VOTE NO on HB 1739 (Rep. Reboletti)

Forced DNA Collection Threatens Medical Privacy

HB 1739 would require DNA extraction from all persons arrested for a felony or Class A misdemeanor. Current Illinois law draws the line at conviction. 730 ILCS 5/5-4-3.

DNA testing discloses private health information.

- DNA can be used to make predictions about a person's physical and mental health. Thus, it might be used by employers, insurers, and others for invidious genetic discrimination.
- Criminal DNA databases contain non-coding DNA, as opposed to the genes that make up our genetic blueprint. But non-coding DNA often regulates, disrupts, or correlates with genes. *See, e.g.*, "'Junk' DNA gets credit for making us who we are," *New Scientist* (3/19/10). Indeed, some of the non-coding DNA in the FBI's DNA system correlates with important genes. *See, e.g.*, "Fingerprint fear," *New Scientist* (5/2/01).
- Police often keep all of a tested person's DNA, though only a part goes in the database.
- Illinois limits the uses of its DNA database, 730 ILCS 5/5-4-3(f-5), but these limits might be lifted, and unlawful misuse is always possible.

Forced DNA testing should stop with convicted persons, and not expand to arrested persons.

- Convictions are based on a jury's finding of proof beyond a reasonable doubt after trial. Arrests are fundamentally different, based on a single officer's finding of probable cause. Because of the large number of wrongful arrests, employers cannot discriminate on the basis of an arrest. 775 ILCS 5/2-103.
- The next step down this slippery slope may be other groups with a diminished expectation of privacy, such as public school students, and applicants for government jobs, licenses, and benefits.

HB 1739 would disparately impact people of color, who are arrested – often wrongly – at a higher rate than others. *See, e.g.*, Report of the Illinois Disproportionate Justice Impact Study Commission (12/10).

HB 1739 would cost many millions of dollars per year. Testing often costs $100 per sample, and tens of thousands of people are arrested but not convicted every year in Illinois.

SB 58 would overwhelm our state's DNA labs. These labs already face a serious backlog of crime-scene DNA samples. *See, e.g.*, "State crime lab reports more than 4,000 untested rape kits," *Chi. Trib.* (1/17/11).

HB 1739 would harm presumably innocent arrested persons.

- Compelled DNA extraction, especially if forcible, is physically invasive.
- Illinois DNA records are shared with local, state, and federal agencies across the country. This massive dissemination creates a danger of wrongful disclosure of private medical information.
- Expungement provides no protection during the months or years between arrest and acquittal.

HB 1739 would be unconstitutional.

- Courts have held that compelled DNA testing of arrestees violates the U.S. Constitution. *Friedman v. Boucher*, 580 F.3d 847 (9th Cir. 2009); *U.S. v. Mitchell*, 681 F. Supp. 2d 597 (W.D. Pa. 2009); *U.S. v. Purdy*, 205 WL 3465721 (D. Neb. 2005); *In re C.T.L.*, 722 N.W.2d 484 (Minn. App. Ct. 2006).
- The Privacy Clause of the Illinois Constitution provides even stronger protection from forced bodily testing than the U.S. Constitution. *In re May 1991 Will County Grand Jury*, 152 Ill. 2d 381 (1992).

HB 1739 is not justified by possible exonerations. Innocent suspects will volunteer their own DNA for testing, and a non-match with the crime-scene DNA will tend to prove innocence. *People v. Dodds*, 801 N.E.2d 63, 71-72 (Ill. App. Ct. 2003) (a non-match required a post-conviction evidentiary hearing). Convictions despite non-matches indicate serious problems with our criminal justice system, which cannot be solved by HB 1739.

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