

Hobbs DNA saga fuels debate on taking DNA samples after an arrest, instead of convictions

Arrest in Virginia led to a DNA sample that may exonerate Illinois dad, but if the arrest had been made in Illinois, the DNA sample wouldn't have been taken

August 03, 2010|By Dan Hinkel, Tribune reporter

When a man arrested earlier this year in Virginia on robbery and abduction charges was linked by DNA to the horrific slayings of two young girls in Zion, it raised the possibility of exoneration for the original suspect, who has been behind bars for five years.

But the crucial connection might not yet have been made if the man jailed in Virginia had been picked up on the same charges in Illinois.

Unlike Virginia, Illinois has no law mandating DNA collection upon arrest. DNA samples are gathered from felons only after conviction. Supporters of post-arrest testing are now pointing to the developments in the Zion case as proof of the merit of testing a felony suspect after an arrest.

On Wednesday, the original suspect, Jerry Hobbs, is due in court for a hearing where his attorney will push for his release on bond. Prosecutors said they will provide "new information" about Hobbs' case at a morning news conference, according to a statement released by the Lake County state's attorney's office Tuesday afternoon.

State's Attorney Michael Waller declined to provide specifics. Prosecutors previously have said only that they are continuing to investigate the case in light of the new evidence, which a source close to the inquiry said links a former Marine now in custody in Virginia to the killings.

Hobbs has told family members that he believes he will be released from jail. His mother, JoAnn Hobbs, of Wichita Falls, Texas, said her son's public defender told her that Lake County officials will escort her son to Texas, if he is released.

"After over five years I might get him back but he will never be the same," JoAnn Hobbs wrote in a statement e-mailed Tuesday to the Tribune.

For now, Jerry Hobbs, 39, remains charged with the double murder. He has been in custody since shortly after he called police in May 2005 to tell them he had found the bodies of his daughter, Laura, 8, and her friend Krystal Tobias, 9, in a Zion park.

["Sad and worth understanding." On Trib Nation, reporter Dan Hinkel describes the haunting questions this case raises, all the more poignant after charges against Hobbs were dropped Wednesday morning.](#)

Two decades after the advent of DNA's use in the justice system, lawmakers are poised to decide whose genetic information belongs in the government's files. The answer will influence the future of criminal prosecution and personal privacy, experts say.

Civil liberties advocates and some legislators worry about a "Big Brother" government that collects genetic information from citizens before they are even charged with crimes.

But lawmakers in Illinois and Washington are pushing measures that would mandate the gathering of DNA upon arrest and bulk up the government's central store of DNA profiles, which now stands at nearly 8.9 million, according to an FBI spokeswoman. President Barack Obama has expressed support for testing upon arrest.

"The primary reason that we're putting samples into the database is to see if you committed a crime. If you committed no crime, if you raped no one, having your sample in the database is of no consequence," said Rob Warden, executive director of Northwestern law school's Center on Wrongful Convictions, who also supports post-arrest DNA collection

Last month, Illinois became the first state to require the testing of all DNA evidence gathered from reported sex crimes. The law was approved after a Tribune review last year found an ongoing backlog of unexamined DNA, going back for years, at the state crime lab. While the backlog has since been reduced, critics say unexamined DNA has hampered investigations and prosecutions.

Virginia's post-arrest collection law guaranteed DNA would be taken and added to the national database, Warden said. The man arrested in Virginia has been identified by a relative as Jorge Torrez, 21, a former Zion resident being held in the Arlington, Va., jail without bond.

Torrez, who has not been charged in the Zion killings, was arrested in February and later charged with two attacks on women in Arlington, Va. One attack involved the alleged abduction and repeated rape of a 23-year-old woman, according to Virginia authorities.

Virginia is one of 23 states that automatically test people upon arrest on suspicion of certain crimes, said Rich Williams, of the National Conference of State Legislatures. Virginia police test upon arrest for any "violent felony," under state law.

In Illinois, law enforcement officials are required to take DNA profiles from people convicted of felonies but not from those who have only been arrested. While DNA is not automatically collected upon arrest, a judge can sign a warrant ordering a suspect to provide a DNA sample during an investigation or prosecution, said Capt. Scott Compton of the Illinois State Police.

DNA gathered in a sexual assault may be entered into the state and national DNA databases, where samples might help identify the offender or provide a link to other unsolved crimes, Compton said.

In May, the U.S. House of Representatives voted 357-32 in favor of a bill that would boost federal grant dollars to states that mandate the testing of people arrested on suspicion of certain violent or serious crimes. The bill's sponsor, Harry Teague, D-N.M., said he is optimistic the Senate will pass the bill within the next six months.

Some attorneys question the constitutionality of additional DNA collection. American Civil Liberties Union staff attorney Michael Risher argues that a DNA test — often taken using a swab of the mouth — is an unreasonable search against people who have been arrested but are presumed innocent

Risher said that if a DNA test is needed, law enforcement officials should seek a court order mandating the DNA collection.

Collecting DNA after an arrest wouldn't significantly increase the number of violent criminals who might be caught through post-conviction collection, because violent criminals tend to have convictions in their past, Risher said.

He also worries about how the government might use genetic information.

"It treats innocent Americans like convicted felons," he said.

In the Zion case, prosecutors have known since at least 2008 that Hobbs' DNA has been excluded as a match to semen found on a victim, and he has recanted his confession to killing the girls. But prosecutors say the semen may have been on the ground before the attack.

Illinois legislators rejected post-arrest collection in May 2009. But state Sen. Matt Murphy, R- Palatine, expects the issue will come up again after a new session starts in January, and state Rep. Susana Mendoza, D- Chicago, said she plans to continue to push the bill in the General Assembly.

One of the measure's opponents will be state Sen. Kwame Raoul, D-Chicago, a former Cook County prosecutor who said such tools disproportionately affect black neighborhoods that suffer racial profiling. It would also allow police to use trumped-up arrests as an investigative tool to solve cold cases, he said.

Raoul said he doesn't trust government agencies to use our genetic fingerprints responsibly.

"Let's just take the DNA of everybody on Earth and put it in a database and put a camera in everybody's home and re-create that, what's the movie? 'Minority Report,'" he said.

Tribune reporters Lisa Black and Megan Twohey contributed to this report.