June 7, 2011

The Honorable Cynthia Stone Creem  
Senate Chair - Joint Committee on Judiciary  
State House, Room 416-B  
Boston, MA 02133

The Honorable Eugene O’Flaherty  
House Chair – Joint Committee on Judiciary  
State House, Room 136  
Boston, MA 02133

RE:  SB 753 and HB 2165  
An Act providing access to forensic and scientific analysis.

Dear Chairwoman Creem and Chairman O’Flaherty:

As District Attorney of Middlesex County, I offer my support for the concepts set forth in SB 753 and HB 2165. It is in the interests of the public and the criminal justice system to permit access to scientific and forensic evidence to convicted defendants who have bona fide claims of innocence. As prosecutors, our duty is to seek the truth. No prosecutor has any interest in convicting an innocent person, and no prosecutor has an interest in keeping an innocent person in prison. In addition to the unjustness of a defendant who is imprisoned for a crime he did not commit, there is a public safety component because in such a circumstance, the person who actually committed that crime may remain at large.

Massachusetts already is unique among the states because it gives convicted defendants broad and unparalleled access to the courts by permitting them to challenge the justness of their conviction by permitting the filing of motions for new trial at any time, which includes a right to file, also at any time, motions for postconviction discovery; all other states and the federal system impose time limits on the filing of such motions. This broad post-conviction access to the courts, desirable as it may be, comes at a price. Even under the current laws, there are many postconviction motions that are filed years and even decades after a conviction that are entirely meritless, and there are costs associated with those motions that are borne by CPCS, the District Attorney’s Offices, and the Court, in responding to and separating out the frivolous ones. Additionally, I also point out that the Commonwealth is oftentimes required to reimburse a defendant from the budget of the district attorneys for the costs and fees associated with appealing even erroneous postconviction orders, including orders regarding postconviction discovery, even in circumstances where the prosecution prevails on appeal. For this reason, I also urge the Committee’s consideration of SB 721, An Act Relating to Costs of Appeals By the Commonwealth, sponsored by Chairwoman Creem, in conjunction with these bills to offset the costs in instances where the prosecution prevails on appeal. It is important that measures are taken so that the worthwhile goals at the heart of SB 753 and HB 2165 do
not add needless costs to our already burdened criminal justice system, and that is why I support provisions that would require a convicted defendant’s motion to be based on a credible claim of innocence, and a demonstration in the motion that the proposed testing would actually support the theory of innocence.

Two additional issues related to the legislative proposals are worthy of mention. The first very important issue relates to the potential impact of the bill on victims, their survivors, and the families of victims – groups oftentimes forgotten as defendant’s rights are satisfied. We believe that the citizens of the Commonwealth as well as those most impacted by the crimes, the victims and their families, would agree that a burden imposed by these bills, which insures both that those actually responsible for their crime have been punished and that an innocent individual has not been convicted, is a necessary cost to the functioning of a truly just process. However, we are always mindful of the need of victims and their families to engage in ongoing recovery towards ever elusive closure to the effects of tragic and painful incidents. These bills, by requiring that the court find that the convicted offender has satisfied a demanding standard before permitting any additional testing, appropriately balances these competing demands.

The second issue pertains to the collateral financial costs resulting from the long term storage requirements being established by the legislation. Provisions of the new law would require that most physical evidence items, both used at trials and not used, be retained for extended periods of time and under environmentally appropriate conditions. This may undoubtedly require additional expenditure of limited public resources not only by district attorneys’ offices, but also by state and local police departments, as well as all the trial courts and clerk’s offices across the Commonwealth. We understand and agree that the added costs resulting from the underlying purpose and aim of this bill are financial burdens our citizens should be willing to share to ensure the truth and validity of criminal convictions. However, the Legislature must be willing to likewise pledge financial resources to the law enforcement community and justice system, so as to ensure the full and effective implementation of this proposal.

Finally, in its 2010 White Paper on Public Safety and Criminal Justice Policy, the Massachusetts District Attorney’s Association announced that it supported “DNA testing at any phase of a proceeding, including post-conviction, if that testing will establish the actual innocence of the defendant.” The MDAA agreed to give “careful consideration to thoughtfully crafted legislation to that end.” I believe that the bills before you are carefully crafted after much measured, balanced, and contemplative consideration. and I urge the Committee to report the bills out favorably, to be ultimately resolved by including provisions that include the caveats that I outline above.

Sincerely,

Gerard T. Leone, Jr.
Middlesex District Attorney