AMERICAN CIVIL LIBERTIES UNION of RHODE ISLAND

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June 23, 2014

The Hon. Lincoln Chafee
Governor
State House
Providence, RI 02903

RE: VETO 14-H 7304Aam/S-2101B

Dear Governor Chafee:

The ACLU respectfully requests your veto of H 7304 and S 2101, which would authorize police to take DNA samples from individuals who are merely *arrested*, but never convicted, for a wide array of crimes so that the samples can be placed in a national DNA database. The presumption of innocence lies at the heart of our system of criminal justice, but this bill deeply undercuts that presumption.

Although the federal government will give the state some initial money to cover some of the increased expenses associated with this new mandate, the money will run out, as it has before, and the state taxpayers will be left with the bill for processing all the new samples. It is important to recall that only two years ago, the Department of Health had such an enormous backlog it required police departments to limit the submission of DNA evidence from crime scenes, even for murders.

Let there be no mistake – by requiring DNA samples from people merely arrested for a crime, this bill is just one more step towards a national database of everyone's DNA. After all, DNA data banking in Rhode Island was originally limited to taking samples from convicted sex offenders, on the theory that they had committed a serious crime that often left behind biological evidence and purportedly had high rates of recidivism. Then the law was expanded to require DNA samples from people convicted of various other violent crimes. Then it was expanded yet again to require samples from people convicted of any felony whatsoever.

The continued attempts to expand the database to cover more crimes, and now people not even convicted of a crime, only confirm that this effort now has little to do with the initial crime-solving goals of DNA collection and more to do with large-scale community surveillance. Like the collection of Social Security Numbers, it is only a matter of time before the various uses to which the DNA database is put will extend far beyond its original purpose.

Some proponents of DNA sampling of arrestees make the specious claim 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. Further, 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.

The argument is also made that the samples are stripped of intrusive medical information. Even assuming that the kept samples will not be used for those purposes, it is worth noting that across the country, police are now using DNA samples to engage in what is known as "familial searching," relying on genetic similarities to encroach on the privacy of relatives of those whose DNA has been collected.

We recognize that the bill passed both Houses overwhelmingly. But it is important to remember that consideration of a bill like this was only made possible by a single vote in the U.S. Supreme Court. Last year, in a very controversial ruling, that Court upheld a similar Maryland law (though a law with more protections than this legislation) by a slim 5-4 vote, demonstrating the legitimacy of the serious constitutional concerns with such a proposal. In writing for the four dissenters, Justice Antonin Scalia summed up well the disturbing nature of this practice when he noted that the law "manages to burden uniquely the sole group for whom the Fourth Amendment's protections ought to be most jealously guarded: people who are innocent of the State's accusations."

We urge you to veto this bill, as it so deeply invades the privacy rights of innocent Rhode Islanders. Thank you for considering this request.

Sincerely,

Steven Brown
Executive Director