

washingtonpost.com

## U.S. to Expand Collection Of Crime Suspects' DNA

Policy Adds People Arrested but Not Convicted

By Ellen Nakashima and Spencer Hsu  
Washington Post Staff Writers  
Thursday, April 17, 2008; A01

The U.S. government will soon begin collecting DNA samples from all citizens arrested in connection with any federal crime and from many immigrants detained by federal authorities, adding genetic identifiers from more than 1 million individuals a year to the swiftly growing federal law enforcement DNA database.

The policy will substantially expand the current practice of routinely collecting DNA samples from only those convicted of federal crimes, and it will build on a growing policy among states to collect DNA from many people who are arrested. Thirteen states do so now and turn their data over to the federal government.

The initiative, to be published as a proposed rule in the Federal Register in coming days, reflects a congressional directive that DNA from arrestees be collected to help catch a range of domestic criminals. But it also requires, for the first time, the collection of DNA samples from people other than U.S. citizens and legal permanent residents who are detained by U.S. authorities.

Although fingerprints have long been collected for virtually every arrestee, privacy advocates say the new policy expands the DNA database, run by the FBI, beyond its initial aim of storing information on the perpetrators of violent crimes.

They also worry that people could be detained erroneously and swept into the database without cause, and that DNA samples from those who are never convicted of a crime, because of acquittal or a withdrawal of charges, might nonetheless be permanently retained by the FBI.

"Innocent people don't belong in a so-called criminal database," said Tania Simoncelli, science adviser for the American Civil Liberties Union. "We're crossing a line."

She said that if the samples are kept, they could one day be analyzed for sensitive information such as diseases and ancestry.

Justice Department spokesman Erik Ablin said the collection of DNA samples "will provide an additional form of biometric identification from persons who would normally be fingerprinted." FBI rules preclude using DNA samples to determine a person's genetic traits, diseases or disorders.

The database expansion was authorized by Congress as an amendment to the Violence Against Women Act and was billed primarily as a way to track down serial rapists, murderers and other offenders. "We know for a fact that the proposed regulations will save the lives of many innocent people and will prevent devastating

Advertisement

Pay \$99.99 for card and after mail-in rebate receive \$100 Visa Promotion Card, 2 year service agreement on Data Connect Plans \$60 or higher required. Allow 60 days for debit card fulfillment. Card valid in U.S. only for 120 days after issuance date but is not redeemable for cash. Some restrictions apply. Not available in all markets. While supplies last. See store for details. Based on a single card solution and cities with a population of 100k or more as of March 8, 2007.

crimes," said Sen. Jon Kyl (R-Ariz.), a sponsor of the legislation. "These regulations are long overdue -- we should have done this 10 years ago."

The proposed rule applies to all federal agencies with the authority to arrest or detain, including the FBI, the Border Patrol and the Internal Revenue Service. Although details of the policy have not been announced, officials said they expect the bulk of the new DNA samples to be collected through cheek swabs.

U.S. officials said that when the measure is fully implemented, roughly 1.2 million people a year could be added to the national database. About 140,000 of those would be people arrested for federal crimes. Many of the rest would be foreigners detained for being in the United States illegally.

Immigration rights advocates note that most illegal immigrants are detained for administrative violations, not federal crimes. By adding their DNA to the database, "it casts them all as criminals," said Paromita Shah, associate director of the National Immigration Project of the National Lawyers Guild.

The rule's scope is still being negotiated, officials said, but it will not cover illegal immigrants picked up at sea; people being processed for legal admission to the United States, such as asylum seekers; and people undergoing secondary screening at ports of entry. It was unclear yesterday whether Mexican border-crossers who are briefly detained and then released in Mexico will be covered. The Border Patrol made 877,000 apprehensions in 2007, most of them of Mexicans.

The move comes as 13 states -- including Virginia and, recently, Maryland -- have passed laws to include many arrestees in their DNA databanks. California, which has more than 1 million profiles, will begin collecting DNA from all felony arrestees next year. The information will be uploaded to the national database, which today houses more than 5.9 million samples, making it the largest forensic DNA databank in the world.

The National DNA Index System (NDIS) was created by the DNA Identification Act of 1994 to store profiles of people convicted of serious violent crimes, such as rape and murder. A 2004 amendment expanded the collection to people convicted of any felony offense, and it allowed states to upload DNA profiles from people convicted of misdemeanors and from arrestees charged with a crime. In 2006, the law was changed again, enabling states to upload data from arrestees who had not been charged.

Over the years, the NDIS has yielded 66,750 hits in 67,285 investigations, FBI officials said. "I think by any measure, the program has been a success," said Thomas Callaghan, head of the database, adding that the best way to increase its effectiveness is to add DNA samples from arrestees.

Jayann Sepich of Carlsbad, N.M., said she applauds the federal rule change. In August 2003, after Sepich's 22-year-old daughter, Katie, was raped and killed, investigators found her attacker's skin and blood under her fingernails. But no samples in the state's database matched the evidence.

In 2006, moved by Katie Sepich's death, the New Mexico legislature passed "Katie's Law," requiring the collection of arrestees' DNA. That December, authorities arrested the man who had killed her -- a DNA sample had been taken from him when he was arrested on a charge of aggravated burglary. Jayann Sepich is now a prominent advocate of similar laws in other states.

The new federal rule will conform to current law, which requires the removal of DNA profiles from the database when a conviction is reversed or when an arrest does not result in conviction. An individual must

petition for expungement, Ablin said. Civil liberties advocates say removal should be automatic.

In Virginia, which in 2003 adopted one of the first arrestee laws, about 51 percent of arrestee profiles are eventually removed from the state database because charges are dropped or a case is dismissed, said Pete Marone, director of the Department of Forensic Science. He said it is the forensic lab's duty to remove the profiles, something that can take a year or two. "As long as the case is in process, they're still there," he said.

Jim Harper, director of information policy studies at the libertarian Cato Institute, warned of mission creep. "The natural path is to move from the dangerous criminals down the chain, to anybody who has contact with law enforcement, and after that you'll have DNA taken when people are born or first enter the country legally," he said.

The proposed rule will be subject to a 30-day public comment period, Ablin said.

### Post a Comment

[View all comments](#) that have been posted about this article.

You must be logged in to leave a comment. [Login](#) | [Register](#)

Submit

Comments that include profanity or personal attacks or other inappropriate comments or material will be removed from the site. Additionally, entries that are unsigned or contain "signatures" by someone other than the actual author will be removed. Finally, we will take steps to block users who violate any of our posting standards, terms of use or privacy policies or any other policies governing this site. Please review the [full rules](#) governing commentaries and discussions. You are fully responsible for the content that you post.

© 2008 The Washington Post Company

#### Ads by Google

##### [How to Retire in Your 30s](#)

Retire Early with Home Business Enjoy a Life of Leisure and Travel  
[www.living-powerfully.com](http://www.living-powerfully.com)

##### [Speed Up Windows XP](#)

Fix PC. Remove Errors. Clean System Complete Scan. Takes 6 Mins.  
[www.ErrorSmart.com](http://www.ErrorSmart.com)

##### [1lb Bags Beef Jerky](#)

USDA Inspected Free Shipping We discount for military shipments  
[www.JerkyNet.com](http://www.JerkyNet.com)