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Fact Sheet on DNA Databank Expansion to Arrestees

- **Innocent people do not belong in a criminal databank.**
 - The basic presumption of “innocent until proven guilty,” a cornerstone of our criminal justice system, is turned on its head when innocent people are included in a criminal databank.
 - There is a vast difference between using DNA as a tool in investigations – both to catch the guilty and exonerate the wrongly accused – and permanently storing the most intimate biological information of persons who have not been convicted of any crime.
- **The taking and permanent retention of DNA from innocent people is an intolerable violation of the Fourth Amendment.**
 - The courts have repeatedly determined the taking of DNA constitutes a “search” under the Fourth Amendment.
 - The courts have nonetheless upheld state DNA databases on the notion that convicted persons have a “lesser expectation of privacy.” Clearly this does not apply to innocent people.
Example: The Minnesota Court of Appeals recently determined that Minnesota’s law authorizing DNA collection from persons charged but not convicted violated both the U.S. Constitution as well as Minnesota’s Constitution (In re Welfare of C.T.L., 722 N.W.2d 484 (Minn. Ct. App. 2006)).
- **Massive expansion is unlikely to make us safer.**
 - DNA is only found at a small fraction of crime scenes.
 - The ability of law enforcement to resolve crimes using DNA evidence is limited by its ability to glean DNA from crime scenes; not by the number of people in the database.
 - Unchecked expansion of DNA databanks will encourage law enforcement to spend a disproportionate amount of time and money mining crime scenes for DNA, when resources could be better spent on other techniques, such as community policing.
 - *Example:* A recent study has shown that enactment of Britain’s arrestee testing program has actually corresponded with a slight *decrease* in matches with crime scene evidence -- probably because they’re bloating their database with people who are highly unlikely to commit the tiny number of crimes where DNA plays a role.
- **Massive expansion may even undermine criminal justice.**
 - Arrestee testing will worsen existing backlogs in DNA testing.
 - Backlogs in DNA testing have resulted in delays in priority cases.
 - *Example:* Consider the tragic case of Christina Worthington, who was raped and murdered on Cape Cod in 2002. Although the crime lab had the

- DNA of her attacker, it took over a year to process the sample thanks to a backlog caused by a DNA dragnet.
- DNA testing is not infallible; mistakes can and have been made in the collection and analysis of DNA and the reporting of results, sometimes resulting in innocent people serving time for crimes they did not commit. Backlogs increase the chances of these errors as lab analysts and database administrators are pressured to cut corners to meet their workload.
- *Example:* Josiah Sutton spent nearly five years in prison, starting at age 16, for a rape he could not have committed, as a result of an error made by an analyst at the Houston Crime Lab.
- *Example:* In Virginia, the first state to actively collect DNA from arrestees, more than 20% of convicted felons' DNA profiles were recently reported as "missing" from the database, either because they were never collected or were improperly entered into the system.
- **DNA is not a fingerprint.**
 - DNA is much more than a fingerprint, in that it contains some of the most private information about a person.
 - Our genetic code, which is contained in our DNA, determines a great deal about susceptibility to disease as well as information about one's family history. This is private, personal information about you that should not be made available to the police or the government.
 - Concerns of misuse of this information are driven by current laboratory practice, where each individual's biological sample is retained along with the generated DNA profile. The risk that these samples might be accessed and used in controversial research (for example on human behaviors such as aggression, substance addiction, or criminal tendency) or in other sinister ways remains so long as those samples remain on file.
 - There is an additional danger inherent in these databases as well, which is that they make sharing the data extremely easy. Almost weekly we hear of another government database being breached and the information being sold by identity thieves. In the case of DNA this would be an especially dangerous scenario, as employers and insurance companies would bid high to get a peak at your genetic profile.
- **Unchecked expansion reinforces racial disparities.**
 - A DNA databank that includes arrestees will unfairly represent minorities, who are wrongfully arrested at a disproportionately higher rate than whites.
 - If information from these databanks should fall into the wrong hands, minorities will face increased discrimination outside the criminal justice system, as well as within.
 - *Example:* 1/3 of the black population in Britain is currently represented in the UK database as a result of Britain's decision in 2001 to include arrestees in its databank.