

Addressing the DNA Backlog

July 13 2010, By Christopher Heaney and Sara Huston Katsanis

(PhysOrg.com) -- Valerie Neumann was drugged and raped in 2006, but the DNA her attacker left behind is still untested. Her case is not unusual.

Government estimates indicate that hundreds of thousands of rape kits and other evidence linger on laboratory shelves, even though [DNA evidence](#) and the FBI's nation-wide [DNA database](#) of offenders have helped convict thousands of criminals.

How widespread is the problem? Earlier this year, Human Rights Watch reported 10,500 untested rape kits in Detroit and another 4,000 in Houston. The status of rape kits is so poorly tracked that we can only estimate how many are untested today. As for the samples collected from offenders, the Department of Justice reports there were more than 700,000 unanalyzed DNA samples from convicted offenders in labs as of 2007.

The inexcusable backlogs led Ms. Neumann to tell the U.S. House of Representatives recently: "I used to believe in our [Justice System](#), but after my experience I have lost faith." In spite of the backlogs of DNA from both crime evidence and offenders, many states, including Washington, want to expand their DNA databases to include a wider range of convicted offenders and arrestees -- people who have been arrested for a felony, but not yet tried or convicted.

As of June 2010, 23 states had passed legislation to collect DNA from arrestees, and the federal government has begun gathering DNA from

arrestees and detained immigrants.

Advocates of expanding DNA databases argue that putting more criminals and arrestees into the databases will help solve crimes and allow earlier apprehension of violent criminals. But evidence for that is lacking so far, and diverting resources to expand the collection of DNA takes away funds needed to analyze the evidence already accumulated.

And because of a strange set of incentives, labs remain eligible for some federal assistance to process DNA samples only so long as they are running behind. Regardless of Congressional intent, federal funding rewards maintaining a backlog.

In May, the U.S. House of Representatives passed Katie's Bill, which could make matters worse by providing bonuses to states that collect DNA samples from those arrested for murder, rape, assault and burglary. Such an increase in DNA collection would further burden labs with hundreds of thousands of new samples.

It's worth considering that supporters of Katie's Bill include companies that stand to benefit from the growing market for genetic testing. They have hired lobbyists to support legislation such as Katie's Bill and federal DNA backlog programs.

Even if labs had sufficient resources to both reduce backlogs and collect and analyze arrestee DNA, some initiatives to expand DNA databases raise constitutional concerns. This month, the American Civil Liberties Union will argue that California's Proposition 69, which expanded the state's DNA collection to include some arrestees, violates the Fourth Amendment ban on warrantless, suspicionless searches.

California's law further allows samples and data from arrestees who aren't charged or who are found not guilty to be kept unless arrestees get

a court order for their destruction. This puts the burden of removing DNA from a criminal database on people who are presumably innocent.

We urge Congress to reward states for eliminating rape kit backlogs and timely processing of samples, not for increasing backlogs of offenders or suspects' DNA. As the Senate considers Katie's Bill, and more states consider collecting arrestees' DNA, legislators should put a priority on analyzing existing DNA evidence and securing constitutionally valid convictions.

Also, if states do collect from arrestees, the samples and profiles in the databases from those not charged or convicted should be destroyed automatically, as some states already do. The charges associated with each arrestee should be recorded along with their DNA profiles, so that the link between expanded collection schemes and crime might be tested.

States also should be required to report the number of backlogged samples from crime scene evidence separate from backlogs of offender and arrestee samples. Let's focus our limited resources on existing cases rather than cataloguing DNA from an increasingly broad number of Americans.

There's no question that DNA databases can be an invaluable tool for law enforcement, but only if they are used judiciously and with the expeditious analysis of evidence from victims like Valerie Neumann.

More information: Christopher Heaney and Sara Huston Katsanis are researchers at Duke's Institute for Genome Sciences & Policy.

Provided by Duke University

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