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2008-09 Term

July 1, 2008

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Senator Barbara Buono
Two Lincoln Highway
Suite 401
Edison, NJ 08820

Re: Senate Bill 514/Assembly 2489 (Expands DNA Database to include samples from disorderly persons and certain arrestees)

Dear Senator Buono:

The Middlesex County Bar Association (“MCBA”) writes to express our strong opposition to S-514, proposing to expand the DNA database to include samples from persons convicted, adjudicated delinquent, or found not guilty by reason of insanity, of disorderly persons offenses.

Currently, the New Jersey DNA Act provides that the database shall contain DNA samples from persons convicted of, adjudicated delinquent for, or found not guilty by reason of insanity of indictable criminal offenses. The present bill (S-514) will expand the reach of the State’s DNA collection efforts to include all adults and juveniles convicted or adjudicated delinquent of disorderly person offenses AND those who have been arrested, but not yet convicted, or certain serious offenses.

S-514 bill is overly broad and intrusive. Disorderly persons offenses are the least serious classification of criminal offenses, and convictions for this class of offenses are deemed by law to not constitute criminal convictions, and do not carry with them any of the disabilities suffered by those who are convicted of criminal offenses. Examples of disorderly persons offenses include simple assault, certain lewdness offenses, damaging a traffic sign or signal, theft of property with a value of less than \$200, and passing a bad check with a value of less than \$200. A conviction for one of these petty offenses, which are typically punished by the imposition of a fine, and carry a maximum penalty of six months in jail, should not carry with it the significant personal intrusion of having the State collect a DNA sample.

Similarly, it violates notions of privacy, and fundamental fairness, to require a DNA sample from persons arrested for, but not convicted of, a serious offense. The filing of a charge is considered under the law to prove nothing, and there is no justification to permit the State to collect highly personal information from those who the law considers to be innocent even after a charges is filed.

New Jersey’s Appellate Division has held that the reasonableness of taking DNA samples is determined by weighing the degree to which this taking intrudes upon an individual’s privacy and the degree to which the DNA information is needed for the promotion of legitimate governmental interests. (CITE TO CASE??). The court also held, because of the reduced expectation of privacy afforded persons convicted of crimes as described in the current DNA Act, collection of DNA samples is outweighed by the public’s interest in identifying and prosecuting crimes. However, the expectation of privacy afforded to all citizens is outweighed by any alleged need to collect DNA samples from persons merely convicted of disorderly persons offenses or only arrested for, but not convicted of, even a serious crime.

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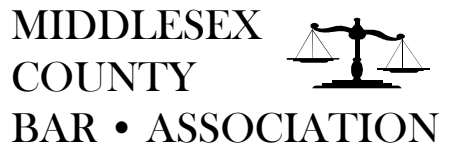
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*Letter to Senator Buono
Opposition to S.514
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Accordingly, the MCBA respectfully requests that you vote "NO" on S-514.

Sincerely,

Angela Foster

Angela Foster
Trustee, Middlesex County Bar Association

CC: George J. LeBlanc
Rosemary Pramuk
Catherine Z. Brennan
Howard K. Rotblat