

Nov. 9, 2017

The Hon. Robert B. Bell
Chair
Virginia State Crime Commission
1111 East Broad Street
Suite B036
Richmond, Virginia 23219

Dear Delegate Bell:

I am writing on behalf of the ACLU of Virginia and its more than 40,000 members to oppose the possible expansion of the list of misdemeanors for which DNA collection from offenders would be mandatory upon conviction, as is currently under review by the Virginia State Crime Commission.

Already in Virginia, the mandatory collection of DNA has gone beyond what is reasonable or justifiable, raising significant concerns about the privacy rights of people convicted of minor offenses and many who have not even been convicted of a crime. At present, DNA samples are required by law to be collected from:

- Adults convicted of any felony offense;
- Adults convicted of a list of 14 misdemeanors, most of which are sex-related but which also includes offenses such as unlawful entry, resisting arrest and unauthorized use of a motor vehicle;
- Juveniles at least 14 years old convicted of any crime that would be a felony if committed by an adult;
- Anyone registered with the Virginia Sex Offender and Crimes Against Minors Registry; and
- Adults arrested for but not yet convicted of any violent felony and certain burglary crimes.

On its face, Virginia's practices with regard to DNA collection and databank usage are unjustifiably overbroad. Established in 1989, the Virginia Department of Forensic Science's (DFS) DNA Databank has ballooned every year now to include 426,534 entries, or about one in every 20 people living in the Commonwealth, according to statistics published on DFS's website. This is even as the number of "hits" to the databank is in decline, down from 933 in 2010 to 531 so far in 2017. Further, the majority type of crimes being solved or assisted in being solved through such hits – 65.6 percent – are for non-violent burglaries or robberies, rather than the heinous violent offenses the databank was originally set up to ward against.

The ACLU of Virginia strongly opposes any further expansion of the list of offenses for which DNA collection would be required, for the following reasons:

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Virginia

- Increasing the size of DNA databases actually raises the likelihood of false matches. Recent studies have confirmed that matches between DNA profiles from different people are far from impossible, including between close relatives, which would lead to false arrests and convictions.
- Increasing the size of a databank also increases the possibility of ethnic bias, meaning that the overrepresentation of particular ethnic groups in the criminal justice system – and thus also in the DNA databank – may lead to a disproportionate number of arrests of innocent people within that ethnic group.
- Requiring DNA collection from people who have only been charged but not convicted of a crime raises serious due process concerns and calls into question the fundamental commitment to the doctrine of presumed innocence.
- Privacy concerns related to the practice of DNA collection in general cannot be overstated. DNA inherently contains the most personal information about any person, including predictive information about a person's predisposition to illnesses or certain behaviors of which the individual themselves may not have knowledge. Requiring persons convicted of only minor crimes or arrested but not convicted of any crime is needlessly invasive.
- There is no quantitative evidence supporting the hypothesis that expanded DNA databases will lead to more "cold hits" – unexpected matches that occur when evidence from old, unsolved cases are compared against a databank – because the state does not track such matches to conviction.

It is the ACLU of Virginia's belief that the proposed expansion under the Crime Commission's review, to include additional Class One misdemeanors, raises serious constitutional concerns and could expose the Commonwealth to costly, detrimental legal actions. I urge you and other members of the Commission to reject any proposals to expand DNA collection within the criminal justice system and instead consider supporting the roll-back some of the intrusive, problematic provisions already codified, including mandatory collections for violent felony arrests.

Thank you for your attention to this important matter, and if you have questions or need more information please do not hesitate to contact me.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Claire Guthrie Gastañaga".

Claire Guthrie Gastañaga
Executive Director