



TO: Senate Judiciary Committee  
FROM: Gary Daniels, Associate Director, ACLU of Ohio  
DATE: January 24, 2012  
RE: Senate Bill 268 – Opponent testimony

To Chairman Wagoner, Ranking Minority Member Kearney and members of the Senate Judiciary Committee, my name is Gary Daniels, Associate Director for the American Civil Liberties Union of Ohio (“ACLU of Ohio”) and I welcome this opportunity to present opponent testimony on Senate Bill 268.

The ACLU is the oldest and largest civil liberties organization in the world with over 500,000 members nationwide and over 30,000 members and supporters across Ohio. The ACLU and ACLU of Ohio are non-profit, non-partisan membership organizations devoted to protecting basic civil rights and civil liberties for all Americans and all Ohioans.

We believe Senate Bill 268 should be rejected and offer the following testimony to explain why:

**SB 268 and SB 77 background**

Clearly, Senate Bill 268 is offered as a “fix” to last session’s Senate Bill 77. SB 77, as you know, was a comprehensive bill finally establishing statewide standards for the collection of, preservation of and accessibility to DNA from all persons over 18-years-of-age merely arrested for, but not convicted of, a felony offense.

While the ACLU of Ohio was supportive of the majority of provisions found in SB 77 we did not ultimately endorse the bill because of the section mandating DNA collection of felony arrestees with no warrant and without individual suspicion.

Indeed, Ohio and other states that passed and continue to pass such laws are proceeding recklessly down a path that simply equates to putting more and more private genetic and medical information into the hands of government at all levels and with mixed results regarding its overall effectiveness.

AMERICAN CIVIL  
LIBERTIES UNION  
OF OHIO  
4506 CHESTER AVENUE  
CLEVELAND, OH 44103-3621  
T/216.472.2220  
F/216.472.2210  
WWW.ACLUOHIO.ORG  
contact@acluohio.org



### **Increasing categories of DNA collection may be counterproductive**

Here in Ohio, for instance, our own Bureau of Identification & Investigation (“BCI”) is being revamped to deal with its own shortcomings with regard to DNA evidence and the increase in workload. Reasons such as these are why the Department of Justice and such states as Illinois and Michigan have warned legislative changes to collect DNA from new categories of people can be counterproductive with expansions negatively impacting the ability of law enforcement to effectively do their jobs and analyze those samples. In other words, it becomes a case of adding hay to the haystack while one searches for a needle in a time of severely limited budgets.

### **DNA collection will continue to expand**

Over the years, we have generally seen such laws start with collecting DNA from those convicted of such serious felonies as murder and sex offenses. Almost every state in the country has some variation of that law. In fact, such laws have been instrumental in tracking down and convicting criminals months and years after their offenses. It has also helped ensure people previously convicted of such serious offenses were the true perpetrators and led to the release of inmates when DNA evidence proved they were not guilty.

However, the familiar “slippery slope” aspect of governing has ensured these laws have not stopped there as various states have passed or considered passing laws to expand warrantless and suspicionless DNA collection to all felony arrestees (the current law in Ohio), to those convicted of misdemeanor offenses and to those only arrested for misdemeanor offenses.

And what is to stop the government from going further? Will there one day be legislation to make DNA or DNA profiles, gained through law enforcement, available to current or potential employers and schools, among others? Or even the collection of DNA every single Ohioan without exception? After all, government lawyers who defend these laws routinely make the case people have almost no or significantly diminished legal expectations of privacy to their DNA.

I feel quite certain SB 268 will not be the first time Ohio will or will try to expand the number of people from which DNA will be seized.

### **Ohio's DNA laws need overall reform**

If members of this committee feel Ohio's DNA evidence laws need fixed, I urge you to look at a variety of other concerns with those laws. Those concerns such matters, but are not limited to: 1) the amount of time DNA evidence is retained, 2) strengthening laws to greater protect against unauthorized dissemination of DNA information and misuse of DNA databases, 3) easing procedures by which arrestees who are not convicted can have their DNA removed from databases and government possession, and 4) the addition of a language to include any combination of a warrant, individual suspicion, and probable cause before the government seizes DNA evidence from an individual. The ACLU of Ohio would be willing to participate in any such attempts to strengthen the privacy rights of Ohioans.

In closing, members of this committee might think a vote to pass SB 268 is nothing more than a tweak to Ohio's existing law. I submit a "yes" vote is much more than that; it represents a further step down the line in the continual expansion of government at all levels unnecessarily collecting and storing the most private and revealing information of its citizens. I respectfully urge you to vote "no" on SB 268.