



State of South Carolina

Office of the Governor

MARK SANFORD
GOVERNOR

Post Office Box 12267
COLUMBIA 29211

July 2, 2008

The Honorable André Bauer
President of the Senate
State House, First Floor, East Wing
Columbia, South Carolina 29201

Dear Mr. President and Members of the Senate:

I am hereby vetoing and returning without my approval S. 429, R-429.

This bill mainly does two things: (1) provides individuals convicted of certain crimes with procedures to preserve DNA evidence and to challenge their conviction through the use of DNA evidence and (2) requires all individuals who are arrested for a felony and certain other crimes to submit DNA samples and have their DNA profiles stored on a national database. We applaud the first part of the bill because it provides those who may have been wrongly accused a chance to clear their names, and we fully support the notion of due process in all cases. If this were the only provision of law, we would have signed this legislation into law. I am compelled to veto this legislation because of the further encroachment on our civil liberties and privacy rights.

Let me begin by expressing sincere admiration and appreciation for the law enforcement officials who fight crime on a daily basis. We have consistently advocated for giving them all the resources possible to maintain safe communities. However, we have also consistently tried to strike a balance between those tools and maintaining our civil liberties and privacy in the way that our Founders intended. I vetoed similar legislation on those same grounds just last year.

Allow me to explain.

To date, we have put safeguards on government's access to this type of personal information. Law enforcement currently has the authority to collect a DNA sample from an accused for comparison purposes – but *only after* a court order has been sought and granted.

The Fourth Amendment to the Constitution guarantees that all people shall be “secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The Fourth Amendment is intended to establish a perimeter of personal integrity into which the government cannot intrude without compelling reason. Currently, the State allows collection of a DNA sample from arrestees after a search warrant is granted by a judge based on probable cause. *See*

State v. Adolphe, 314 S.C. 89, 92, 441 S.E.2d 832 (S.C.App. 1994). This practice is consistent with the Fourth Amendment because it ensures that an arrestee is afforded due process as would be expected under the Constitution. This bill abolishes that right and requires collection of DNA automatically upon arrest without any showing that the DNA is needed as evidence of the crime for which the individual was arrested. Accordingly, we believe that this bill circumvents the probable cause requirement for a search warrant and is, therefore, unconstitutional. See *In re Welfare of C.T.L.*, 722 N.W.2d 484 (Minn.App. 2006) (holding that obtaining DNA specimens upon arrest of certain crimes was unconstitutional under the Fourth Amendment).

Lowering the threshold for obtaining DNA samples to felony arrest instead of conviction is particularly troubling when you consider that not even half of all felony arrests lead to felony convictions. For instance, in 2006, approximately 150,000 arrests were made, yet less than 40% of these arrests resulted in convictions. This means that this bill would require the State to take DNA samples of thousands of people who will never be convicted of the charges for which they are arrested. While the bill requires the destruction of the DNA sample in cases where someone is arrested and later exonerated, it does not address the uses of that evidence before guilt or innocence is determined. It is for this reason that the legislation appears to be about something much larger than simply criminal investigations.

Though American society values personal liberties, we are the first to recognize that persons **convicted** of a crime must give up some of those liberties, including the protection against search and seizure. By limiting DNA collection to those who have been convicted of a crime, we ensure that no DNA is collected unless that person has been granted due process of rights and has experienced a full vetting by the judicial system. In fact, we would become just the 14th state to enact some sort of upon arrest DNA collection. Even then, there have already been efforts to go beyond even this step.

Our fear that permitting the expansion of the DNA database under this bill will ultimately lead to further expansions in the future is justified in consideration of the DNA database's history. The DNA database was created in 1994 under the State DNA Identification Database Act, which required only individuals who had been convicted of sex-related crimes or individuals who had been convicted of violent crimes that had been ordered by the court to provide DNA samples for the database. Since its creation in 1994, the DNA Identification Database Act has been amended three times in a mere fourteen years by expanding the database to include samples from all individuals convicted of a felony, eavesdropping, peeping, and a misdemeanor punishable up to five years of imprisonment. Given the ever-expanding scope of the DNA database, we believe that it is finally time to draw a line in the sand and say that the DNA database will not be expanded to individuals who have not been convicted of a crime. We think the clear divide created with conviction has served us well because one of the central tenets of American law is that one is presumed innocent until proven guilty.

We are aware that some have justified the expansion of the DNA database by analogizing DNA sampling to fingerprinting. We reject this analogy because it fails to take into account the many

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varied and different uses that the DNA profiles can be used for. For example, California recently announced that it would begin using its DNA database to investigate biological relationships between individuals by comparing DNA evidence left at a crime-scene to near-matches in the DNA database. This means that law enforcement will investigate an unmistakably innocent person in the hope of obtaining clues to the identity of the actual culprit. Thus, unlike fingerprinting, DNA sampling is not limited to identifying the actual culprit of the crime because it provides for the investigation of demonstrably innocent people. Therefore, we cannot accept expanding the DNA database on the premise that it is like fingerprinting.

Thomas Jefferson is quoted as saying, "The natural progression of things is for liberty to yield and government to gain ground." What he recognized well over 200 years ago is just as true today, that liberty is not simply an idea that remains consistent. Instead, it is under constant attack from even seemingly well-intended people. We see this legislation as a reach past that very foundation upon which this country was founded.

For these reasons, I am vetoing S. 429, R-429.

Sincerely,

A handwritten signature in black ink, appearing to be 'MS', written over a horizontal line.

Mark Sanford