



Quarterly Forensic DNAResource Report January 2012

Special Interest Feature

South Africa Continues Work on Database Implementation

Universally, one of the most difficult problems faced when integrating DNA databasing technology into any criminal justice system is finding adequate resources and laboratory capacity. Even when attempts are made through the legislative process to anticipate the laboratory needs created by an effective database, few countries possess the infrastructure to immediately maximize the crime solving potential of DNA. South Africa is a notable exception. If South Africa manages to pass legislation this year establishing an offender DNA database, the South African Police Service (SAPS) will be ready with an automated laboratory system they have been developing for years.

Since 2002, SAPS has maintained an automated system for DNA analysis that is one of the most advanced in the world. However, the lack of legislation establishing an offender database has prevented South Africa from reaping the full benefits of a laboratory system envied by many other countries. With crime statistics showing South Africa to be one of the most sexually violent places on the planet, the SAPS laboratory has both the capacity and technical sophistication to hit back hard. But absent the legislation, tremendous potential goes unrealized.

According to the United Nations, South Africa ranks second for murder and first for assaults and rapes per capita. An average of fifty two people is murdered every day there and the number of rapes reported in a year is around 55,000. It is estimated that 500,000 rapes are actually committed annually in South Africa. In a 2009 survey, one in four South African men admitted to raping someone. Even more insidious, South Africa has one of the highest incidences of child and infant rape in the world. It is a country where it is believed that intercourse with a virgin will cure or prevent HIV/AIDS and where child rape is used as a method of retaliation against another for a perceived wrong. Children are murdered and body parts used for "traditional" medicinal remedies. And in a country also cursed with epidemic rates of HIV/Aids, rape takes on an exponentially tragic dimension.

However, after ten years, it appears as though the South African Parliament is poised to pass legislation in the next year which will unleash the power of DNA and stem the tide of sexual violence. Having taken a study trip abroad to the United Kingdom and Canada this summer, the Portfolio Committee responsible for developing

the legislation has fulfilled one of its announced requirements before recommending the legislation to Parliament. They have also received significant input from victim advocates such as Vanessa Lynch, Executive Director of the DNA Project as well as testimony from Chris Asplen of Gordon Thomas Honeywell Governmental Affairs. Significant radio and television attention has also helped drive the Committee to forward the legislation to the full Parliament.

When passed, the South African DNA database legislation will create an investigative tool that, if properly implemented, could not only begin saving lives immediately by removing serial rapists and murders from the streets, but will also serve as a model for neighboring countries and ultimately all of Africa.

International Developments

Russia Begins Offender DNA Database Program

In late 2011, Russia finally began its nationwide offender DNA database program. This program is the result of legislation enacted by the Russian Parliament in December of 2008 to require DNA from serious criminal offenders upon conviction. With a population of over 140 million, Russia is now the third most populated country in the world (behind China and the US) to implement a nationwide offender DNA database program. Since the passage of the law, Russian officials and laboratory personnel have been working aggressively to build the infrastructure needed for the offender DNA program, and are now ready for wide-scale implementation.

The Russian Ministry of Internal Affairs Police Crime lab will operate the database. Russia becomes the 43rd country to implement a nationwide offender DNA database.

DNA Databases in Middle East Move Forward

Middle Eastern countries have been relatively late in adopting nationwide offender DNA databasing policies, but in recent years have marked significant progress in the establishment of such programs. In 2009, only Israel and the Emirates of Dubai and Abu Dhabi had operational DNA programs. Since then, Jordan, Kuwait, and Qatar have also implemented DNA database programs. Furthermore, Saudi Arabia has now developed an impressive network of DNA laboratories and is planning implementation of an offender DNA database program. Oman and Lebanon are also in active discussion on how to move forward with DNA database policies.

Also in the general Middle East region, Pakistan is known to have impressive DNA plans as well. Pakistan's Punjab State has constructed a world-class crime laboratory in Lahore and hopes to begin a significant regional DNA database in the near future. At the federal level, the Pakistani Ministry of the Interior established the National Forensic Science Agency, which plans to build multiple forensic laboratories throughout the country, and will promote the passage of DNA databasing legislation and related policies. Financial concerns will

challenge Pakistan's ability to rapidly move these plans forward, but this interest in establishing new forensic DNA programs is a significant step for a country which previously exhibited little interest in DNA programs.

United States Developments

Legislative Update

Database Expansion

As of the end of 2011, a total of 25 states have enacted laws to require DNA upon arrest for certain felony crimes. An arrestee DNA database bill in Pennsylvania passed the State Senate (SB 775, by Senate Majority Floor Leader Dominic Pileggi) by a vote of 42-6. The bill is now in the Pennsylvania House of Representatives where it will be eligible for consideration in 2012. Most other state legislation that was not enacted in 2011 will either need to be reintroduced in 2012, or will re-start the approval process in its chamber or origin. Legislators throughout the country are currently drafting new arrestee DNA bills for introduction in 2012. Please check our tracking lists throughout the year at www.DNAResource.com to view newly introduced bills.

Addressing Backlogs

The October 2011 DNA Resource Report reported that Illinois and Texas are facing new laws which mandate near-immediate submission of all rape kits, and a requirement for public crime laboratories to test all submitted kits. These laws intentionally include cases such as acquaintance rapes, where there is some debate over the utility of DNA testing.

Parties objecting to such testing are not necessarily opposed to the concept of testing all rape kits, but question the wisdom of depleting limited resources available for DNA on cases in which the suspect is already known and admits to sexual contact. DNA results may provide little further indication as to the question of consent, but the additional testing may necessarily mean limitations or even stoppage on DNA testing in other types of cases, particularly property crimes – and with the high rate of burglars that are linked to sex crimes on the DNA database, some analysts may argue that this scenario makes little sense.

Proponents point to instances where DNA from acquaintance rape cases have been linked to stranger assaults, or have other times helped to point out *serial* acquaintance rape suspects. In many jurisdictions, the clearance rate on closing rape cases is very low, and proponents view a refusal to test the kits as one more way in which the crime of rape is not taken seriously. GTH encourages full funding of such laws, if passed, but is not involved in the policy debate of whether or not such laws should be enacted.

The rape kit law passed by Texas this year had an October 2011 deadline for local jurisdictions to inventory and submit figures on the number of untested rape kits in their possession. Only 5% of jurisdictions had reported by the deadline, declaring roughly 5,500 untested kits. Many larger jurisdictions, including Dallas, Fort Worth, and Houston had not reported at all (subsequent news from Houston reported 6,000 untested kits, much of which is being addressed through a federal grant from NIJ). A list of Texas counties reporting by the Oct. 31, 2011 deadline can be found in [this article](#).

It was also reported in our October report that California also considered, but rejected a similar rape kit mandate law, opting instead for a pilot project where all rape kits would be accepted from approximately 10

counties, which have a closure rate on rape cases of fewer than 12%. The results of this effort would be studied for possible future legislation and/or agency initiatives. However, the Governor of California vetoed this legislation, stating:

"I don't see why we would mandate counties to participate in a program they don't want, especially when the state is cutting back on so many programs that are needed and wanted. Local officials are in the best position to determine whether to participate in such a program." See full [veto message](#).

The total cost to the California Department of Justice for testing and administration was estimated to be between \$190,000 to \$350,000 annually, for the 2-3 year term of the pilot project. See [legislative summary](#) of bill and costs.

Legal Update

In *Mario v. Kaipio*, the Arizona Court of Appeals has upheld the portion of the state's arrestee DNA database statute which permits collection of DNA from juveniles who are subject to delinquency proceedings for certain felony crimes. However, in its ruling the court limited its approval of this law to those samples collected after a finding of probable cause. Arizona statute permits collection at booking, so the ruling, while positive, also narrows the circumstances under which a sample may be collected. The status of a possible appeal is unknown at the time of this writing.

In California, the State Supreme Court has agreed to review an Appeals Court decision which initially struck down the voter-passed initiative, Proposition 69 from 2004. This law permits California law enforcement to collect DNA samples at the time of booking for all felony crimes. With the State Supreme Court's acceptance of *Brown v. Buza*, the negative Appeals Court decision was officially "de-published" – in sum, of no further precedence or authority and thereby allowing California to proceed with arrestee DNA collection pending a ruling from the State Supreme Court.

Lastly, in *US v. Mitchell*, the defense for Mitchell has officially filed its appeal brief with the US Supreme Court, and now the Department of Justice is preparing a response brief for filing. Once all briefs are in, the court will consider whether or not this case will be among the handful of appeals it accepts for review each year. As there is no real split in legal decisions regarding arrestee testing, there is a strong possibility that the court may reject *Mitchell*. However, is likely just a matter of time before the US Supreme Court will have to speak on the constitutionality of arrestee DNA testing – although the issue may not be ripe for the court to take up *Mitchell*, both *Brown v. Buza* and *Brown v. Haskell* (currently being decided by a 9th Circuit Appeals panel) are not far behind.

Backlog / Funding

The FY 2012 federal spending bill for the US Department of Justice (HR 2112) was signed into law on November 18. The new spending plan includes \$117 million for DNA-related programs, plus another \$4

million for post conviction DNA grants, and \$4 million for SANE/SART training. The \$117 million DNA grant appropriation represents a 6% reduction from FY 2011 levels of roughly \$125 million, but is a much smaller reduction than those felt by other law enforcement grant programs in the FY 2012 appropriations bills. Those programs saw a cut of over 60% to the Coverdell National Forensic Science Improvement grant, which provides vital support to other areas of need at public crime laboratories.

Unfortunately, these cuts are precursors of more to come. In late November the bipartisan Super Committee (made up of House and Senate members) failed to negotiate an agreement on over \$1 trillion in spending cuts needed to stabilize the national debt. Due to this failure to come to an agreement, an automatic budget cutting process called “sequestration” will begin for the FY 2013 funding cycle. “Sequestration” will bring across-the-board cuts to all non-defense discretionary spending for 2013, at a level of approximately 7.8% based on the FY 2012 appropriation. Therefore, a cut of approximately \$10 million is anticipated for the DNA program funding – bringing FY 2013 levels down to \$107 million, or a reduction of nearly 30% over FY 2010 levels of \$151 million.

While it is possible Congress could modify this automatic “sequestration” process through new legislation before the first cuts are due, the President has indicated he would not sign such a bill. Moreover, the 2013 cuts are just the beginning of automatic cuts to come in future budget cycles -- roughly the same total dollar amount in cuts in domestic accounts will need to be accomplished every year through 2021.

Unless Congress can reach a compromise, the foreseeable future will bring continuing reduction in the availability of federal funds to support forensic DNA, crime laboratory, and even general law enforcement programs. State and local governments will increasingly be called upon to make difficult decisions as to the future of forensic science and service to victims of crime in their jurisdictions.

Other News of Note

Legislative efforts to encourage familial searching policies received a boost in Congress when the fiscal year 2012 appropriations package for the US Department of Justice (HR 2112) included the following report language:

The conferees encourage the FBI to undertake activities to facilitate familial DNA searches of the Combined DNA Index System database of convicted offenders and work with the National DNA Index System (NDIS) Procedures Board to consider the establishment of procedures allowing familial searches only for serious violent and sexual crimes where other investigative leads have been exhausted. The procedures should provide appropriate protections for the privacy rights of those in the NDIS database. (Conf. Rept. 112-284)

Currently, familial searching is not conducted at the national level, and is only practiced by a handful of states. To date, no state law specifically codifies the ability of laboratories to conduct familial searches of the DNA database. Those jurisdictions which do perform such testing do so under the broad legal authority granted through most state laws to use DNA samples in the database for investigative purposes limited to law enforcement. There are two jurisdictions – Maryland and the District of Columbia – which have laws

specifically prohibiting familial searches. However, a bill moving forward in Pennsylvania may soon create the first state statute to specifically permit familial searches.

To qualify for familial searching under the Pennsylvania legislation, a case must meet a series of requirements, including representation that all other investigatory leads have been exhausted, and that there is a commitment by personnel to follow up on the investigation should a lead result. The bill also specifically states:

The State Police shall not be limited to procedures or methods used by the FBI in conducting moderate or low stringency CODIS searches.

The bill has passed the State Senate on a strong vote (42-6), and is now eligible for consideration in the State House during the 2012 legislative session. Use [this link](#) for the full text of the bill.