



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL
HARRISBURG, PA 17120

KATHLEEN G. KANE
ATTORNEY GENERAL

16TH FLOOR
STRAWBERRY SQUARE
HARRISBURG, PA 17120
(717) 787-3391

**House Judiciary Committee Public Hearing on Senate Bill 150
Tuesday, November 12, 2013**

**By Bruce Beemer
Chief Deputy Attorney General of Criminal Prosecutions
On behalf of the Office of Attorney General**

Good morning, Chairmen Marsico and Caltagirone, and members of the legislature. My name is Bruce Beemer and I am the Chief Deputy Attorney General of the Criminal Prosecution Section within the Pennsylvania Attorney General's Office. My section prosecutes, among other things, cases involving homicide, rape, and other forms of sexual assault and violent crimes. On behalf of Attorney General Kathleen G. Kane I very much appreciate the opportunity to speak before the House Judiciary Committee about Senate Bill 150.

Late one night in 1998, Michael Lipinski broke into a Pittsburgh home and tied up a 17-year old girl. The sleeping girl awakened to find Lipinski standing over her. Lipinski raped and assaulted her. DNA evidence was collected from the victim but the crime went unsolved.

In 2002, in Wilksburg, just outside of Pittsburgh, Lipinski pried open the screen of a home and climbed through an unlocked window. He kidnapped a 3-year old girl, and took her to the Highland Park section of Pittsburgh where he raped and sexually assaulted her after removing the toddler's one piece pajama. DNA evidence was again collected from the victim, but the crime went unsolved.

Lipinski struck again in Pittsburgh in 2005, this time snatching a sleeping 9-year old girl off a couch and assaulting her. This time, too, the crime remained unsolved even though DNA evidence was retrieved from the victim.

In 2008, Lipinski was finally identified as the perpetrator of all three of these previously unsolved attacks when CODIS (the Combined DNA Index System) matched DNA samples obtained from these crime scenes with a sample that was taken from him following a separate 2008 conviction for a sexual assault.

Lipinski had a lengthy history of contact with the criminal justice system, including a dozen or so arrests between 1989 and 2002, some for sexual offenses. If Senate Bill 150 had been law at the time of those arrests, it very well may have prevented the second and third vicious sexual crimes. It would have been lawful for Lipinski's DNA to be matched to the evidence gathered from the 1998 crime scene, and for him to be prosecuted and punished.

Sadly, the case of Michael Lipinski in Pittsburgh is not unique. Studies from other jurisdictions establish rather conclusively that collection of DNA at the time of arrest aids the timely identification of perpetrators engaged in violent criminal activity. A Chicago study that detailed the history of eight felons found that if DNA had been collected at the time of their first felony arrests, it could have prevented 60 additional violent crimes from occurring, including 22

murders and 30 rapes. Similar studies in Denver and Maryland illustrate the tangible benefits for law enforcement—and society—in identifying and stopping violent perpetrators through DNA matches.

One need only look to Virginia, one of the first states to require DNA collection at the time of arrest for certain felonies, to see how concretely this procedure helps solve crimes. Virginia authorities have received 785 hits on unsolved cases through their arrestee data bank, including 117 hits associated with sexual assaults. This procedure greatly enhances law enforcement's ability to solve crimes more quickly and, just as importantly, helps prevent further victimization.

These tangible benefits to law enforcement and to actual or would-be victims of crime can legitimately be expected to follow from the passage of Senate Bill 150. Not only would this bill assist in prosecuting crimes that might otherwise go unsolved, but in a number of cases it would prevent specific instances of violent crime all together. Maintenance of this type of database would have other benefits as well. It would be a valuable tool for law enforcement to accurately identify individuals in custody. Importantly, one can also appreciate the potential of such data to exonerate those who have been wrongly suspected of, charged with or convicted of crimes.

Not surprisingly, the issue of post-arrest DNA collection has spawned much debate in the courts and in our society at large. Whether the taking of a sample from someone arrested for a serious crime is the sort of intrusion that violates the Fourth Amendment was ultimately settled by the United States Supreme Court's recent decision in *Maryland v. King*. In concluding that Maryland's statute which permitted the taking of DNA samples from those arrested for serious criminal transgressions—not everyone who is arrested—was constitutional, the court scrutinized the process involved and determined that it could reasonably be described as minimally invasive, much like the taking of a fingerprint at arrest. Justice Anthony Kennedy, writing for the majority in *Maryland v. King*, summed things up by saying that the process of obtaining an individual's DNA is a non-invasive, painless, and simple swab on the inside of a person's cheek.

While DNA sample collection is a minimal intrusion similar to fingerprinting, DNA is actually a far more reliable and precise method of human identification in crime-solving identification of a perpetrator at arrest, and in excluding/exonerating innocent people. CODIS, a database program controlled and operated by the FBI, allows DNA profiles to be compared from state to state and across many crime laboratories. There are several databases within CODIS, including one of DNA of known individuals, and another containing DNA profiles recovered from crime scenes. The databases are filled with a series of DNA pairs from each genetic profile, typically identifying 13 locations or "loci" on any DNA molecule.

It is important to note that the CODIS system has numerous safeguards in place to prevent the improper use or dissemination of private information obtained through entry of the genetic loci into the system. Information obtained can only be used for identification or match purposes in a criminal investigation, and not to decode the genetic markers to identify personality traits, illnesses, or genetic ancestry.

I would like to highlight some very important provisions that Senate Bill 150 contains. First, like the Maryland statute that was upheld in *Maryland v. King*, Senate Bill 150 provides for the taking of samples from those arrested for *serious* crimes—not every arrestee. Second, it allows for an expungement procedure in the event the charges for which an individual was arrested were withdrawn, dismissed, or resulted in a not guilty verdict. This procedure would safeguard against the permanent collection of DNA from exonerated individuals.

No matter how carefully-drafted and well-intentioned this piece of legislation, it will ultimately only be as effective as the resources that are devoted to it. The Pennsylvania State Police have noted the difficulties in effectively implementing certain provisions of Senate Bill 150, without a considerable increase and allocation of resources to the existing framework of their crime laboratories. For example, there is currently an average of about 100 days between when a sample is submitted to the Pennsylvania State Police for analysis from a crime scene and the completion of the testing process. This gap in time would only be further exacerbated without the addition of more crime lab equipment and analysts.

At least one scholarly study makes a compelling case that there is actually a fiscal benefit to the adoption of "arrestee DNA" legislation. Jay Siegel, Ph.D., the Department Chair of Forensic Science and Forensic Chemistry at Indiana University-Purdue University-Indianapolis, conducted a study entitled, "*Why Arrestee DNA Legislation Can Save Indiana Taxpayers Over \$50 Million Per Year.*" He found that implementing DNA upon arrest legislation could save Indiana taxpayers as much as 50 million dollars per year. A willingness to provide the resources necessary to implement Senate Bill 150 now can have a positive fiscal impact on the Commonwealth. Moving forward, our office would welcome the opportunity to work with you to try and identify ways to make this legislation viable in terms of the fiscal resources or the manpower needed to accomplish that goal.

As I conclude my remarks this morning, I would mention that there are a few technical questions and concerns that the Office of Attorney General would be happy to address in written form as this bill progresses further. In sum, we hold firmly to the belief that this legislation requiring the taking of DNA of certain arrestees can help prevent the victimization of an untold number of innocent people, help solve previously "unsolvable" acts of violence, and exclude the truly innocent. I urge this Committee to consider the enormous benefit this legislation could have on society as a whole and to individual victims, for many of whom justice and closure have been too long delayed. With the appropriate protections in place, such as expungement from the database coupled with privacy protections, this law could provide law enforcement and the judicial system with an incredibly powerful forensic arsenal to protect the innocent and punish the guilty.