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**Testimony of**  
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**Office of Chief Public Defender**

***Raised Bill No. 7013***  
**An Act Concerning DNA Testing For**  
**Persons Arrested for Murder or Sexual Assault**

**Judiciary Committee Public Hearing**  
**March 20, 2015**

The Office of Chief Public Defender opposes **Raised Bill No. 7013, An Act Concerning DNA Testing for Persons Arrested for Murder or Sexual Assault**. This bill requires that a DNA sample be taken from any person who has been **arrested** for committing certain enumerated serious felonies, prior to being released from custody. In *Maryland v. King*, 133 S. Ct. 1958 (2013), by a vote of 5 to 4, the United States Supreme Court did uphold Maryland's statutory scheme governing the collection of DNA samples from people that have been arrested for serious felonies. While the United States Supreme Court did find the Maryland statute which allowed the taking of DNA samples after arrest but prior to final judgment to pass constitutional muster, it did so based upon procedural protections that are not included in this proposed legislation.

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

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

**Raised Bill No. 7013** does not provide any of those procedural provisions.

Additionally, even if these constitutional infirmities are resolved, an additional problem would

result from the lack of any guideline as to what the term “prior to being released from custody” contemplates. The concern raised here involves a situation in which the authorities do not have the necessary resources and/or are unwilling to take the DNA sample in a timely fashion. To the extent that such language would require the continued custody hold of an individual who has otherwise met all requirements of release in our statutes and practice, such provision would conflict with the procedural rights of an accused to a timely arraignment or release from custody. Without some strict restriction placed upon the time-frame as to when law enforcement collects its sample, this language raises constitutional and statutory problems as well.

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

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