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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on ... Criminal Justice (AC-CJ)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**


INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

- None.

April 22, 2010

Failed to pass pursuant to Senate Joint Resolution 1.



Nancy McAdams
Committee Clerk



ABS11

10/9/09 -

Packet



207 E. Buffalo Street, #325
Milwaukee, WI 53202-5774

MEDIA RELEASE

Bob, Renee Crawford
dropped this off. She
asked that you not
pass this bill if it
eventually N.
comes to your
comt.

For Immediate Release: October 9, 2009

Contact: Christopher Ahmuty, Executive Director, (414) 272-4032, ext. 13

DNA collection expansion too costly, too invasive, and too distracting, ACLU of Wisconsin Says

Milwaukee – The American Civil Liberties Union of Wisconsin today urged state lawmakers to oppose legislation that would expand profiles in the state DNA data bank to include individuals merely arrested, not convicted, on a felony charge. State Senator Sheila Harsdorf (R-River Falls) and State Representative Ann Hraychuck (D-Balsam Lake) are co-sponsors of Senate Bill 336, which has been referred to the Senate Judiciary Committee.

Christopher Ahmuty, Executive Director of the ACLU of Wisconsin, issued the following statement:

DNA technology has great potential for addressing crime, but we must use it and any developing technology wisely. When police are looking for a needle in a haystack, we shouldn't be adding more hay to the stack. But that's exactly what SB336 does by collecting and analyzing DNA samples from individuals who have not been convicted of a violent crime.

While it is clear that the Wisconsin State Crime Laboratories' DNA data bank system needs better management, a dramatic expansion of DNA collection without adequate checks and balances and funding at a time when the State and its counties have serious funding problems is like throwing water on a drowning swimmer.

This proposal allows the state crime laboratories to maintain the DNA profiles of persons who are never charged for as long as a year. During that year the DNA profile is likely to be shared with the federal DNA data bank (CODIS) making it virtually impossible to remove it from state, federal and even international DNA data banks. DNA collection is an invasive search that jeopardizes the constitutional rights of Americans, if it is not done judiciously.

Expanding DNA collection to arrestees has undermined the use of DNA to solve crimes across the nation. In March, the Inspector General at the United State Department of

Justice released an audit that found that state laws expanding DNA collection have led to significant delays in DNA analysis. Audits in Illinois and Michigan have similarly found massive backlogs due to increased DNA collection.

And in Milwaukee, recent media reports reveal that the Sheriff David Clarke's own department failed to collect DNA samples from over 350 convicted felons this year at the County Correctional Facility – South.

Finally, expanding DNA collection will perpetuate, if not increase, the racial disparities that are acknowledged to exist in Wisconsin's criminal justice system. When a disproportionate number of minorities are arrested, they will create unwarranted racial disparities in the DNA data bank, making them permanent suspects who need to be investigated, while white perpetrators may not even be in the data bank.

The ACLU of Wisconsin urges legislators to re-direct their efforts to improve the state's DNA data bank system by mandating regular audits, improving the expungement process, and concentrating on eliminating existing backlogs. Legislators should not adopt a more is always better approach when it undermines constitutional rights, without improving public safety in a fiscally responsible way.

The ACLU of Wisconsin has over 8,500 members statewide and defends the civil liberties and rights of all Wisconsin residents in a non-partisan manner.

RENEE CRAWFORD
ASSOCIATE DIRECTOR
EMAIL RCRAWFORD@ACLU-WI.ORG



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LIBERTIES UNION OF
WISCONSIN
207 EAST BUFFALO ST
SUITE 325
MILWAUKEE, WI 53202-5774
T/414.272.4032
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C/414.331.8907
WWW.ACLU-WI.ORG



207 East Buffalo Street, Suite 325
Milwaukee, WI 53202-5774
(414) 272-4032

October 1, 2009

State Senator Sheila Harsdorf
Room 19 South
State Capitol
Madison, WI 53707-7882
Fax: 608-267-0369

State Representative Ann Hraychuck
Room 6 North
State Capitol
Madison, WI 53708
Fax: 608-282-3628

SB 336

Dear Senator Harsdorf and Representative Hraychuck,

On behalf of the American Civil Liberties Union of Wisconsin, a non-partisan organization with over 8,500 activists and members, we urge you to revise LRB-1911, your proposal to expand profiles included in the state DNA data bank to include individuals arrested on a felony charge. We can all agree that DNA analysis is a highly useful tool for law enforcement, and it is clear that the Wisconsin state DNA database needs reform. However, a dramatic expansion of forensic DNA collection has not been accompanied by adequate checks and balances or proper consideration of the special threat it poses to privacy, civil liberties, and civil rights. In addition, the Wisconsin state DNA database is currently grappling with a severe budget shortfall, insufficient staff, an overwhelming backlog of crime scene samples to be analyzed and as many as 12,000 DNA specimens to be collected and analyzed from convicted felons going back years.

In America, people are presumed innocent until proven guilty. Thousands of people are arrested or detained every year and never charged with a crime. Housing a person's DNA in a criminal database renders that person an automatic suspect for any future crime – without warrant, probable cause, or individualized suspicion. While U.S. courts have generally ruled that DNA banking of convicted felons is permissible because a person who has been convicted of a crime has a “diminished expectation of privacy,” this cannot be said for those persons who have simply been arrested.¹

¹ See, e.g., *Landry v. Att’y Gen.*, 709 N.E.2d 1085, 1092 (Mass. 1999); see also *Hudson v. Palmer*, 468 U.S. 517, 523 (1984); *People v. Wealer*, 636 N.E.2d 1129 (Ill. App. Ct.); *Jones*, *supra* note 6, at 308.

Some in state law enforcement, such as Milwaukee County Sheriff Clark, appear to have bought the line that the bigger the databank the more effective it is as an investigative tool and have sought to include the DNA of just about every sample they can get their hands on. This is misguided. While some have argued that permanently warehousing DNA of those convicted of violent crimes is warranted because of allegedly high rates of recidivism for these crimes, this rationale does not hold for those who have never been convicted of a crime. Moreover, you can't find a needle in a haystack by making the haystack bigger. At best, this is a situation of diminishing returns: as we expand the databank to ever more categories of individuals and to the innocent, the likelihood that these individuals will ever be involved in a crime involving DNA evidence is less and less.

DNA databank expansion is extremely expensive and will divert funds from other critical law enforcement programs. Proper DNA storage requires specialized equipment and specially trained personnel, both of which come with a high price tag. As DNA collection expands, space and equipment demands rise, along with costs. To put the extreme costs associated with DNA databank expansion in perspective, consider that in 2008, Wisconsin law enforcement made 8,133 arrests for violent crimes alone.² With a price tag of approximately \$250.00 (the amount of the surcharge) to analyze each sample, Wisconsin taxpayers would be charged \$2,033,250.00.³ Given the harsh economic conditions and the statewide budget crisis, scarce funds would be better spent on more critical programs than storing and analyzing genetic samples of individuals who have not, and may not ever be convicted of a crime.

The expansion of DNA databases to arrestees would also perpetuate racial disparities that are systemic to Wisconsin's criminal justice system.⁴ The persistent practice of discriminatory profiling in law enforcement (addressed in part in the current state budget) combined with expanded DNA collection would result in an increasingly skewed criminal database in which minorities and poor people are overrepresented.

While racial disparities are systemic to our criminal justice system, they are especially dramatic at the point of arrest. If arrestees are included in the DNA databank, the demographics of individuals included will not represent the population of actual offenders, but will instead become a catalogue of the genetic information of minority communities – a discriminatory boondoggle that will not serve public safety.

Privacy and racial justice issues aside, encouraging the Wisconsin Department of Justice to expand its DNA data banks to arrestees is at best impractical and perhaps impossible. Laboratories across the nation are facing extraordinary backlogs, and Wisconsin is no exception.

² Wisconsin Office of Justice Assistance's Statistical Analysis Center, *Arrests in Wisconsin 2008*, Sept. 2009, available at: <http://oja.wi.gov/docview.asp?docid=17600&locid=97>

³ Wis. Stats. § 973.046

⁴ Commission on Reducing Racial Disparities in the Wisconsin Justice System, *Final Report*, February 2008, available at <http://oja.wi.gov/docview.asp?docid=13615&locid=97>

At the close of 2006, the state crime lab reported a backlog of 1,785 cases.⁵ These backlogs, caused in part by the heedless expansion of state DNA databases to ever more categories of individuals, have led to extensive delays in the processing and testing of rape kits and other crime scene evidence.

Lengthy delays in testing DNA from crime scenes can have tragic outcomes. For example, an emergency report issued last year by the California Commission on the Fair Administration of Justice, a bi-partisan panel of criminal justice experts and practitioners, documented enormous backlogs of approximately 160,000 untested DNA samples arising from the expansion of California's databank to all felons. In addition, the panel reported that "delays of six months or more have become the norm" in analyzing rape kits. In one case, a rapist attacked two more victims, including a child, while his DNA sat on a shelf awaiting analysis.⁶

We agree that the results of a recent audit state DNA database indicate that much better oversight and implementation is needed. However, expanding the profiles included in the state DNA databank would only serve to exacerbate existing problems without providing needed reforms. We would like to propose several high-impact, low-cost reforms that could be implemented relatively quickly to ensure that errors like those in the case of Walter Ellis are a thing of the past.

The apparent missing profiles revealed in the aftermath of the Ellis case highlight the need for frequent audits and stringent oversight of the state databank. Any future systemic problems in the databank could be caught and corrected quickly by mandating yearly performance and fiscal audits that must be reported to the Legislature and available to the public. In addition, an annual racial disparity impact statement would serve to both minimize the potential for racial disparities in the databank, and demonstrate good faith to minority communities. By requiring a log to be kept of all DNA databank sharing and/or matching activities, inappropriate or unauthorized use of the system can be easily observed. Unauthorized use of the databank would also be mitigated by increasing the penalty from a negligible \$500 fine to an amount that would effectively deter mischief.

Genetic information may remain accessible indefinitely once it is collected. Even if an individual is never charged for or convicted of a crime, their genetic information can remain in a criminal DNA database in the form of backed-up or shared data or if the proper bureaucratic channels for expungement are not properly followed. To mitigate this potential, we recommend strengthening the expungement provision in LRB-1911 by transferring the burden from an

⁵ Wisconsin Department of Justice, *Attorney General J.B. Van Hollen Announces Release of Department of Justice Report Reviewing State Crime Lab Resources for DNA Analysis*, Feb. 12, 2007, available at: <http://www.doj.state.wi.us/absolutenm/anmviewer.asp?a=69&z=5>

⁶ California Commission on the Fair Administration of Justice, *Emergency Report and Recommendations Regarding DNA Testing Backlogs*, Feb. 20, 2007.

exonerated individual to the state to petition for the removal of DNA samples and profiles that do not belong in the system. We also recommend that DNA samples not be shared with other parties until after a conviction is achieved so that an individual's genetic material is not lost in the proverbial ether.

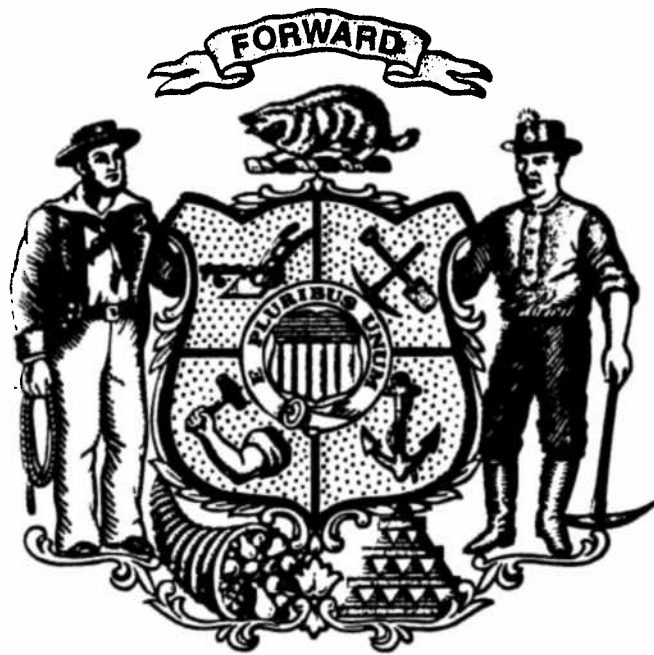
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Sincerely,

/s/

Chris Ahmuty
Executive Director

CA:mb



IMPORTANT MESSAGE

FOR → NANCY
DATE 10/23 TIME 11:10 (A.M./P.M.)
M Chris Amety (4)
OF ACLU
PHONE 414 272-4032
 FAX AREA CODE NUMBER EXTENSION
 MOBILE AREA CODE NUMBER TIME TO CALL
(X 13)

TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL	<input checked="" type="checkbox"/>
CAME TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>
WANTS TO SEE YOU	<input type="checkbox"/>	RUSH	<input type="checkbox"/>
RETURNED YOUR CALL	<input type="checkbox"/>	SPECIAL ATTENTION	<input type="checkbox"/>

MESSAGE Letter to Haychuck +
Hansdorf

SIGNED LG

Office
DEPOT

2009

Packet

AB 511
Folder

McAdams, Nancy

From: Chris Ahmuty [cahmuty@aclu-wi.org]
Sent: Friday, October 23, 2009 11:24 AM
To: McAdams, Nancy
Subject: FW: ACLU WI says DNA collection will increase racial disparities

Attachments: WI DNA collection expansion LRB-1911.doc



WI DNA collection
expansion LR...

Nancy,

Here is a copy of the my letter to Rep. Hraychuck, which I copied to Bob on Sept. 30th.

Thanks.

Chris

-----Original Message-----

From: Chris Ahmuty [mailto:cahmuty@aclu-wi.org]
Sent: Wednesday, September 30, 2009 5:16 PM
To: 'Rep.turner@legis.wisconsin.gov'
Subject: ACLU WI says DNA collection will increase racial disparities

Dear Rep. Turner,

Please find attached my letter to Senator Harsdorf and Representative Hraychuck regarding LRB 1911 relating to: requiring DNA samples to be taken on arrest of a felony charge.

My letter explains in detail why we believe that expanding collection and analysis of DNA samples beyond convicted felons is ill-conceived. For example, collecting samples at arrest will exacerbate the racial disparities that already exist in Wisconsin's criminal justice system.

If you have questions, please don't hesitate to contact me.

Chris Ahmuty



**207 East Buffalo Street, Suite 325
Milwaukee, WI 53202-5774
(414) 272-4032**

State Senator Sheila Harsdorf
Room 19 South
State Capitol
Madison, WI 53707-7882
Fax: 608-267-0369

State Representative Ann Hraychuck
Room 6 North
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Sincerely,

/s/

Chris Ahmuty
Executive Director

CA:mb



AB 511
Folder



Van Hollen expresses concern over OWI, DNA bills
1/4/2010

A proposal to ensure DNA samples are collected from offenders as required and a crack down on drunken driving have the potential to cripple the Department of Justice because of inadequate funding, Attorney General J.B. Van Hollen says in a WisPolitics.com interview.

Van Hollen, a Republican, said he supported parts of the OWI crack down that lawmakers approved last month. But he continues to have concerns that the cost of the package will end up drawing DOJ resources from other priorities.

The first-term AG up for re-election in 2010 said that's also a major reason why his agency hasn't taken a position on a proposal to require DNA samples collected from offenders after they are arrested rather than following a conviction, as now required.

The proposal surfaced after reports that some 12,000 samples from felony offenders hadn't been collected despite the requirement under state law.

Van Hollen said his agency is working with lawmakers to improve the bill, but he continues to have concerns about the demands it would place upon DOJ and what it would cost, especially after a round of cuts in the current budget.

"If we undertook the requirements of that bill without resources to back it up, it could paralyze the Department of Justice, and it could create backlogs that are insurmountable," Van Hollen told WisPolitics.

Van Hollen said he believes the state is making "pretty good progress" in gathering the samples that weren't collected; the last report he received about a month ago showed an increase of about 5,500 offender samples.

Van Hollen also said there are concerns about balancing the demands of law enforcement work with the rights of suspects.

"At some juncture, it's hard to tell whether you've gone too far or not," he said.

The drunken driving reforms that were signed into law rely on a series of fee increases on offenders to pay for the increased costs, but some have raised questions about whether the fees are a reliable funding source. Van Hollen pegged the additional costs for DOJ at \$3 million per year.

"There were a few parts of it I didn't like. By and large I liked the legislation because there were some very good things in it," Van Hollen said. "And even though it came with supposed complete funding, I think people very reasonably expect that's not going to be true."

See more from Van Hollen and his likely 2010 opponent, former DNR Secretary Scott Hassett, [here](#).



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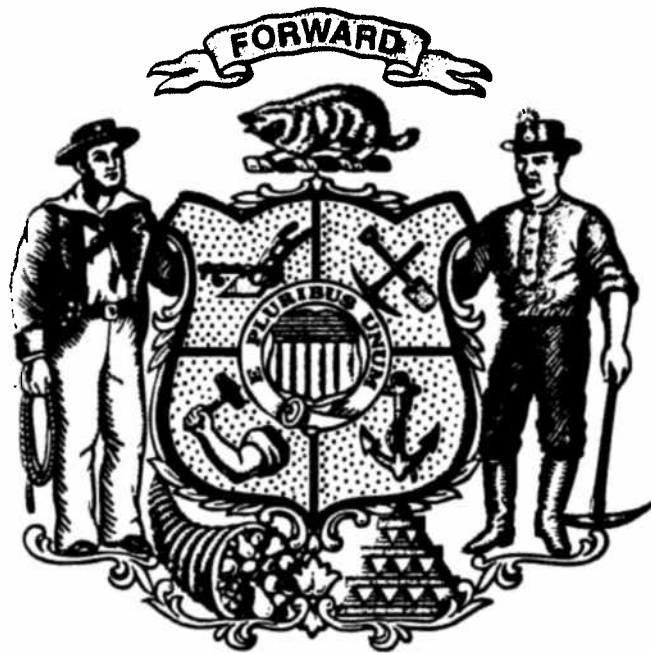


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SHARE







ANN HRAYCHUCK
STATE REPRESENTATIVE

MAR 17 2010

March 9, 2010

Representative Robert Turner
Chair, Assembly Committee on Criminal Justice
State Capitol, 223 North
HAND DELIVERED

RE: Assembly Bill 511, "DNA Saves"

Dear Chairman ^{Bob:} Turner:

I write to respectfully request that you schedule Assembly Bill 511 for a public hearing as soon as possible. As you know, this legislation would require law enforcement to take a deoxyribonucleic acid (DNA) sample from every adult arrested for a felony.

"DNA Saves" is an important piece of legislation that would give law enforcement an invaluable tool for solving heinous crimes. By taking DNA at the time of arrest for felony charges, Wisconsin's police and sheriff departments will be able to save time and money by avoiding extended and unnecessary investigations. The accuracy of an eyewitness account pales in comparison to the accuracy of a DNA test.

Not only will we be freeing up resources for our law enforcement community, but this legislation also allows us to place repeat offenders in prison, prevent future crimes from taking place, and exonerate those who otherwise would have been found guilty.

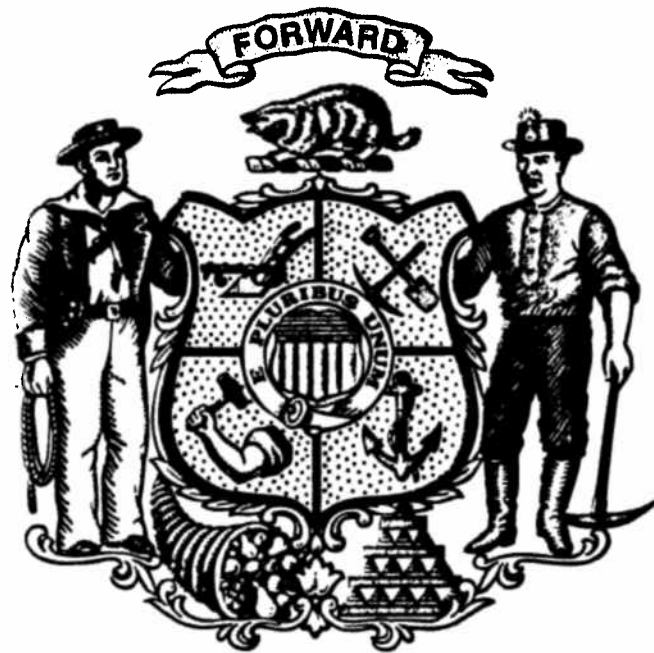
Thank you for your consideration of Assembly Bill 511. If you have any further questions about my support for scheduling this legislation for a public hearing, please feel free to contact me.

Sincerely,

Ann Hraychuck
State Representative
28th Assembly District

AH/mg

Bob- 3/18
Do you want to
have a hearing
on this bill?
N.



Date: April 14, 2010
To: Assembly Committee on Criminal Justice
Fr: Karen Foster, DNA Chair, Surviving Parents Coalition
Re: Assembly Bill 511 – DNA testing on felony arrest

Chair Turner and Committee members:

We don't have to let people get away with murder, rape and other heinous crimes anymore. We can identify them and prosecute them successfully by collecting DNA on all felony arrests.

We will save lives, prevent many crimes, protect our children and grandchildren. Collecting DNA on all felony arrests will change our criminal justice system and start to balance the scales of justice. We will see amazing progress in the next couple of years as all 50 states start collecting DNA on all felony arrests. No victim should have to wait years for answers. Waiting to collect DNA until after conviction adds years, which weakens cases and complicates prosecution, making it incredibly costly and time consuming.

Law enforcement won't have to deal with as many unsolved crimes when DNA is collected on felony arrest. Cases will be solved earlier; fewer cases will grow cold. No one should get away with murder, rape or any other heinous crime. We have the technology to stop them. It is our moral responsibility to protect the innocent and keep the innocent out of jail.

We, also, have a financial responsibility. Failure to pay \$50 to collect and process an offender's DNA at the time of arrest costs our states thousands of dollars in investigation time, prosecution time and court time. Cold cases cost our states millions. Catching the criminals earlier prevents many crimes. It will reduce our crime rates. Currently 23 states and the federal government have legislation in place to collect DNA on felony arrest.

We can make this nation a better place and a safer place for our children and grandchildren. Passing a bill requiring DNA on all felony arrests will become your legacy. You will save lives. You will be preventing so much pain and sorrow. You will be responsible for balancing our justice system.

We all want to do our part to make this world a better place. Collecting DNA on all felony arrests will make an incredible difference.

Finding a suspect can be like looking for a needle in a haystack. CODIS, our national DNA database can do it in a couple of key strokes.

No killer will slip through the cracks when DNA is collected on arrest, at the same time the finger prints and mug shots are taken. Delays will be minimized by keeping it simple.

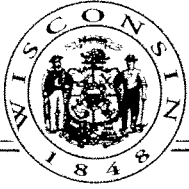
As a nation, we can no longer allow people to get away with murder, rape and other heinous crimes.

The Surviving Parents Coalition, SPC, is a nationwide group of parents dedicated to stopping predatory crimes against our children and young adults. We know collecting DNA on all felony arrests is the single, most effective, way to do it.

We, all, have had a child abducted, sexually assaulted, murdered, recovered or are still missing. Our stories are compelling and will tear at the hardest of hearts. Our losses are made even more horrific by the failures in our justice system. We have learned the hard way and are dedicated to making changes so that others will not have to suffer as we have.

Please vote in favor of DNA on felony arrest. It will prevent so much pain and sorrow and help reduce our crime rate. Let's make our nation a safer place, a better place for our children and grandchildren.





State Senator Sheila Harsdorf

Date: April 14, 2010

To: Assembly Committee on Criminal Justice

Fr: State Senator Sheila Harsdorf

Re: Assembly Bill 511 – DNA testing on felony arrest

Chair Turner and Committee members:

I would like to thank you for holding a public hearing and allowing me to testify in support of Assembly Bill 511, which calls for the collection of DNA samples at the time of a felony arrest.

The proposal to collect DNA samples on felony arrest was brought to my attention last year by a national effort seeking to pass this legislation in every state. Currently, 23 states and the federal government have passed similar legislation to collect DNA samples on arrest.

I have authored this legislation with Representative Hraychuck given the positive results seen in other states that have this law in place, including:

- Saving lives by cutting short career criminals that rape and murder,
- Saving money by reducing investigation time, prosecution time, and court time,
- Exonerating the wrongly accused,
- Ensuring a better, streamlined process to collect DNA samples – when doing at the same time as fingerprinting and mug shots, and
- Providing relief to the families of victims.

Under current law, Wisconsin collects samples of DNA from convicted felons and other offenders identified by statute. The DNA sample that is collected from these individuals is analyzed and placed into the state DNA database, which is administered by the Department of Justice. This data is valuable for law enforcement agencies in identifying criminals and providing evidence for trials.

The legislation we have drafted would require the collection of DNA samples when an adult is arrested on a felony charge and when a juvenile is arrested on certain felony charges relating to sexual assault. These are the same offenses that we currently collect DNA for upon conviction.

Under current law, the DNA sample collected from an offender may be expunged from the DOJ database if the felony conviction is reversed, vacated, or set aside, and the offender requests the data to be expunged. Under AB 511, if the offender is found not guilty, the charges are dismissed, or no charges are brought within one year of the arrest, the offender may request the DNA sample to be expunged from the database. This process is similar to the one set forth in state statutes for expunging fingerprint records.

Thank you again for holding a public hearing on this legislation. I urge your support for AB 511.





ANN HRAYCHUCK
STATE REPRESENTATIVE

Date?

**Testimony of Rep. Ann Hraychuck
Before the Assembly Committee on Criminal Justice
AB 511 – DNA Collection at Time of Felony Arrest**

Good afternoon Chairman Turner and committee members. I appreciate having the opportunity to speak with you about Assembly Bill 511.

As a former member of law enforcement, I served as a Sensitive Crimes Investigator for over 20 years. Some of the most brutal and horrific crimes committed in Polk County came across my desk. And with each case, I would meet with the victim or with the victim's family, and assure them that I would do everything in my power to find the individual or individuals who brought so much pain into their lives.

I spent my entire career looking for a better way to do things - a more effective and efficient way to put the pieces of the crime puzzle together to solve cases and get violent offenders off the street.

As a secretary in 1971, my first request of the Polk County Board of Supervisors was for an electric typewriter to replace the manual typewriter I was using to type officers' reports. An electric typewriter was the state of the art method to quickly get critical data onto paper to disseminate to officers to help them solve cases.

Thirty years later, as the Sheriff, my last request to the Board was for a state-of-the-art six million dollar radio tower system. This system would enable our portable radios to work 100 percent of the time when officers were calling for help and would ensure that ambulance and fire departments would get all of their pages.

As a State Legislator, my commitment to public safety and "looking for a better way" continues. That is why I am sitting before you today. I am committed to doing everything in my power, our power, to ensure that law enforcement continues to have the tools they need to lock up our most violent criminals.

Taking DNA samples at the time of arrest saves lives AND money in the long run. As you know, DNA is the fingerprint of the 21st Century. By taking DNA at the time of arrest for felony charges, Wisconsin's law enforcement officers will be able to save time and money by avoiding lengthy investigations.

Not only will we be freeing up resources for our law enforcement community, but this legislation also allows us to place repeat offenders in prison, prevent future crimes from taking place, and exonerates those who otherwise may have been found guilty. Our

ability to quantify these types of savings is nearly impossible, but just because the calculations are difficult doesn't mean the savings do not exist.

DNA collection is not a complicated procedure and simply requires a swab of the cheek. We currently collect a photo with fingerprints at the time of arrest, already a valuable resource for law enforcement. I feel that it is our obligation to provide law enforcement with the most up-to-date technology available to keep our families safe. Collecting DNA at the time of arrest is that technology.

Just like the electric typewriter of the early '70s, DNA gives us a clear, concise, written report – helping us more efficiently and effectively fit the pieces of the crime puzzle together to save lives.

Thank you for your consideration. I would be happy to answer any questions that you may have.



Date?

Testimony of Jayann Sepich, mother of
Katie

Support DNA Saves, AB 511



Mr. Chairman, members of the committee, thank you for allowing my testimony today.

My name is Jayann Sepich. In August of 2003 my daughter Katie was a 22-year old graduate student. Katie was the kind of daughter every mother would love to have. She was bright, ambitious, loving and joyful. We called her our sunshine because Katie brought light and happiness everywhere she went. She was an extreme optimist--Katie always said that she woke up every morning expecting something wonderful to happen. But on August 31, something horrible happened. Katie was raped, strangled, murdered her body set on fire and abandoned at an old dump site. Our delightful daughter had been brutalized and taken from us forever. No family should have to endure this pain, the agony. No mother should have to bury her beloved daughter.

The detective in charge of Katie's case told us that Katie had fought so hard for her life that the blood and skin of her attacker had been found under her fingernails. He told us that the DNA profile of the man that killed Katie had been extracted from that blood and skin and uploaded into the national forensic database called CODIS. He went on to explain that once a week this database would be cross-referenced against an offender database to look for a match.

This was our only hope of finding Katie's killer. There was no other evidence in her case. I made the offhand remark to the detective that this man that had brutalized and murdered my daughter was such a monster that surely he would be arrested for another crime, his DNA taken, entered into the database and we would have the match. That's when the detective said, "Oh no, Jayann, that won't happen. It's illegal in New Mexico and almost every other state to take DNA upon arrest. We have to wait until conviction".

I have to tell you I was stunned. Fingerprints are taken upon arrest. Mug shots are taken upon arrest. DNA was not?

I started doing research. I wanted to know why this incredible scientific tool was not being used to solve crime. The more research I did, the more I discovered that taking DNA upon arrest doesn't just solve crime, it prevents crime. I found a case study done by the City of Chicago that followed eight convicted felons. If their DNA had been taken upon their first felony arrest 60 violent crimes including 53 rapes and murders would have been prevented.

But it was the case of Chester Turner in California that convinced me beyond the shadow of a doubt how important it is to take DNA upon arrest rather than to wait for conviction. Chester Turner was arrested a total of 21 times over a period of 15 years and never convicted of a crime that allowed his DNA to be taken. His first felony arrest was for assault with a deadly weapon. His victim was too frightened to testify against him, so the charges were dropped. Two months later Chester Turner raped and murdered his first victim. Over the next 15 years, as he was being arrested a total of 20 more times, and yet never convicted of a felony, he continued to rape and murder. He raped and murdered a total of 12 women before he was finally convicted of rape and his DNA taken. Had his DNA been taken upon any one of these arrests, lives would have been saved. It is quite possible that eleven women would still be alive. Diane Johnson. Annette Ernest, Anita Fishman, Regina Washington, Debra Williams, Mary Edwards, Andrea Triplett, Deserae Jones. Natalie Price, Mildred Beasley, Paula Vance and Brenda Bries.

These are not just names. These are women whose lives could have been saved. When I hear these names, I see faces. And I feel their mother's pain. The same pain I felt as I buried my daughter.

And to make this tragedy even worse, a man named David Jones had been wrongfully convicted of two of these murders and had spent eleven years of his life in prison. After Chester Turner's DNA matched the evidence in these cases, David Jones was released from prison. But nothing can give him back those eleven years.

So why? Why are we not using this incredible scientific tool? We take fingerprints upon arrest. Why is it okay to take fingerprints and not take DNA upon arrest? The DNA profile that is submitted into CODIS contains absolutely no more private information than a fingerprint. The forensic scientists that designed the CODIS system were very sensitive to privacy issues. They designed the system to protect privacy. Only thirteen markers, out of over three billion markers found in the DNA molecule, are isolated and placed into CODIS. These markers were specifically chosen because they contain no genetic information. I had the honor of speaking with Dr. Arthur Eisenberg, one of the scientists that developed the CODIS system. I asked him to explain it to me in terms I could understand. He asked if I was familiar with what a 33 rpm vinyl record album looks like. You can see the band containing the music. When the needle is placed inside these bands, you hear the song. But in between the bands are spaces. If the needle is placed in these spaces, there is no music. Dr. Eisenberg said the markers that go into CODIS are like the spaces between the bands containing the music. They contain no genetic information. So the profile in CODIS absolutely has not capacity to reveal any private information. It does not reveal eye color, hair color, race, or medical information. The only information it does reveal is gender.

Please look at the handout which shows the exact information that is contained in the CODIS DNA profile. Please note that it is a series of 13 pairs of numbers. And please note that there are no names, nor social security numbers in the CODIS profile. This is another protection of privacy. No one can tell who each profile belongs to, until and only if the profile matches the profile found at a crime scene. Only when a match is made is the name matched to the profile. This is done by matching the code number, which was generated by the computer upon entry into CODIS, with the code number held in a secure, off-line data base in the state where the DNA was taken. In each state only a very limited number of individuals who are subjected to very stringent security requirements have access to this database. But first the DNA analysis must be retested, as a control measure. Only after this second analysis is done is the person identified. And then only the law enforcement person in charge of the case is given the information as an investigative lead. It is important to note that the DNA match is no more than this---an investigative lead used by law enforcement to investigate the crime. In order for the DNA to be used as evidence in a court of law, a warrant must be issued and the DNA must be taken again. Then and only then can it be used as evidence in court.

After learning all of this about DNA upon arrest, my family decided that we would take up the cause of changing the laws so that DNA could be used to not only solve crimes, but save lives, and exonerate the innocent. We began with our home state of New Mexico. "Katie's Law" went into effect in New Mexico at midnight on January 1, 2007. One hour and fourteen minutes later the first felony arrestee was swabbed in Albuquerque, NM. His DNA matched the crime scene DNA of a double homicide. He has

since been convicted of both of those murders. Since that time 135 cases have been matched to arrestee DNA in New Mexico. One hundred and thirty-five cases that without arrestee DNA would quite possibly remain unsolved.

What about my daughter's murder? Her murder was solved by a DNA match. But it would have been solved three years sooner if arrestee DNA had been legal when Katie was killed. Gabriel Avila was arrested for aggravated burglary less than three months after her murdered Katie. But since it was illegal at that time to take DNA upon arrest, he was not identified. He was released on bail and ran. He crossed the border into Mexico, where he stayed for over two years. While he was in Mexico over 50 rapes and murders were committed in the area where he was known to have been staying. Was Gabriel Avila responsible for any of those rapes and murders? We will never know. But we do know that he would not have been free if his DNA had been taken upon his burglary arrest. It was over three years later that he was convicted of burglary and incarcerated and his DNA taken before the match was made to the DNA found in the skin and blood that was under Katie's fingernails---the evidence she fought so hard to provide. Three years is a long time for a family to wait for justice. Especially when that three year wait could have been prevented with one DNA cheek swab.

Some opponents say that taking DNA upon arrest is too expensive. Nothing could be further from the truth. Because taking DNA upon arrest saves money. A study recently conducted in Indiana shows that taking DNA upon arrest in that state would save \$50 million dollars per year. How is that possible? Because one DNA swab costs about \$50. How much does it cost in manpower and administrative costs to investigate a case the old fashioned way? In my daughter's case, over \$200,000 was spent investigating her case between the time Avila was arrested for burglary and when he was finally identified. \$200,000 that could have been saved with a \$50 cheek swab. DNA evidence also saves in court costs. When presented with DNA evidence, suspects are ten times more likely to accept a plea bargain than to demand a drawn-out, expensive trial. A study conducted by the office of the District Attorney in Denver, Colorado, under the auspices of the United States Department of Justice concluded that for every dollar invested in DNA technology, \$62 is saved. So investing in DNA technology is sound fiscal policy.

Twenty three states and the federal government have passed laws mandating that DNA be taken upon arrest. The Supreme Court in the State of Virginia, along with the US Federal District Court in California have upheld arrestee DNA as Constitutional. There are court cases pending. The United States Supreme Court may have the final word. Twenty three states and the federal government have decided to use DNA upon arrest as a tool to solve crimes, prevent crimes, save lives and exonerate the innocent. This is truly a bi-partisan effort. The Bush Administration initiated the federal system, and the Obama Administration has continued to support and implement it. President Obama himself stated in a national television appearance in March of this year that taking DNA upon arrest is "the right thing to do".

It is. It is the right thing to do. It is right because it protects the innocent. Innocents like my daughter Katie. There is nothing more I can do for my beloved daughter. But I can be a voice for the Katies out

there that do not have to die. A voice for the mothers that should not have to bury their daughters.
Because taking DNA upon arrest can save them. It truly can.

Thank you.

CODIS DNA Profile

This is the *only* information put into the database

LabXYZ

0012152

06,09,11,12,10,22,24,9.3,10,08,09,

14,14,15,17,17,22,25,12,12,9,10,09,13

DHL

LabXYZ = Originating Laboratory Identifier

0012152 = Specimen ID #

(Number automatically generated upon entry into CODIS)

06,09,11,12,10,22,24,9,03,10,08,09,

14,14,15,17,17,22,25,12,12,9,10,09,13

(These are the pairs identifying the 13 markers)

DHL = Analyst Identifier

Only thirteen out of the over three billion markers found in the DNA molecule go into the CODIS database. These thirteen markers were specifically chosen by genetic scientists because they contain no genetic information. You are looking at the only information that goes into the CODIS database. There are no names or social security numbers. When a match is made to DNA evidence, the state CODIS administrator is notified. After re-running the original sample to verify no errors were made, the CODIS administrator searches the offline, secured database at the state level to cross-reference the specimen ID# for a name. Then he notifies the detective in charge of the matched case of the match. The detective must then obtain a search warrant to have the DNA collected again from the offender. It must be re-run and re-matched. Then and only then can it be used as evidence in court.





A word from John Walsh

“DNA legislation helps make our communities safer places to live. Don't let your state be the one that provides a safe haven for criminals. Every state can make a difference and save lives, and it starts with you.”

Thank you,

John Walsh
Host, America's Most Wanted
Co-Founder, National Center for Missing & Exploited Children

Update on Legal Challenges...

A federal district court has upheld that the federal statute allowing collection of DNA samples prior to conviction for inclusion in the national DNA database does *not* represent a violation of constitutional rights. In issuing its ruling, the court specifically held that the collection does not represent a violation of 4th Amendment rights. The court also dismissed claims of violations of 5th and 8th Amendment rights. For more information, see *United States v. Pool*, 09-015-EJG-GGH, Eastern District of California, May 27, 2009.

State Legislators:
PASS
KATIE'S LAW

Katie Sepich, Raped & Murdered August 31, 2003

Why should your state require DNA upon arrest?

SOLVE COLD CASES

More than 85,000 investigations in the US aided by the national DNA database

SAVE LIVES

Arrestee DNA testing can prevent crimes by providing early identification of serial offenders

ABSOLVE THE INNOCENT

Guarantees equal access to DNA testing for all felony arrests and minimizes wrongful incarcerations

MINIMIZE RACIAL BIAS

Forensic DNA databasing is blind to race and ensures accurate identification of suspects

**FOR MORE INFORMATION ON
HOW YOU CAN PASS KATIE'S LAW
IN YOUR STATE**

WWW.KATIESLAW.ORG WWW.DMASAVES.ORG

E-mail: jsepich@katieslaw.org

Or call Jayann Sepich at
575.361.1931 • 575.885.0715

TAKING DNA UPON ARREST WILL SAVE LIVES.

The following case studies catalog lives that could have been saved if DNA had been required upon arrest for felony crimes. For more complete details on these and other cases, please visit www.katieslaw.org.

Chester Turner — California

Chester Turner was arrested for assault with a deadly weapon in 1987. He was not convicted. In fact, Turner was arrested a total of 21 times before he was ever formally convicted of any crime. In 2002 he was convicted of rape, his DNA was taken, and it was found to match twelve other unsolved rape and murder cases. The first of these victims was raped in March of 1987. DNA taken upon his first felony arrest could quite possibly have saved the next eleven lives.

Unfortunately, while Turner remained free, a man named David Jones was wrongfully convicted for three of the murders and served eleven years for the crimes — adding one more life to those irreparably harmed by the failure to require DNA from felony arrestees.

City of Chicago Study

A City of Chicago case study of serial killers and rapists showed that 60 violent crimes, including 53 murders and rapes, would have been prevented with DNA taken upon arrest.

The Mopac Rapist in Texas

In Texas, Christopher Dye raped three women before being arrested for burglary. He then raped four more women before being arrested for burglary again. He raped a total of fourteen women before being caught. Had his DNA been taken upon his first arrest for burglary, eleven of his victims would not have been raped.

Each victim is a tragic testament to the potential for DNA testing upon arrest to halt the needless victimization of innocent people!



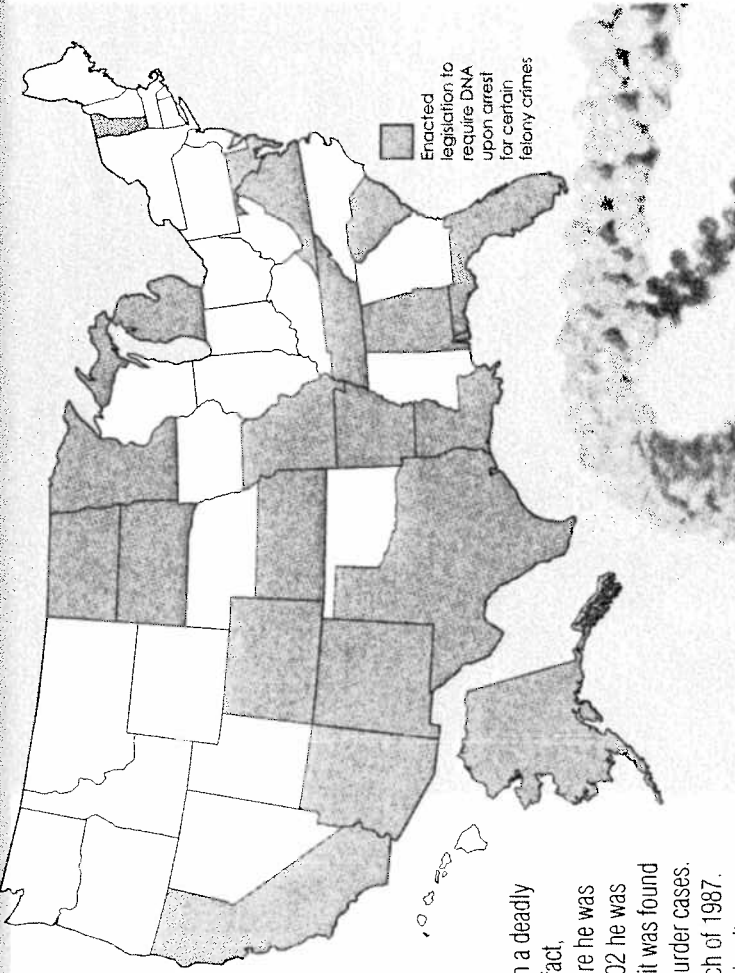
UPDATE ON KATIE'S CASE:

Katie Sepich, a 22-year-old college graduate student, was brutally attacked in August 2003. She was raped, strangled, her body set on fire, and abandoned at a dump site. Katie had fought for her life, and her attacker's DNA was found under her fingernails. The evidence was sent to the national DNA database system, to search for a match. When Katie's parents learned of the DNA database they were certain the killer would soon be identified. But then the Sepiches learned that most states do not allow DNA collection for felony arrests. This was the beginning of the quest for Katie's Law.

The Sepiches took their fight to require DNA for felony arrests to the New Mexico legislature in January 2006. Thirty days later, "**Katie's Law**" was enacted. After passing this milestone legislation in New Mexico, the Sepiches were dedicated to passing similar bills for "**Katie's Law**" nationwide.

Later in 2006, a DNA database match was made to Katie's case. Gabriel Avilla was arrested less than three months after Katie was killed in 2003, on aggravated burglary charges. He escaped while on bond before sentencing and disappeared. Avilla was recaptured in August 2005, his DNA was finally taken, and it eventually matched to Katie's case. Avilla confessed to Katie's murder and was charged on December 26 — which would have been Katie's 26th birthday. He will spend the rest of his life in prison.

**DON'T WAIT — PASS KATIE'S LAW
IN YOUR STATE TODAY**



47 states require DNA for all felony convictions. 21 states and the federal government have passed laws to require DNA for certain felony arrests.

Measurable Success:

Virginia's arrestee law has matched more than 500 unsolved cases to arrestee DNA profiles.

New Mexico's law for arrestee DNA testing took effect January 1, 2007 at 12:01 AM. A DNA sample collected for a burglary arrest just 75 minutes later matched to an unsolved murder.

GENETIC HEALTH PRIVACY

IS NOT AT RISK

"The markers that we use are used only for human identification. By knowing my or your complete profile at these 15 markers, we cannot tell anything about your height, your weight, your race, your ethnicity or anything about your health or predisposition to disease... To me it's unconscionable not to use these methods to solve serious crimes and prevent future crimes."

Dr. Fred Bieber, Ph.D.
Harvard Medical School



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DNA bill finds growing support

Cost, civil rights issue a concern for Van Hollen

By [Patrick Marley](#) of the Journal Sentinel

Posted: Dec. 26, 2009

Madison — A bill to have DNA taken from accused felony offenders upon arrest instead of conviction is gaining momentum in the Assembly but has not received the endorsement of the state's top law enforcement official.

Republican Attorney General J.B. Van Hollen is concerned about the \$6.4 million the bill would cost in its first year and said officials must think very carefully about whether the bill infringes too much on civil liberties.

"The biggest problem that I see is that there are a lot of things we could do to benefit public safety, but we have to find the resources to do those things," he said. "If we are going to start collecting DNA at the time of arrest, it is going to require the Legislature to cut spending somewhere else to come up with the resources we need to fund this initiative."

Rep. Ann Hraychuck (D-Balsam Lake) and Sen. Sheila Harsdorf (R-River Falls) introduced their DNA bill in October after officials reported the state hadn't taken DNA samples from about 12,000 felons it should have. The problem was discovered during the investigation of suspected Milwaukee serial killer Walter E. Ellis, whose DNA should have been taken when he was in prison in 2001 but wasn't.

Democratic Gov. Jim Doyle has endorsed the idea, and Assembly Speaker Mike Sheridan (D-Janesville) said recently that he likes the plan but wants to study it more.

"It's another issue I have to understand better but, shooting from the hip, I am supportive of it because I know we can save a lot of heartache in this country," Sheridan said. "But I also know the devil's in the details, so I definitely want to get more information before making final decisions."

Supporters of the bill have insisted the bill would save money because more criminals would be caught sooner, cutting down on investigative costs. But the Department of Justice has determined the measure would cost \$6.4 million in its first year and \$4.1 million a year thereafter because it would have to process more samples.

The State Crime Laboratory analyzes about 8,500 DNA samples from convicted felons a year. The department estimates that figure would balloon to 104,000 samples the first year after it became law.

The bill allows those arrested but not convicted to have their DNA profiles expunged from the state's databank. The department thinks thousands of people would ask for that, contributing to the higher costs. Now, fewer than 10 people a year ask to have their DNA profiles expunged after having their convictions overturned, according to the department.

Van Hollen said he would oppose the bill if it does not include adequate funding. Even if it does provide money, he said, he is not sure he will support the measure.

"Part of the reason why I'm reserved on the bill is because I, like many people, do realize that there comes a point where we cross a line," he said. "As we start to collect DNA samples from more and more individuals under more

circumstances, you come closer to that line.

"I'm personally weighing in this specific legislation whether I believe that this takes us too close to that line or not. There are some wonderful things it can do for public safety. However, I would need to be able to possess and digest more information on how big a return there would be for public safety to determine, for myself anyway, whether the further erosion of civil liberties - which any law creates - are worth the return of public safety we would get out of this legislation."

Hraychuck, Doyle and other backers of the bill have said taking DNA with a cheek swab is no different from taking fingerprints, which is commonly done at arrest.

Doyle has pushed for the bill because it would make it clear who is in charge of taking DNA samples. Now, those duties fall to multiple agencies, which has resulted in DNA not being collected.

Twenty-one states allow DNA to be taken when people are arrested for at least some crimes, according to DNA Saves, a group that lobbies for such laws.

Both houses of the Legislature are controlled by Doyle's fellow Democrats. Some Senate Democrats have expressed reservations about the bill because of its cost and effects on civil liberties.

State officials deployed a team in September to collect as many DNA samples as possible from the estimated 12,000 felons whose DNA was never collected. Van Hollen said about 5,500 samples have come in since then.

Van Hollen also has sounded the alarm on the cost of toughening the state's drunken driving laws, which Doyle signed last week. The bill Doyle signed will increase costs by up to \$82 million a year but raises \$12.2 million a year in new fees on offenders.

"As we do more to fight drunk driving or enact this legislation, it will draw resources from other law enforcement initiatives," Van Hollen said.

The new law will make fourth-time drunken driving offenses felonies if they occur within five years of a third offense and require all repeat drunken drivers to install Breathalyzer-like devices in their vehicles.



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this Bill will have
to be amended for
certain crimes only