



Comments of ACLU-Vermont on S. 10, DNA database, Allen Gilbert, executive director, April 22, 2016

I wanted to make sure the House Judiciary Committee knows of the ACLU-Vermont's strong opposition to the Senate's proposal to collect DNA samples from people convicted of misdemeanors who serve at least a 30-day sentence. I see the bill is scheduled for a committee vote today. We wanted to weigh in because we believe the proposal is unconstitutional.

S. 10 is a response to the Vermont Supreme Court's *State v. Medina* decision of 2014. That decision threw out DNA collection upon arraignment for felonies and one misdemeanor (domestic assault). The arraignment provision had been added to the state's DNA collection statutes in 2009. There was disagreement then over whether the provision was constitutional. The legislature decided to test whether the Court would allow the expansion. The Court did not.

Under S. 10, collection of DNA upon arraignment is removed. However, collection of DNA not just from anyone convicted of a felony crime, but from anyone convicted of a misdemeanor crime who is sentenced, and serves, at least 30 days is added.

By adding any misdemeanor of which someone is convicted and who serves a month in Corrections custody, S. 10 greatly broadens the scope of the state's DNA collection effort.

- Anyone knowingly mislabeling maple syrup, for example, and is caught, prosecuted, convicted, and is given and serves a sentence of 30 days in jail will have his or her DNA collected (mislabeling maple syrup carries a maximum penalty of a year in jail).
- If you stop at the New Hampshire liquor store on I-93 in Hookset, buy more than eight quarts of whiskey and bring them home to Vermont, get caught, prosecuted, convicted, and are given and serve a sentence of 30 days in jail, you will have your DNA collected (bringing nine quarts of whiskey into Vermont carries a maximum penalty that includes a year in jail).
- If you ignore the "no trespass" sign on your neighbor's meadow and track rabbits or ski there, and you're caught, prosecuted, convicted, and are given and serve a sentence of 30 days in jail, you will have your DNA collected (no trespassing carries a maximum penalty that includes three months in jail). There are three dozen fish and wildlife violations that carry jail terms of 30 days or more.
- If you volunteer to serve as auctioneer at your town's annual Fourth of July charity auction and are not licensed as an auctioneer, you can be prosecuted, convicted, and given a sentence of 30 days in jail. Serving that time in jail means you will have your DNA collected (providing services as an auctioneer when you're not licensed as such carries a maximum penalty that includes up to a year in jail; it is a general Office of Professional Regulation penalty applying to licensed professionals).

The DNA that's collected for misdemeanors like these will be stored in a database indefinitely, and shared nationally.

The ACLU-VT believes that the public policy rationale for collecting and storing somebody's DNA because they've mislabeled maple syrup, bought nine bottles of whiskey in New Hampshire to save a few bucks, ventured onto a neighbor's meadow, or acted as an auctioneer but isn't licensed is not clear. What is very clear, however, is that S. 10, if enacted into law, will be challenged in court. We believe the challenge will be successful.

We urge you not to pass S. 10.