



February 7, 2012

Speaker Chopp and Members of the House Democratic Caucus
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JESSE WING
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

RE: Taking DNA Upon Arrest is Expensive, Unconstitutional, and Doesn't Prevent Crime. Reject HB 2588.

Dear Speaker Chopp and Distinguished Members of the House Democratic Caucus,

The 30 community-based and advocacy organizations, as well as additional concerned individuals listed below, urge you to reject HB 2588, currently in the House Rules committee. This bill would allow the collection of DNA from individuals who have not been convicted of any crime—in the absence of compelling evidence that this kind of DNA collection improves public safety. DNA is not simply a means of identification—it contains an individual's most private biological information, and taking it is an invasive search that is not justified by documented improvements in public safety. The legislation is also likely unconstitutional under the Washington Constitution and possibly the federal Constitution's Fourth Amendment, and will negatively impact communities of color.

Taking DNA from arrestees goes against fundamental constitutional rights.

Courts have split on the question of whether the Fourth Amendment of the federal Constitution allows taking DNA on arrest. But Article I, Section 7 of the Washington state constitution guarantees a right to privacy even more expansive than that of the federal Fourth Amendment. Given the invasiveness of the search involved (see below), the bill is likely unconstitutional. We would be happy to provide a detailed legal analysis.

Taking DNA is a highly invasive search that goes far beyond identification.

Studies show an individual's DNA includes information about susceptibility to diseases such as genetic disorders, heart disease, diabetes, obesity, schizophrenia, bipolar disorder, and depression, as well as drug addiction; character traits, including intelligence, aggressiveness, violent tendencies, and predisposition to a particular sexual orientation; and parentage and kinship. This rich and highly personal information—including a biological sample—remains in the government's custody

until expunged, even for individuals who are never charged or convicted of any crime—in other words, a large proportion of arrestees.

Taking DNA on arrest has not been shown to improve public safety.

Proponents of HB 2588 have touted unscientific, anecdotal “studies.” However, their data does not withstand scrutiny—there is no systematic study that shows this kind of DNA collection actually reduces crime in the states that already follow the practice. Instead, many of these “studies” are based on small samples of individuals, are based on proxies such as police calls rather than actual crime rates, and do not rise to the level of peer-reviewed science. We are not aware of any study that shows a drop in crime rates associated with collection of DNA evidence upon arrest.

Collecting DNA from arrestees will exacerbate existing racial disparities. In Washington, data show that people of color are over-represented in several stages of the state’s criminal justice system, including at arrest, charging, conviction, and imprisonment. To take just one example, according to arrest figures from 2006, Seattle’s racial disparity in drug arrests is among the highest in the country. Blacks are 21 times more likely to be arrested for selling serious drugs (i.e. narcotics other than marijuana) despite extensive evidence that Whites constitute the majority of sellers and users of serious drugs in Seattle.¹ Because of disparities like this, expanded DNA collection would result in an increasingly skewed criminal database in which minorities are over-represented far beyond their share of actual crimes committed.

Although there is an expungement process included in the bill, the process will be hard to navigate. We know from experience in the voting rights arena that many individuals—particularly low-income individuals and communities of color—will be unable to navigate the process to expunge their DNA from the government’s custody. This will lead to further disproportionality.

We can’t afford this law. Collecting DNA from arrestees is expensive, as evidenced by the large fiscal note for the bill. Despite that large fiscal note, the bill was not sent to a fiscal committee that could have considered its cost-effectiveness. But it seems clear the bill would be a poor use of our public safety dollars in a year in which we have cut services, particularly to low-income communities and communities of color, to the bone. Even if funding is found through traffic ticket or other surcharges, there are surely better ways to spend that money than on an unconstitutional and expensive tactic that targets communities of color and fails to improve public safety.

We strongly urge you to reject HB 2588.

Sincerely,

A. Philip Randolph Institute
ACLU of Washington
Asian Pacific Islander Coalition of King County

Asian Counseling and Referral Service
Center for Justice
City of Seattle Immigrant and Refugee Advisory Board
Community to Community Development
Consejo Counseling and Referral Service
Faith Action Network
Farm Worker Pesticide Project
First Place
Incarcerated Mothers Advocacy Project, University of Washington School of Law
Incarcerated Mothers Advocacy Project, Seattle University School of Law
Kent Black Action Commission
Latino Equity Initiative
Loren Miller Bar Association
Middle Eastern Law Association of Washington
Minority Executive Directors Coalition of King County
Mothers for Police Accountability
OneAmerica
Peace & Justice Action League of Spokane
SEIU Property Services 6NW
Seattle Human Services Coalition
Seattle/King County NAACP
Seattle/King County Coalition on Homelessness
Sea Mar Community Health Centers
Society of Counsel Representing Accused Persons
United Indians of All Tribes Foundation
Washington Association of Criminal Defense Lawyers
Washington Defender Association

Signing as individuals:

Claudia Kauffman, Former State Senator
Faaluaina Pritchard, Executive Director, Asia Pacific Cultural Center (APCC)
Dr. Freeman S. Rhoades, Bethlehem Baptist Church
Kip Tocuda, Former State Representative

ⁱ Task Force on Race and the Criminal Justice System, *Preliminary Report on Race and Washington's Criminal Justice System*, 2011, p. A-7.