



128 DORRANCE STREET, SUITE 220
PROVIDENCE, RI 02903
401.831.7171 (t)
401.831.7175 (f)
www.riaclu.org

COMMENTS ON 11-H 5132 AND 11-S 120, DNA TESTING OF ARRESTEES March 30, 2011

The ACLU strongly opposes this bill, which would provide for taking DNA samples from individuals who have only been *arrested* for certain violent crimes. DNA is an effective tool for fighting crime when used correctly. But as with all forms of law enforcement intrusions, the collection of DNA must be balanced against the rights and freedoms of law-abiding citizens, and this legislation fails to do so.

There are many reasons we oppose this legislation, outlined as follows:

Cost

- Not only is there an actual monetary cost involved with such an expansion related to the actual cost of taking and processing the sample, there is a cost by way of resource diversion. Rhode Island is already dealing with a backlog of samples because of *current* law. If we are putting more people on the task of taking DNA from persons who have not even been *convicted* of a crime we will be delaying processing samples of *known* felons. Delays like this have allowed criminals to remain free.
- At last year's hearing on this legislation, we noted that Rhode Island had 44 sexual assault cases waiting to be tested. A further 1,050 untested sexual assault cases awaited testing pending requests for testing by submitting police departments. The Department of Health further estimated that, on average, it took 180 days to process DNA samples. An article in this past Sunday's *Providence Journal* has only highlighted just how serious the backlog is, and that is growing, both in terms of testing samples and adding them to the database. In and of itself, this is a sufficient reason why expanding the current DNA testing law is unwise.

Threat to Privacy

- DNA is not analogous to a fingerprint or a mug shot. Fingerprints and mug shots can be used for identification purposes only; DNA contains a host of other private information about ethnicity, family history and relationships, propensity for disease, etc. DNA from one person can even expose information about that person's blood relatives.
- Ongoing scientific research is likely to increase the amount of personal information gleaned from DNA, consequently increasing risk of database misuse and privacy infringement in the future.

Misuse of the Data

- Even if the purpose of the data collection is limited now, history consistently shows that information collected by the government for one purpose inevitably gets used for broader purposes. Social Security Numbers, e.g., were originally not to be used for anything other

than Social Security. Now, however, the SSA database and social security numbers are being used for a host of other purposes.

Protecting Innocent People

- Our judicial system operates on the presumption that a person is innocent until proven guilty. Taking DNA samples from people who have merely been *arrested* and not yet *convicted* of a crime is tantamount to a premature guilty verdict. Innocent people simply do not belong in a criminal DNA database. Further, allowing the collection of DNA from arrestees could encourage pretext arrests as a means for obtaining a person's DNA sample. The fact that the records may later be expunged does not mitigate the invasion of privacy entailed by treating these individuals as if they were convicted felons.
- Because of what is known as "familial" or "low stringency" testing, where partial matches are explored, people are more likely to be deemed a suspect simply by being identified as a family member of someone within the database. By adding people without convictions, we are greatly expanding that net. Familial testing looks for a much smaller number of matching alleles, which typically generate up to thousands of partial matches. This results in casting suspicion on even more innocent people.
- Some proponents of expanded DNA sampling have claimed that it helps protect innocent people from being falsely charged or convicted. However, a bill like this is completely unnecessary to protect innocent parties. They can voluntarily submit a sample if they wish. Once in the database, however, mistakes can be made.

Accuracy Problems at FBI and State DNA Labs

- A 2001 FBI audit found that half of the local and state labs that contribute DNA evidence to the national registry did not meet the FBI's DNA analysis standards. Labs in several states have faced investigation and review of hundreds of cases.
- **Errors can, and do, lead to false convictions.** A man convicted of rape in Texas in 1999 was released in 2003 after retesting of DNA evidence revealed that the Houston lab's original analysis was faulty. In Las Vegas, a 26-year-old man faced life in jail and was incarcerated for over a year because the label on his sample had mistakenly been switched with someone else's.
- Only a few years ago, the FBI itself was contending with charges of improper DNA analysis practices by one of its agency scientists. This is not the first time such issues have surfaced at the FBI's DNA lab: in the mid-1990s justice officials identified 3000 cases that might have been affected by improper testing at the lab.

Expungement

- This bill puts the burden of expungement on the individual rather than having a case dismissal or exoneration or any of the numerous other circumstances outlined in the bill trigger automatic expungement and destruction of the sample.
- It seems counterproductive, however, to spend the time and money on all of these samples if so many will be eligible for expungement anyhow. The state has no real interest in maintaining a database of only arrested persons by the simple fact that the bill allows for and perhaps even encourages expungement, yet the state is willing to commit time and money to samples from innocent people up front. If the state truly is only interested in people who are convicted, the present statute already addresses that.

- Despite the state's intentions, it is unclear to us whether there is any guarantee at all that a sample will, or can be, expunged once it is provided to the federal government's CODIS system. Thus, this guarantee of expungement may be a hollow one.

Racial Profiling

- We know from statistics that a disproportionate number of minorities will end up in the database. According to the Department of Justice, nonwhites are arrested at nearly *three times* the rate of whites. According to Rhode Island State Police arrest statistics, African Americans alone account for over 18% of all arrests even though they only represent 6.3% of the state's population.

Scope

- DNA data banking in RI was originally limited to convicted sex offenders, on the theory that they have a high rate of recidivism and often leave biological evidence. Then it was expanded to other violent crimes. Then it was amended to cover any felony. The continued attempts to expand the database only confirm that legislation like this has little to do with the original crime-solving goals of the DNA collection law and more to do with large scale community surveillance. Although this bill may be limited to individuals arrested of only designated crimes, past experience teaches us that it will not be long before efforts are made, as is the case elsewhere, to begin taking samples of people arrested for any felony, and then people arrest for any offense whatsoever.
- If the police have a particular person in custody about whom they feel obtaining a DNA sample would be relevant to solving a crime, they remain free to obtain a warrant from a judge.

For all of these above reasons we urge the committee to reject these bills. Thank you.