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State's DNA file ready to expand if law passed

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Mug shot. Fingerprints. Oral swab.

It's not yet on the books, but New Jersey State Police technicians are gearing up for the day when DNA could be collected upon arrest for certain types of crimes.

Already, five states and the federal government gather these samples, and - while not without detractors - the tactic has proved an effective law enforcement weapon in an age when DNA has the power to free a felon from death row.

"I feel that the more DNA we collect, the better off we are," said New Jersey State Sen. Nicholas J. Sacco (D., Bergen), who introduced a bill last month to allow DNA testing of arrestees. "The savings in time could make a difference, because we could be taking violent offenders off the street."

That has been the case in Virginia, where nearly 250 unsolved crimes have been closed since 2003, when the state began taking DNA samples from people charged with violent felonies.

"It speeds up the process of crime-solving by not having to wait until conviction to get samples," said Paul Ferrara, director of Virginia's forensic science laboratory. "I would recommend it as a nice crime-fighting tool."

Under Sacco's bill, New Jersey would take DNA samples from those arrested in murder, manslaughter, aggravated-assault, kidnapping and certain sex cases. More than 14,000 such arrests were made in 2004, according to state police records.

The DNA profile would be removed from the database and the sample destroyed if charges were dismissed or the defendant was acquitted.

Sacco floated the bill during last year's legislative session, but it expired after failing to make it out of committee. He vowed to work harder this time to rally support.

Expanding the state's database to include arrestees also has been discussed by the Forensic Science Commission, which the New Jersey Attorney General's Office established to guide the state's forensic plan, said John Hagerty, a spokesman for the state Division of Criminal Justice.

The commission has made no formal recommendation on the matter. Still, the state police laboratory that analyzes DNA samples is getting ready.

"We are preparing a proposal in case it happens," said Tom Brettell, director of the state's Forensic Science Center.

He referred questions to Assistant Attorney General Patricia Prezioso, who could not be reached

for comment.

New Jersey is one of more than 20 states where legislators have proposed DNA testing of arrestees, said Lisa Hurst, a government-affairs consultant with Smith Alling Lane in Tacoma, Wash., a law firm that tracks DNA legislation. Nothing is pending in Pennsylvania, which passed a law in late 2004 to expand testing to all felons.

"Every state has a law in place to collect DNA from convicted felons to some degree," she said. "With the high recidivism rates and the length of time it takes to bring a conviction, it makes sense to consider expanding the scope."

Aside from Virginia, DNA samples are taken upon arrest in Louisiana, Minnesota, Texas and California, where sampling was approved in a voter referendum.

New Jersey's state police began collecting DNA in 1995 to build a database of violent sex offenders. The practice was expanded five years later to include homicides and other crimes. A bill was passed in 2003 requiring all convicted offenders to provide DNA samples.

New Jersey's database has about 130,000 DNA profiles of convicted criminals, with roughly 3,000 added each month. Sacco's bill would also expand the database to include DNA samples from those found guilty of disorderly person offenses.

A national FBI database contains nearly three million DNA profiles. Most are from convicted offenders, but more than 126,000 come from physical evidence gathered from crime scenes.

When profiles are added, they are searched against the FBI's database. More than 200 matches have been made with profiles submitted to the database from New Jersey's crime lab.

That number would likely increase rapidly if arrestees became part of the state's database, Ferrara said.

The American Civil Liberties Union of New Jersey, which opposed the law forcing inmates to provide a DNA sample, said taking samples at arrest would be a further violation of rights.

"In the United States of America, people are supposed to be innocent until proven guilty," said Deborah Jacobs, executive director of the ACLU of New Jersey.

But Ferrara said he believed there was still room to strengthen laws that govern DNA profiling, often heralded as "the fingerprint of the 21st century."

That comparison would be more accurate if the DNA profile of those found not guilty was kept in the database instead of discarded.

"Fingerprints are never destroyed," Ferrara said. "It doesn't make a lot of sense to me to destroy DNA, but that is the policy right now."