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March 16, 2011

The Honorable Stewart J. Greenleaf  
Senate Box 203012  
19 East Wing  
Harrisburg, PA 17120-3012

The Honorable Daylin Leach  
Senate Box 203017  
184 Main Capitol Building  
Harrisburg, PA 17120-3017

Dear Chairman Greenleaf and Chairman Leach,

Thank you for the opportunity to submit testimony on Senate Bill 775, which alters Pennsylvania law on DNA collection of persons convicted of and arrested for certain crimes. Founded in 1920, the American Civil Liberties Union is one of the nation's oldest civil rights organizations, and ACLU activity in Pennsylvania dates to the 1930s. I respectfully submit this testimony on behalf of the 17,000 members of the ACLU of Pennsylvania.

Senate Bill 775 makes several significant alterations to the current law on DNA collection and expungement, including an expansion of DNA collection upon arrest for certain felonies; privacy protections for those in the state DNA database; and automatic expungement from the state database for those who have been exonerated.

The ACLU of Pennsylvania recognizes the value in keeping DNA collected for law enforcement purposes from being used for other purposes, such as research. We also fully support the provision of SB 775 that allows automatic expungement of samples from the state DNA database for people who have been exonerated. Current law forces a person to receive a court order to get DNA expunged.

However, SB 775 implements a broad, new expansion of DNA collection for persons who have been arrested but not convicted of certain felony offenses. This provision has significant implications under the Fourth Amendment's guarantee of freedom from unreasonable searches and seizures. For that reason, the ACLU of Pennsylvania opposes SB 775, and I respectfully urge members of the Senate Judiciary Committee to also oppose it.

Taking a DNA sample from a person who has been arrested, who is considered innocent under the law, constitutes a search. Because it is a search, the government has constitutional obligations to show probable cause that the person has committed a

specific crime and to receive a court order to take the sample. If DNA evidence is available from the crime for which the person has been arrested, it is highly likely that the government can receive the necessary court order to take a DNA sample from the arrestee and analyze it to determine if it is a match to the crime scene evidence.

SB 775 goes much further, however. This bill bypasses the court altogether and implements blanket DNA sampling from all persons arrested for certain crimes, even if there is no DNA evidence available from the crime for which the person has been arrested. SB 775 further expands the law by requiring that the sample is then entered into the state's DNA database. Under current law, DNA collected for the purposes of a specific investigation would not be entered into the state database until the person has been convicted of a felony or certain misdemeanors.

Thus, SB 775 subjects the person who has been arrested but not convicted to a search for any crime entered into the state or federal DNA databases, without evidence to suggest that the government suspects him or her of having committed any other crime. It allows the government to go on a fishing expedition without any probable cause to believe that the person has committed another crime. This type of DNA collection turns the long-cherished legal concept of innocent-until-proven-guilty on its head.

We will soon receive guidance from the Court of Appeals for the Third Circuit on this issue. The court of appeals is currently considering a challenge to the federal law requiring DNA samples at arrest in *United States of America v. Ruben Mitchell*. The federal district court in the western district of Pennsylvania overturned the law as unconstitutional, and the court of appeals has heard oral arguments. Regardless of how the court rules, collecting DNA at arrest is poor public policy, but if the court of appeals agrees with the district court, its ruling could short-circuit SB 775 before it becomes law in Pennsylvania.

The ACLU of Pennsylvania and the Electronic Frontier Foundation filed an amicus brief in *Mitchell*, and that brief is available upon request.

Some supporters of laws like SB 775 brush off DNA collection and equate it to taking a fingerprint. This indicates a fundamental misunderstanding of what DNA is. DNA is a genetic blueprint that tells a much greater level of personal information about a person than a fingerprint does. It can indicate a person's susceptibility to disease and mental illness and information on his or her family history. More than 1,000 genetic conditions can be read from a person's DNA.

Collecting DNA samples from persons who have been arrested will also be expensive and increase the backlog at the Pennsylvania State Police. A freezer for biological specimens may cost \$10,000, and a single DNA analyzer costs approximately

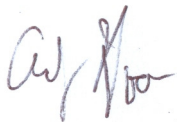
\$250,000. Increased demand for DNA samples will inevitably increase the costs of storing and analyzing the specimens.

The passage of SB 775 would also lead to an increase in the backlog of DNA samples in need of analysis. This problem was brought into stark perspective recently when police were investigating the crimes of the alleged “Kensington strangler.” A DNA sample from the alleged perpetrator was available but was not analyzed before he killed a third victim.<sup>1</sup> SB 775 would add more specimens to that backlog and would increase the burden on DNA labs in Pennsylvania.

In conclusion, by allowing blanket DNA collection at arrest, the government is conducting a warrantless, suspicionless search that undermines a person’s right to be considered innocent under the law. SB 775 is a massive expansion of DNA collection in Pennsylvania that will be expensive and create an additional backlog in the state’s DNA labs. The ACLU of Pennsylvania urges members of the Senate Judiciary Committee to oppose this bill.

As always, you are welcome to contact me with any questions on this or any other civil liberties issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Andy Hoover".

Andy Hoover  
Legislative Director

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<sup>1</sup> “Ramsey Talks Strangler Case DNA Delays.” Fox 29. Available at [http://www.myfoxphilly.com/dpp/news/local\\_news/Kensington\\_Strangler\\_DNA\\_Delays\\_Ramsey\\_Reacts\\_011811](http://www.myfoxphilly.com/dpp/news/local_news/Kensington_Strangler_DNA_Delays_Ramsey_Reacts_011811).