June 8, 2011

The Honorable Cynthia Stone Creem
Chair, Joint Committee on the Judiciary
Massachusetts State Senate
State House, Room 405
Boston, MA 02133

The Honorable Eugene O’Flaherty
Chair, Joint Committee on the Judiciary
Massachusetts House of Representatives
State House, Room 136
Boston, MA 02133


Dear Chairwoman Creem and Chairman O’Flaherty:

I am writing regarding H.2165/S.753, “An Act Relative to Providing Access to Scientific and Forensic Analysis,” otherwise known as the “DNA Access bill,” which provides post-conviction access to and testing of forensic evidence and biological material by defendants who claim factual innocence. This bill is spearheaded by the Boston Bar Association Task Force to Prevent Wrongful Convictions (“the Task Force”), which is comprised of a highly regarded group of law enforcement professionals in Massachusetts with diverse backgrounds, including prosecutors, defense attorneys, academics, and police officers.

I have always been committed to making DNA testing available both to support prosecutions and to prevent wrongful convictions. In 2005, as Middlesex District Attorney, I worked with fellow District Attorneys and the Attorney General to establish the “Justice Initiative” to look at the criminal justice system as a whole. As one of four District Attorneys who sat on the forensics subgroup of the Initiative, I strongly supported—and continue to support—the use of DNA testing, including post-conviction, if such testing would establish the innocence of a defendant. In fact, I was personally involved in post-conviction DNA exclusion cases as Middlesex District Attorney, including the Kenneth Waters case. In each of those cases, the District Attorney’s Office cooperated with the defendants’ attorneys to implement DNA testing. In each of those cases, the defendants were released upon DNA testing exonerating or excluding them.

The DNA Access bill sets forth a process that allows those in custody or restrained as a result of a criminal conviction, who claim to be innocent, to obtain DNA testing. Specifically, the legislation permits a judge to order DNA testing when a prisoner who claims he or she is actually innocent persuades the judge that there is important forensic evidence available to be tested that was not tested at the time of trial, and demonstrates that the results of the testing would be admissible in court.
Massachusetts is one of only two states that do not have a statute providing for post-conviction DNA access. It is time to put a formal process in place for obtaining this evidence, as this bill does. As such, I support this bill’s concept and ultimate passage. However, we believe that improvements to the bill can be made, and we are available to work with the Task Force members, the Committee, and other stakeholders on such improvements to ensure that the legislation strikes an appropriate balance of ensuring that defendants with legitimate claims can obtain test results that could vindicate them, while at the same time protecting the families of victims and the court system from frivolous proceedings.

Thank you for your attention to this important matter, and please feel free to contact Jennifer Stark, Chief of the Policy & Government Division at (617) 963-2021 with any questions you may have.

Cordially,

Martha Coakley