DNA arrestee laws authorize the collection of DNA samples from individuals arrested or charged, but not yet convicted, of certain crimes. Currently, 30 states and the federal government have laws permitting the collection of DNA samples from arrestees. Arrestee laws specify which crimes qualify for DNA collection, whether a judicial determination of probable cause is required prior to sample’s submission or analysis and expungement procedures for samples and profiles.

A DNA Profile identifies the position of DNA sequences at 13 specific locations. Each person (except identical twins) has a unique DNA profile.

DNA and Criminal Investigations - Once a DNA sample is taken from a qualifying arrestee, the specimen is analyzed at a forensic laboratory and the results, in the form of a DNA profile, are uploaded into the appropriate DNA database. Through the Combined DNA Index System (CODIS), databases at federal, state and local levels can compare their new profile to profiles developed from unsolved crime scenes, convicted offenders, other arrestees and missing persons. If a match is identified, police are then able to investigate this new lead. If the arrestee is not charged, found not guilty or otherwise acquitted, state laws provide procedures for the removal of the profile and the destruction of the sample.

Perspectives on DNA Collection - Proponents of taking DNA samples from arrestees argue that it has many benefits for crime prevention, exonerating the innocent and objective suspect identification. They also contend that the principal method of DNA collection, a buccal cell swab—wiping the inside of the mouth with a cotton swab—is no more intrusive than taking an arrestees’ fingerprints or other standard booking procedures.

Those opposed to arrestee laws are concerned that they infringe on the civil liberties and privacy of those who give their DNA. They also believe the samples contain too much genetic information to be surrendered without a criminal conviction.

Cost and forensic laboratory capacity are other considerations for lawmakers evaluating arrestee legislation. Without appropriate funding, legislation expanding DNA collection can overwhelm capacity at forensic laboratories.

Supreme Court: Maryland v. King - In June, the United States Supreme Court ruled in Maryland v. King that collecting DNA samples from arrestees is a reasonable search that does not violate the Fourth Amendment. The Court determined that the collection of DNA using a cheek swab is a legitimate police booking procedure like fingerprinting and photographing. The ruling emphasized the importance of a valid arrest supported by probable cause prior to collecting and testing the DNA.

The Maryland statute at issue in King requires that DNA samples be collected from individuals charged with a crime of violence or burglary and provides that the sample cannot be uploaded into a DNA database until a judicial officer determines that there was probable cause for the arrest. Issues that may be presented for future consideration include: statutes that collect DNA for different crimes, statutes that have no probable cause hearing, and states with constitutions that provide a higher degree of protection against searches and seizures than the Fourth Amendment to the United States Constitution.
Federal DNA Arrest Collection Law

Since The DNA Fingerprint Act of 2005, the federal government has authorized the collection of DNA samples from individuals arrested or detained for any felony, sexual abuse or crime of violence. DNA collection also applies to all individuals who, at the time of arrest, are not United States citizens and who are not lawfully admitted for permanent residence.

2013 Legislative Action

Federal - In January, Congress passed the Katie Sepich Enhanced DNA Collection Act of 2012 (HR 6014). The new law authorizes the Attorney General to award grants to states in order to implement DNA arrestee collection processes. States are eligible to receive a grant for up to 100 percent of the first year costs of implementation, not to exceed $10 million per fiscal year through 2015. To qualify, states must demonstrate that they statutorily authorize DNA arrestee collection and that the funds would be used to supplement, not supplant, their process.

State - In 2013, Nevada (SB 243) and Wisconsin (AB 40) became the most recent states to enact DNA arrestee laws. The new laws require DNA testing for all felony arrestees and hearings to determine probable cause for the arrest. Both laws also provide for automatic expungement if no probable cause existed for the arrest. Also this year, Utah (HB 170) expanded DNA arrestee collection for certain felonies including the sale of a child, human trafficking and the sale or use of body parts. Ten states—Georgia, Massachusetts, New York, Pennsylvania, Rhode Island, Indiana, Kentucky, Mississippi, West Virginia and Wyoming—discussed legislation that would have commenced the collection of DNA upon arrest.

Qualifying Arrests - Each state DNA arrestee law specifies certain crimes for collection. Twenty-nine states collect DNA for at least some state felonies, while eight states have laws that collect DNA from arrestees for certain misdemeanors. Oklahoma collects DNA only upon arrest for undocumented immigrants under federal immigration law. Eight states apply their arrestee laws to juveniles.

Probable Cause Hearings - Thirteen states require a hearing to determine probable cause for an arrest before a DNA sample can be analyzed. Probable cause hearings are intended to be a safeguard against law enforcement targeting an individual for DNA collection without proper justification. Four of the states that require probable cause hearings—Nevada, New Mexico, North Carolina and Wisconsin—provide an exception if the arrestee was arrested pursuant to a warrant which required probable cause to obtain.

Expungement - When an arrestee is not charged, has his or her charges reduced to a crime that does not qualify for DNA collection, is found not guilty or otherwise acquitted of criminal activity, the DNA profile and sample can be expunged, the process of removing their profile from a database and destroying their sample. Sixteen states provide for the expungement of a DNA record upon the request of the individual. Thirteen states provide for automatic expungement, with no action required by the individual. Proponents of expungement upon request say that automatic expungement puts an increased burden on the justice system. Those who favor automatic expungement argue that an individual should not be compelled to remove their profile when they have done nothing wrong. They also contend that fewer expungements occur in states that require the individual to initiate the process.