

**HB**

**294**

## **Alaska Civil Liberties Union**

*An Affiliate of the American Civil Liberties Union*

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To: House Judiciary Committee  
From: Jennifer Rudinger, Executive Director  
Date: Wednesday, March 29, 2000

### **Re: HB 294: DNA collection from persons convicted of burglary**

The Alaska Civil Liberties Union opposes HB 294 and respectfully urges this Committee to put an end to the progressive expansion of DNA collection by the government. DNA collected from one person not only reveals personal information about that person (much of which has nothing to do with serving the needs of law enforcement), but it also reveals very personal information about that person's blood relatives. Unlike fingerprinting, which *only* reveals information that can be used for identification purposes, DNA gives the government control over a great deal of personal, private information about anyone related to the sample source. Therefore, expansion of the government's power to collect DNA from its citizens – even people convicted of crimes – should not be taken lightly. HB 294 proposes to invade the privacy of innocent people, and the government's only justification is that burglars *might* later commit violent crimes in which they leave DNA evidence at the crime scene.

To give the Committee some background, DNA testing and profiling are becoming increasingly more common. States across the country and the federal government are expanding the scope of their DNA data banks as scientific knowledge about the content of this genetic material is growing by leaps and bounds.

In October 1998, the FBI opened a national database that brings together the DNA records from all 50 states and the federal government into one centralized system, known as CODIS (Combined DNA Index System). If this trend is allowed to continue, the most intimate and personal information about each individual could routinely become a matter of public record, to be used and abused at the state's discretion.

Initially, these DNA storehouses were created to house information about convicted sex offenders exclusively. The argument was that sex offenders were especially prone to recidivism, typically left DNA evidence at the crime scene, and hence, were important to identify. Whether or not that argument was sufficient, we were assured at the time that only convicted sex offenders would be tested, and the information gleaned from these tests would be used by law enforcement officials strictly for identification purposes.

But it is often the case that information initially collected for one, limited purpose is before long used for many other purposes. Slowly and inexorably, the pool of people being tested, and the range of uses for the data, has been expanding, raising grave concerns for personal privacy. In less than a decade, law enforcement officials across the country have gone from advocating collection of DNA from only convicted sex

offenders, to all violent offenders, to all burglars, to all persons convicted of any crime, to all juvenile offenders. In many states, the DNA record is maintained even if a conviction is overturned.

Louisiana has gone a step further. A new state law will collect DNA data from everyone *arrested* for a felony crime -- before they have been convicted. In Louisiana, the record can be kept even if the person is found innocent. U.S. Attorney General Janet Reno has asked the National Commission on the Future of DNA Evidence to look into the possibility of applying this concept across the country. In December 1998, New York City Police Commissioner Howard Safir jumped on the bandwagon, proposing the same idea. And New York's Mayor Rudy Giuliani not only voiced his support for the proposal, but went so far as to say that he would support the collection of DNA samples from all babies at birth, giving the city a genetic database of all its citizens.

The collection of DNA samples and the creation of DNA data banks have legitimate and vital medical, scientific and forensic purposes. Research can lead to treatments and even cures for many genetic diseases. DNA can prove that an individual was at the scene of a crime. It can also prove the innocence of a suspect, preventing terrible miscarriages of justice. DNA can even be used to correct wrongful convictions based upon an erroneous identification (although law enforcement and prosecutors are decidedly less enthusiastic about this use).

But it is equally clear that there is tremendous potential for abuse. The vast amount of information to be gleaned, the incredible longevity of DNA samples, and the ease with which DNA databases can be shared and accessed raise grave privacy, equality and due process concerns. Though DNA has been touted as a high-tech equivalent to fingerprints, this comparison is dangerously misleading. Where fingerprints can be used for identification purposes only, DNA can provide insight into a breathtaking wealth of singularly private information -- information about a person's ethnicity, family relationships, family history and the likelihood of getting some 4,000 genetic conditions and diseases. This information belongs to each individual, not the government. Further, geneticists are constantly increasing the database of information that can be gleaned from DNA -- some even claim that there are genetic markers for "criminal tendencies," sexual orientation, substance abuse, etc. The possibilities -- and thus the dangers -- are endless.

Today, the growing law enforcement databases raise the immediate specter of widespread discrimination. Given the over-targeting of African Americans, Latinos and other minorities within the criminal justice system nationwide, the government will have the disproportionate power to track millions of people of color.

Now the Governor wants the Alaska Legislature to expand DNA sampling to include convicted burglars. It will help identify more violent criminals in the future, proponents say. Claiming that this is a minor and necessary expansion of the present system, proponents ask, "What's the harm?"

Because genetic information pertains not only to the individual whose DNA is sampled, but to everyone who shares in that person's blood line, potential threats to genetic privacy posed by their collection extend well beyond the millions of Americans

whose samples are currently on file. Moreover, there is no requirement in HB 294 or in the Alaska Statutes that the DNA sample from which genetic information is taken be destroyed. This allows for the future possibility that all of the information could be used in other ways that we cannot even anticipate.

There is a long and unfortunate history of despicable behavior by governments toward people whose genetic composition has been considered "abnormal" under the prevailing societal standards of the day. While the FBI states that this information will be used for limited forensic purposes, the history in our country is that information compiled for one purpose will be used for another. For example, Social Security numbers were initially intended only for use as an aid tracking social security payments but are now a universal identifier. Another example, Census records created for general statistical purposes were used to round up innocent Japanese Americans and place them in internment camps during World War II.

Your constituents throughout Alaska are concerned about the government's ever-increasing control over their personal information, and their concerns cross party and ideological lines. The Alaska Civil Liberties Union fields inquiries virtually every week regarding the government's demand for personal information – Social Security numbers, Census information, background checks, DNA and genetic information, etc. Almost every week, Alaskans voice concerns that the government cannot be trusted to keep this information confidential or to limit its use to the initial purpose for which it is given. And we agree. Your constituents are right.

In conclusion, HB 294 does not "only" affect burglars – it affects their relatives, who are law-abiding citizens innocent of any crime. And the government's proposed justification for collecting DNA from burglars just doesn't fly in Alaska – we do not take DNA from people who have never committed a violent crime on the theory that someday they *might* commit a violent crime. If so, where will this end?

Please end it here and now. Please do not pass HB 294 out of Committee.

# STATE OF ALASKA

## DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

TONY KNOWLES, GOVERNOR

P.O. BOX 111200  
JUNEAU, ALASKA 99811-1200  
PHONE: (907) 465-4322  
FAX: (907) 465-4362

February 28, 2000

FEB 28 2000

The Honorable Pete Kott  
Chair, House Judiciary Committee  
State Capitol, Room 118  
Juneau, AK 99801

Dear Representative Kott: 

This is to request a hearing of HB 294, "An act relating to violations of an order to submit to deoxyribonucleic acid (DNA) testing, to court orders and conditions of parole to collect samples for DNA testing, to removal of material from the DNA identification registration system; and to the collection and processing of samples from certain burglary perpetrators for the DNA identification registration system; and providing for an effective date." DNA identification is an increasingly effective tool for law enforcement investigation. This bill would expand the State's ability to use this method for detecting and abating the conviction of serious crimes by allowing the State to obtain DNA samples from convicted burglars.

In 1995, Alaska adopted a DNA identification registration system. In this program, persons convicted of most felony offenses against a person, and minors 16 years of age or older adjudicated delinquent for similar crimes, must provide a DNA sample to the Department of Public Safety for testing. Most other states in the country have a similar system of obtaining DNA samples from persons convicted of serious crimes. Since 1995, the technology and research into the uses of this information has grown rapidly. Research in other states into the criminal history of persons convicted of homicide and serious sexual assault has shown that over half the persons convicted of homicide or sexual assault were convicted of burglary before their convictions for the more serious crimes. DNA information from burglary convictions would be invaluable to law enforcement in the investigation of subsequent, more serious crimes against a person.

The bill also allows juvenile and adult correctional, probation, and parole officers and peace officers to collect oral DNA samples. The collection technology has improved so that a simple, inexpensive, non-obtrusive kit allows the tested person to take an oral swab without the need of a medical professional. If a blood sample is required, it would still be taken by a medical professional.

The Honorable Pete Kott  
February 28, 2000  
Page 2

Penalties are provided for failure to cooperate with these sample requests. The bill also clarifies the procedures for removal of DNA material from the identification registration system, specifying that a court order is necessary for such removal.

Your consideration of this request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Del Smith".

Del Smith  
Deputy Commissioner

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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 18, 2000

The Honorable Brian Porter  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Porter:

Using DNA identification is an increasingly effective tool for law enforcement investigation. This bill I transmit today expands the state's ability to use this method for detecting and abating the conviction of serious crimes by allowing the state to obtain DNA samples from convicted burglars.

In 1995 Alaska adopted a DNA identification registration system. In this program persons convicted of most felony offenses against a person, and minors 16 years of age or older adjudicated delinquent for similar crimes, must provide a DNA sample to the Department of Public Safety for testing. Most other states in the country have a similar system of obtaining DNA samples from persons convicted of serious crimes. Since 1995 the technology and research into the uses of this information has grown rapidly. Research in other states into the criminal history of persons convicted of homicide and serious sexual assault has shown that over half the persons convicted of homicide or sexual assault were convicted of burglary before their convictions for the more serious crimes. DNA information from burglary convictions would be invaluable to law enforcement in the investigation of subsequent, more serious crimes against a person.

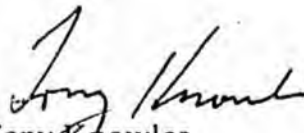
The bill also allows juvenile and adult correctional, probation, and parole officers and peace officers to collect oral DNA samples. The collection technology has improved so that a simple, inexpensive, non-obtrusive kit allows the tested person to take an oral swab without the need of a medical professional. If a blood sample is required, it would still be taken by a medical professional.

The Honorable Brian Porter  
January 18, 2000  
Page 2

Penalties are provided for failure to cooperate with these sample requests. The bill also clarifies the procedures for removal of DNA material from the identification registration system, specifying that a court order is necessary for such removal.

I urge your prompt and favorable consideration of this bill.

Sincerely,



Tony Knowles  
Governor

FISCAL NOTE

No: 2

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Bill Version: HB 294  
(H) Publish Date: 1/21/00

Revision Date: \_\_\_\_\_  
Title: "An Act relating to the collection and processing of DNA from burglary perpetrators..."  
Sponsor: Rules Committee  
Requestor: Governor

Department Affected: Administration  
BRU: Legal and Advocacy Services  
Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**

CAPITAL EXPENDITURES	**	**	**	**	**	**
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CHANGE IN REVENUES ( )	**	**	**	**	**	**
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 00) cost: \$ \_\_\_\_\_

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill will most likely have some fiscal impact on the Public Defender Agency. Failing to comply with a valid request to provide a DNA sample is a class A misdemeanor. See AS 11.56.760. The Agency would be appointed to represent people accused of this crime.

Currently, the Public Defender Agency has few of these cases. If the sampling program becomes more widespread, with the inclusion of additional crimes and more samples being requested, more refusals will, undoubtedly, be prosecuted. In that case, there could be a significant fiscal impact on the Public Defender Agency.

Prepared by: Barbara Brink, Director  
Division: Public Defender Agency

Phone: (907) 264-4414  
Date: \_\_\_\_\_

Approved by Commissioner: Bob Poe  
Agency: Department of Administration

Date: 12/13/99

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# FISCAL NOTE

Bill Version: HB 294

(H) Publish Date: 1/21/00

**STATE OF ALASKA  
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Public Safety  
 Title An Act relating to DNA testing, collection of sample BRU Statewide Support  
and to persons convicted of burglary Component Laboratory Services  
 Sponsor Rules Committee  
 Requester Governor Component No. 527

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill should not adversely impact the budget.

Prepared by: Royce Weller, Special Assistant Phone 465-4322  
 Division Office of the Commissioner Date/Time 12/27/99  
 Approved by Commissioner Ronald L. Otte Date 12/27/99  
 Agency Department of Public Safety

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