments further and answer any
8 questions you might have.

9 MAJORITY CHAIRMAN MARSICO: Go ahead.

10 MR. PFLEEGOR: First I'd like to thank
11 the Committee on giving the Philadelphia Police
12 Department's Office of Forensic Science the
13 opportunity to speak today. Rather than read this
14 prepared statement, which is just gonna be
15 repetition of everything you heard today from other
16 witnesses, I'd kind of like to add something
17 myself.

18 The CODIS database is the most important
19 investigative tool that's come to law enforcement
20 in my 18 years with the Philadelphia Police
21 Department. And it's not a tool that's just given
22 to any police department or any laboratory.
23 There's a responsibility that comes with having
24 this tool, and there's certain levels of audits and
25 inspections you have to go through before you even

1 have the privilege of using this tool.

2 We have federal legislation; there's
3 state legislation. There's what we call the FBI
4 quality assurance standards which guide how things
5 are done within the laboratory. There's the
6 National DNA Index System standards which are
7 standards that guide how the CODIS database itself
8 is operated and what's uploaded to the national DNA
9 database. Along with those standards comes annual
10 audits on our -- the QAS standards or the FBI
11 quality assurance standards. We have accreditation
12 audits every two to four years. Not to mention,
13 there's also what we call Endus (phonetic)
14 assessments, which are random assessments based on
15 these Endus standards, as well as the Office of
16 Inspector General who also performs random
17 inspections on the lab based on these standards
18 that I've mentioned.

19 In order for us to maintain the
20 privilege of using this CODIS database, we have to
21 undergo these audits and inspections, and it's not
22 something that any law enforcement agency takes
23 lightly. The reason I mention this, I heard Mr.
24 Hoover earlier speak about some of the additional
25 information that could be maintained in the -- or

1 the genetic information maintained in these
2 samples.

3 Miss Sepich did a great job in
4 explaining how that type of information is not
5 something you find in the database. Not only is it
6 not in the database, these standards -- this
7 legislation makes sure that we don't maintain this
8 type of information in our database. Not only do
9 the standards tell us that we can't, they even take
10 the further step in doing these audits and
11 inspections to make sure that this type of testing
12 is not being done. It's very specific on what we
13 can use this for, and they make sure -- you know,
14 they come out and inspect that that is actually
15 what's being done.

16 There's no law enforcement agency that I
17 know of that's willing to jeopardize their ability
18 to use this tool. In Philadelphia alone, we've
19 been participating in the CODIS database now for
20 nine years. In that nine years, we've had 650
21 hits -- I'm sorry. I can refer to my notes for
22 that. It's been 560 hits to convicted offenders in
23 our state database, and an additional 88 hits
24 convicted offenders across the country, including
25 arrestees -- the states who have arrestee

1 legislation like California. Without this tool,
2 that's 650 cases that we may not have ever solved.

3 Again, I can't stress enough on how
4 important this tool is to all our law enforcement
5 agencies, and how -- I can't see -- I know
6 personally at the Philadelphia Police Department
7 ever doing anything outside of what these standards
8 state to jeopardize our participation in that.

9 MAJORITY CHAIRMAN MARSICO: Questions?

10 (No response).

11 MAJORITY CHAIRMAN MARSICO: Well, once
12 again, thank you for your testimony and taking the
13 time to come up here from Philadelphia. We really
14 appreciate you being here. Your testimony, I'm
15 sure, will be used by the Committee. We, once
16 again, thank you for your time. We've got to get
17 to session, so we don't have a lot of time to ask
18 questions. That's why there isn't any questions.
19 Thank you again.

20 MR. OWENS: Thank you.

21 MR. PFLEEGOR: Thank you.

22 MAJORITY CHAIRMAN MARSICO: This
23 concludes the hearing. Thanks everyone for being
24 here.

25 (At 1:14 p.m., the hearing concluded).

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C E R T I F I C A T E

I, Karen J. Meister, Reporter, Notary Public, qualified in and for the County of York, Commonwealth of Pennsylvania, hereby certify that the testimony was recorded by me in stenotype, to the best of my ability, from a video recording and subsequently reduced to computer printout under my supervision, and that this copy is a true and correct record of the same.

I further certify that I am not a relative or employee of counsel or the parties hereto. This certification does not apply to any reproduction of the same by any means unless under my direct control and/or supervision.

Dated this 22nd day of November, 2013.

Karen J. Meister, Reporter
Notary Public