July 26, 2011

Honorable Stephen M. Brewer
Chairman, Senate Committee on
Ways and Means
State House, Room 212
Boston, MA 02133

RE: Senate Bill No. 753, An Act providing access to forensic and scientific analysis.

Dear Chairman Brewer:

I am writing to you in reference to Senate Bill No. 753, An Act providing access to forensic and scientific analysis. This petition was filed in the previous session as Senate No. 1659, and was included in a study package on 23 June 2010. Although we applaud the proponents' objective to preserve the integrity of post-conviction scientific and forensic evidence, we have the following concerns about this legislation.

- The proposed legislation duplicates the post-conviction relief that is already available under Rule 30 of the Massachusetts Rules of Criminal Procedure, which currently sets forth procedures for relief where justice has not been served. The procedures for seeking relief under this bill are essentially the same as those contained in the Rule: the same type of motion must be filed in the underlying case; similar detail must be provided in the motion and affidavit(s); notice must be given to the prosecuting attorney; the judge in the exercise of discretion may assign or appoint counsel to represent the defendant in the preparation and presentation of the motion; a hearing is permitted if the procedural requirements are satisfied; and the original trial judge conducts the hearing, if possible. Therefore, Senate No. 753 is unnecessary and would potentially create confusion.
• This proposal would provide special treatment for a class of defendants claiming innocence based on the evaluation or reevaluation of forensic evidence. Defendants seeking post-conviction relief based on, among other reasons, newly discovered non-forensic evidence, recantation of a witness's testimony, or ineffective assistance of counsel may well have equally meritorious claims but would be treated differently.

• Respectfully, Section 16 of the bill, which mandates procedures governing the retention and preservation of biological evidence, should be the sole focus of this legislation. It is imperative that we have such regulations to insure the integrity and uniform preservation of these materials.

• Any realistic consideration of this bill must take into account the increased costs and burdens on the affected government entities. Without adequate funding to implement the new protocols, this legislation will not achieve its intended objective.

Thank you for the opportunity to comment and I would be pleased to discuss this further.

Sincerely,

[Signature]

Barbara J. Rouse
Chief Justice

cc: Members, Senate Ways and Means Committee ✓