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California AG says DNA law too broad

(3 comments; last comment posted January 27, 2006 09:35 am)

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By [Steve Terrell](#) The New Mexican |
January 27, 2006



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Proponents of a bill to require DNA samples from anyone arrested on a felony charge say the measure would help solve and prevent crimes in New Mexico. But the top law-enforcement official in California, which recently adopted a similar law, has reservations about the idea.

A spokesman for California Attorney General Bill Lockyer said Thursday that while he strongly supports collecting DNA from convicted felons, he wishes the requirement to take samples from arrestees wasn't part of the law.

California voters overwhelmingly approved the law in 2004.

"From an administrative point of view, there's just an enormous number of samples," Lockyer spokesman Nathan Barankin said. "We have hundreds of thousands of arrests each year. That can create quite a backlog."

California is one of five states that have adopted laws similar to the one proposed in House Bill 130, known in the New Mexico Legislature as "Katie's Law," which is scheduled for discussion today by the House Judiciary Committee.

The concept also has been embraced by the federal government. Earlier this month, President Bush signed The 2005 Violence Against Women Act, which includes a section that allows federal authorities to take DNA samples from those arrested on suspicion of federal crimes and foreign citizens detained by the U.S. government.

California's Proposition 69 requires that state to collect DNA from all convicted felons, a requirement New Mexico has had for years.

But beginning in 2009, the California proposition also will require the state to collect samples from arrestees, Barankin said.

The American Civil Liberties Union has filed a legal challenge to that part of the California law in federal court. The case is pending.

Proponents of the New Mexico bill — including the family of Katie Sepich, a New Mexico State University student who was raped and murdered in Las Cruces in 2003 — say taking DNA from felony arrestees by taking a swab from the cheek lining will greatly add to the state's DNA database. This, proponents argue, will help solve crimes and help stop serial murderers and rapists from preying on additional victims.

During the debate in the New Mexico Legislature, opponents — mainly defense lawyers and the ACLU — have argued that taking DNA from a suspect before a criminal conviction is unconstitutional and a threat to privacy.

Barankin said the California attorney general also has concerns about taking evidence from those who haven't been convicted.

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Some have expressed fears that DNA taken from people who haven't been convicted of any crime could be used by the government to gather other information.

Peter Lammers, director of the Genetic Testing Laboratory at New Mexico State University, said in an interview this week that such fears are overblown.

No information about disease susceptibility, for example, could be taken from the DNA data that goes into the forensic database, he said.

However, under HB130, the state would have to keep the original DNA samples. Critics have raised the possibility that the government in the future could use those samples to mine information from innocent people.

But Lammers said such a scenario is unlikely. "Accessing anything in these samples costs lots of money," he said. "You just have to write legislation with legal teeth to prevent unauthorized future misuse."

Lammers said DNA will be a powerful crime-fighting tool and is the way of the future. "When has man turned his back on new technology?"

But, as many states have learned, DNA is not infallible. Last year, the Illinois State Police canceled its \$7.7 million contract for DNA analysis with the Virginia-based Bode Technology Group. Police said the company failed to recognize semen on evidence in 22 percent of cases that were checked again by forensic scientists who work for the police. Bode, which bills itself as the largest forensic DNA company in the world, is helping more than 20 states build DNA databases.

New Mexico is not one of those states, state Public Safety Department spokesman Peter Olson said Thursday.

However, Olson said, if "Katie's Law" passes, some private forensics DNA testers would be hired to process the evidence. The state, he said, would have to hire more forensic scientists and administrators.

Last week, Public Safety Secretary John Denko, a strong advocate of "Katie's Law," said about 25,000 samples are in the state DNA database. If HB130 is passed, about 7,000 new samples would be added every year, Denko said.

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Comments

By Judy Yelsky (Submitted: 01/27/2006 9:35 am)

Mr. S. under the Patriot Act, your library records are already fair game. As for the face recognition: wwho know what they are doing with all those DL photos?

By Hector Sanchez (Submitted: 01/27/2006 9:28 am)

Why stop there? Why not require anyone who applies for a drivers license to give a sample? Or, why not take samples from all newborn babies? That way, we'd REALLY be able to solve future crimes (not prevent, solve...big difference). Let's also install cameras everywhere and use face reconigition software to build a database of people who

appear in public places. We could REALLY solve crimes then. Let's keep databases of everyone who checks out a book from the library in case they read a book which could later be tied to a crime. All emails and phone calls should be automatically screened by the NSA for anything to do with a potential crime. "If you aren't doing anything illegal, you have nothing to worry about. Your government is protecting you and your rights. You should not question it."

By Tom Dowdalls (Submitted: 01/27/2006 7:49 am)

Bill Lockyer is a career politician with zero law enforcement background. If taking DNA samples is intrusive, does he also have a problem with fingerprinting arrestees?

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