

12049

SENATE

STATE

AFFAIRS

SB

94



SENATOR FRED DYSON

MEMORANDUM

April 1, 2005

To: Senator Gene Therriault, Chair
Senate State Affairs Committee

From: Senator Fred Dyson

RE: Hearing Request, SB 94

I respectfully request the scheduling of SB 94, "An Act Related to Health Savings Accounts" at your earliest convenience. Thank You.

24-LS0257\G

Craver

4/1/05

CS FOR SENATE BILL NO. 94()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY**Offered:****Referred:****Sponsor(s): SENATORS DYSON, Davis****A BILL****FOR AN ACT ENTITLED**

1 **"An Act relating to state employee health plans that give employees the option to select a**
2 **high deductible health plan so as to qualify to establish a health savings account."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 STATEMENT OF PURPOSE OR INTENT. It is the intent of this Act to promote the
7 use of health savings accounts and to demonstrate the value of this method of patient control
8 of the patient's dollars by directing the state, as an employer, to make this option available to
9 state employees. When the state offers its employees a health plan, one of the options shall be
10 a high deductible health plan so that a state employee may establish a health savings account.
11 The federal government made a significant change to the health care financing system on
12 January 1, 2004, by allowing individuals to participate in federally qualified health savings
13 accounts. These accounts may be established with pre-tax money when an individual has
14 health insurance coverage under a high deductible health plan. Insurance costs will be

1 lowered by the use of health policies that do not cover, at a minimum, the first \$1,000 in
2 health costs each year for an individual or, at a minimum, the first \$2,000 in health costs each
3 year for families. Individuals covered by these high deductible policies will be able to use
4 pre-tax dollars to save up to \$2,600 annually or \$5,150 annually for families. Patients will
5 skip unneeded treatments and will be able to go to the provider of choice for treatment.
6 Individuals and families will continue to be covered by insurance for high cost medical
7 events, such as accidents or serious illnesses. Health savings accounts are owned by the
8 individual, roll over from year to year and are available for tax-free withdrawals to cover
9 qualified medical costs, such as routine medical office visits, physicals, and simple tests.
10 Health savings accounts are trusts administered by banks and insurance companies.

11 * Sec. 2. AS 39.30.090(a)(1) is amended to read

12 (1) A group insurance policy shall provide one or more of the
13 following benefits: life insurance, accidental death and dismemberment insurance,
14 weekly indemnity insurance, hospital expense insurance, surgical expense insurance,
15 dental expense insurance, audiovisual insurance, or other medical care insurance. If a
16 health plan is provided, employees shall have the option of selecting a high
17 deductible health plan.

18 * Sec. 3. AS 39.30.090(b) is amended by adding a new paragraph to read:

19 (4) "high deductible health plan" means a health plan with a high
20 annual deductible limit that qualifies an individual covered under the health plan or an
21 employer to make contributions to a health savings account under 26 U.S.C. 223.



SENATOR FRED DYSON

SPONSOR STATEMENT

SB 94 – “An Act relating to state employee Health Savings Accounts.”

Under a new federal law, Alaskans (and/or their employers) can contribute up to \$2,600 annually into their Health Savings Account (HSA). Families are allowed up to \$5,150 per year. This pre-tax money can be withdrawn from HSAs to pay for a wide range of health care services including, but not limited to, acupuncture, braille books, dental services, artificial limbs, and guide dogs. At the end of the year, residuals in the account roll over to add to the principle for the future.

HSAs must be accompanied by a High Deductible Health Plan (HDHP) to cover the cost of catastrophic injuries or illness. If an employer wants to ensure that there is an incentive for first-dollar expenditures to go for preventative care, benefits for physicals and selected appropriate tests can be part of the HDHP insurance package rather than paid for out of the HSA.

The potential benefits of HSAs are many:

- HSAs stay with a patient regardless of employer or employment status;
- HSA owners can roll over unused funds at the end of each year; Rolled over funds can result in large nest eggs available upon retirement;
- Perhaps most significantly, HSAs create incentives for HSA holders to use their health care dollars in an efficient manner. As more people participate, this will have positive ripple-effects on the health care marketplace as more consumers demand greater pricing, billing and quality transparency from providers.
- Patients who own HSAs call the shots in how they access the health care system. It eliminates “pre-approval” restrictions empowers them with the ability to pay promptly and in full for services they wish to purchase.

SB 94 simply requires that state employees have an HDHP option that qualifies an individual or an employer to make contributions into an HSA.

Updated 2/3/05

Frequently Asked Questions **(provided by US Department of Treasury)**

What is a Health Savings Account ("HSA")?

A Health Savings Account is an alternative to traditional health insurance; it is a savings product that offers a different way for consumers to pay for their health care. HSAs enable you to pay for current health expenses and save for future qualified medical and retiree health expenses on a tax-free basis.

You must be covered by a High Deductible Health Plan (HDHP) to be able to take advantage of HSAs. An HDHP generally costs less than what traditional health care coverage costs, so the money that you save on insurance can therefore be put into the Health Savings Account.

You own and you control the money in your HSA. Decisions on how to spend the money are made by you without relying on a third party or a health insurer. You will also decide what types of investments to make with the money in the account in order to make it grow.

What is a "High Deductible Health Plan" (HDHP)?

You must have an HDHP if you want to open an HSA. Sometimes referred to as a "catastrophic" health insurance plan, an HDHP is an inexpensive health insurance plan that generally doesn't pay for the first several thousand dollars of health care expenses (i.e., your "deductible") but will generally cover you after that. Of course, your HSA is available to help you pay for the expenses your plan does not cover.

In order to qualify to open an HSA, your HDHP minimum deductible must be at least \$1,000 (self-only coverage) or \$2,000 (family coverage). The annual out-of-pocket (including deductibles and co-pays) cannot exceed \$5,100 (self-only coverage) or \$10,200 (family coverage). HDHPs can have first dollar coverage (no deductible) for preventive care and apply higher out-of-pocket limits (and copays & coinsurance) for non-network services.

How can I get a Health Savings Account?

Consumers can sign up for HSAs with banks, credit unions, insurance companies and other approved companies. Your employer may also set up a plan for employees as well.

How much does an HSA cost?

An HSA is not something you purchase; it's a savings account into which you can deposit money on a tax-preferred basis. The only product you purchase with an HSA is a High Deductible Health Plan, an inexpensive plan that will cover most of your medical expenses should your expenses exceed the funds you have in your HSA.

Who is eligible for a Health Savings Account?

To be eligible for a Health Savings Account, an individual must be covered by a HSA-qualified High Deductible Health Plan (HDHP) and must not be covered by other health insurance that is not an HDHP. Certain types of insurance are not considered "health insurance" (see below) and will not jeopardize your eligibility for an HSA.

Can I get an HSA even if I have other insurance that pays medical bills?

You are only allowed to have auto, dental, vision, disability and long-term care insurance at the same time as an HDHP. You may also have coverage for a specific disease or illness as long as it pays a specific dollar amount when the policy is triggered. Wellness programs offered by your employer are also permitted if they do not pay significant medical benefits.

NEW - Does the HDHP policy have to be in my name to open an HSA?

No, the policy does not have to be in your name. As long as you have coverage under the HDHP policy, you can be eligible for an HSA (assuming you meet the other eligibility requirements for contributing to an HSA). You can still be eligible for an HSA even if the policy is in your spouse's name.

I don't have health insurance, can I get an HSA?

Unfortunately, you cannot establish and contribute to an HSA unless you have coverage under a HDHP.

I'm on Medicare, can I have an HSA?

You are not eligible for an HSA after you have enrolled in Medicare. If you had an HSA before you enrolled in Medicare, you can keep it. However, you cannot continue to make contributions to an HSA after you enroll in Medicare.

I am a Veteran, can I have an HSA?

If you have received any health benefits from the Veterans Administration or one of their facilities, including prescription drugs, in the last three months, you are not eligible for an HSA.

I'm active-duty military and have Tricare coverage, can I have an HSA?

At this time, Tricare does not offer an HDHP options so you are not eligible for an HSA.

My employer offers an FSA, can I have both an FSA and an HSA?

You can have both types of accounts, but only under certain circumstances. General Flexible Spending Arrangements (FSAs) will probably make you ineligible for an HSA. If your employer offers a "limited purpose" (limited to dental, vision or preventive care) or "post-deductible" (pay for medical expenses after the plan deductible is met) FSA, then you can still be eligible for an HSA.

My employer offers an HRA, can I have both an HRA and an HSA?

You can have both types of accounts, but only under certain circumstances. General Health Reimbursement Arrangements (HRAs) will probably make you ineligible for an HSA. If your employer offers a "limited purpose" (limited to dental, vision or preventive care) or "post-deductible" (pay for medical expenses after the plan deductible is met) HRA, then you can still be eligible for an HSA. If your employer contributes to an HRA that can only be used when you retire, you can still be eligible for an HSA.

My spouse has an FSA or HRA through their employer, can I have HSA?

You cannot have an HSA if your spouse's FSA or HRA can pay for any of your medical expenses before your HDHP deductible is met.

I don't have a job, can I have an HSA?

Yes, if you have coverage under an HDHP. You do not have to have earned income from employment – in other words, the money can be from your own personal savings, income from dividends, unemployment or welfare benefits, etc.

Does my income affect whether I can have an HSA?

There are no income limits that affect HSA eligibility. However, if you do not file a federal income tax return, you may not receive all the tax benefits HSAs offer.

Can I start an HSA for my child?

No, you cannot establish separate accounts for your dependent children, including children who can legally be claimed as a dependent on your tax return.

I'm a single parent with HDHP coverage but have child/relative that can be claimed as a dependent for tax purposes, and this dependent also has non-HDHP coverage. Am I still eligible for an HSA?

Yes, you are still eligible for an HSA. Your dependent's non-HDHP coverage does not affect your eligibility, even if they are covered by your HDHP.

As an employer, do I own my employees' HSAs? Can I control how they spend the money in them?

No, you do not own your employees' HSAs. The employee fully owns the contributions to the account as soon as they are deposited, just as with a personal checking or savings account to which you would deposit their compensation.

My employees want to contribute to their HSAs but want to make sure they get a tax benefit out of doing so. How does that work?

Employee contributions can be made to HSAs on either after-tax or pre-tax basis. If made on an after-tax basis they should be counted as an above-the-line deduction on their tax return, effectively making their contributions tax-free. If they want to make the contribution pre-tax it can be done through a Section 125 (also called a "salary reduction" or "cafeteria plan").

How much do I have to contribute to my employees' HSA, as an employer?

As much or as little as you want (while staying below the legal limit on the account of \$2,600 or \$5,150 for employees with family coverage).

Do HSA contributions have to be made in equal amounts each month?

No, you can contribute in a lump sum or in any amounts or frequency you wish. However, keep in mind that the funds belong to the employee after they are deposited.

As an employer, do I have to contribute the same amount to every employee's HSA?

Employer contributions must be "comparable", that is they must be in the same dollar amount or same percentage of the employee's deductible for all employees in the same "class". You can vary the level of contributions for "full-time" vs. "part-time" employees, and employees with "self-only" coverage vs. "family coverage". You do not need to consider employees who do not have HDHP coverage as they are not eligible for HSA contributions.

Our company offers benefits through a Section 125 plan, do contributions have to be comparable under these plans as well?

Section 125 plans (also known as "salary reduction" or "cafeteria" plans) must meet a different set of rules. Under these plans, contributions (both from employer and/or employee) must meet "non-discrimination" rules. These rules require the employer to ensure that contributions do not favor higher compensated employees.

Our company wants to offer "matching" contributions, can we do that?

Yes, but your company can only offer "matching" contributions through a Section 125 plan. Remember that the non-discrimination rules still apply.

I don't offer health insurance, but some of my employees have opened HSAs and I'd like to help them out, what can I do?

Your company can make pre-tax contributions to your employees' HSAs as long as you do so for all eligible employees. However, the comparability rules apply. If you have a Section 125 plan, then the non-discrimination rules apply.

How are contributions treated for owners and shareholders of S corps?

Owners and officers with greater than 2% share of a Subchapter S corporation cannot make pre-tax contributions to their HSAs through the company by salary reduction. In addition, any contributions made to their HSAs by the corporation are taxable as income. However, they can make their own personal contributions to their HSAs and take the "above-the-line" deduction on their personal income taxes.

How are contributions treated for partners in a partnership or limited liability company (LLC)?

Partners in a partnership or LLC cannot make pre-tax contributions to their HSAs through the partnership by salary reduction. However, they can make their own personal contributions to their HSAs and take the "above-the-line" deduction on their personal income taxes.

May a self-employed person contribute to an HSA on a pre-tax basis?

No. Self-employed persons may not contribute to an HSA on a pre-tax basis and may not take the amount of their HSA contribution as a deduction for SECA purposes. However, they may contribute to an HSA with after-tax dollars and take the above-the-line deduction.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 94
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act establishing a health care option for a RDU Centralized Administrative Services
high deductible health plan and a health savings account. Component Retirement and Benefits
 Sponsor Senator Dyson
 Requester HESS Component No. 64

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual	35.0	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	35.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1017 Group Benefits	35.0	0.0	0.0	0.0	0.0	0.0
TOTAL	35.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would add another option for employees (5,300 members) who participate in Select Benefits Health Plan to include a high deductible health plan, which would allow establishment of a health savings account.

The fiscal impact associated with this bill includes having the Division's benefit consultant redesign the existing benefit options to include a high deductible plan.

Prepared by: Melanie Millhorn, Director
 Division: Retirement and Benefits
 Approved by: Mike Tibbles, Deputy Commissioner
 Agency: Department of Administration

Phone 465-4408
 Date/Time 4/12/05 7:06 AM
 Date 4/12/2005

Health Savings Accounts: What You Need to Know

Laura Trueman, Executive Director

QuickTime™ and
PDF (LZW) decompressor
are needed to see this picture

HSA Overview

- A Health Savings Account (HSA) is a new way to have health insurance and establish a tax advantaged savings account for medical expenses.
- The account -- Health Savings Account (HSA) -- allows people to put money in and take money out tax-free, if it is spent on medical care.
- HSAs were created in Medicare legislation and signed into law on December 8, 2003.

Who Can Open A Health Savings Account?

- Anyone who has a qualified “High Deductible Health Plan” (HDHP).
- For 2006 HSA plans, a high deductible health plan has a minimum deductible of \$1050 for individuals and \$2100 for families.

Do HSA Owners Have Any Protections on How Much They Must Spend Out of Pocket?

- YES!
- Annual out-of-pocket expenses (including deductibles and co-pays) cannot exceed (for 2006):
 - \$5,250 (self-only coverage)
 - \$10,500 (family coverage)
 - Those amounts are indexed annually for inflation

Won't HSA Owners be Tempted to Skip Medical Care Since it Comes out of their pocket First?

- All Preventative Care is paid for at 100% coverage. The incentive is to encourage people to be proactive in managing their health.
- All physicals, mammograms, colonoscopies, and a whole host of other preventative services and drugs are covered with no copayment.

In Fact --- HSAs Do More to Encourage Preventative Care than Traditional Coverage

- Many traditional policies require that you meet an individual deductible or family deductible before they begin making payments. Then, they require copayments, usually 20%
- In comparison, HSA owners have no required deductible or copayments in order to receive 100% payment for preventative care, drugs, or diagnostic services.

HSA Rules 2006

Single		
Deductible	Contribution	Out-of-Pocket
\$1050	\$2700	\$5250
Family		
\$2100	\$5450	\$10,500

2006 HSA Contribution Rules

	HDHP Deductible	Maximum HSA Contribution (2005)
Single Coverage	\$1,050	\$1,050
	\$1,500	\$1,500
	\$2,000	\$2,000
	\$2,700	\$2,700
	\$3,000	\$2,700
Family Coverage	\$2,100	\$2,100
	\$3,000	\$3,000
	\$4,000	\$4,000
	\$5,000	\$5,000
	\$6,000	\$5,450

What About Prescription Drugs?

- Current status: HSA owners can have a separate prescription drug plan and receive insurance coverage for their expenses on drugs even before the \$1050 deductible is met.
- Beginning in 2006, the transition period will end. Prescription drugs will be like all other medical expenses and they must pay the full cost of prescriptions with their own dollars until their deductible is met before coverage kicks in.
- **Important Exception:** Preventative Drugs are covered at 100% before any deductible is met.

If I Pay “Cash” for Drugs and Medical Services by Using My HSA Account, Won’t I Be Stuck With the Highest Dollar Charge for those Services?

- No. You will receive the best negotiated rate that has been obtained by the insurance carrier... you will not be paying the usual (and often highest) prices that cash-paying customers are often charged.

Tax Treatment of HSA Expenditures

- Distribution is tax-free if taken for “qualified medical expenses”
 - Includes over-the-counter drugs
 - Premiums for qualified long-term care insurance
 - Dental and orthodontia treatment
 - Plastic Surgery
 - Mental Health treatment
 - Liberal definition of “qualified medical expenses”

HSA Owners Get Choice

- Consumers can decide what medical expenditures are most important to them, rather than having to weigh what is covered and what is not covered under a policy.
- Example: Smith family has general good health, but all three kids need braces. Traditional coverage does not provide coverage for this. However, under HSA plan, they can use their account to pay for the braces. If the braces cost a total of \$12,000 for the three children, the HSA owner could save up to \$4000 for the treatment, depending on their tax bracket.

Other HSA Advantages

- **Portability:** Health Savings Accounts are owned by the individual (not by the employer). If the employee leaves the job, they take their savings with them.
- **Choice:** Employer cannot restrict how distributions from an HSA are used.

Other Advantages of HSAs

- **Roll Over:** HSA Funds can be rolled over from year to year: No “use it or lose it rules” like Flexible Spending Accounts (FSAs).
- **Money Can Grow:** Accounts can be managed and invested just like an IRA.

Other HSA Advantages

- Positive Health Incentives: HSA owners are rewarded for healthy lifestyles. [Already, companies are seeing employees quit smoking after switching to HSA policies.]
- Protection for Occurrence of Catastrophic or Chronic Illness: By limiting the total out-of-pocket expense for HSA owners, those who do have illnesses are protected.

Who Is Offering HSAs?

- Federal Government - Offers several HSA options for federal employees.
- States: South Carolina, Arkansas, and Florida are all offering HSA plans to their state employees. [In just the first year, 30% of South Carolina's state employees have switched to an HSA plan.]

SB

95



LAWS OF ALASKA

2003

Source
SCS CSHB 49(JUD)

Chapter No.

AN ACT

Relating to the deoxyribonucleic acid (DNA) identification registration system and testing;
and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

THE ACT FOLLOWS ON PAGE 1

Enrolled HB 49

AN ACT

1 Relating to the deoxyribonucleic acid (DNA) identification registration system and testing;
2 and providing for an effective date.

3

4 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
5 to read:

6 **FINDINGS.** The legislature finds that

7 (1) the deoxyribonucleic acid (DNA) identification registration system is an
8 important tool in the investigation of crime, both in excluding innocent persons and in
9 detecting repeat offenders;

10 (2) the inclusion of DNA samples from all persons who are convicted of a
11 crime against another person or of any felony under AS 11 or AS 28.35 will greatly assist law
12 enforcement agencies in solving crimes and detecting repeat offenders;

13 (3) cooperation between the state and other criminal justice agencies improves
14 the detection of repeat offenders, the exoneration of innocent persons, the location of missing

1 persons, and the identification of unknown human remains; and

2 (4) the federal government is paying the costs of the DNA identification
3 registration system.

4 * Sec. 2. AS 11.56.760(a) is amended to read:

5 (a) A person commits the crime of violating an order to submit to DNA testing
6 if, when requested by a health care professional acting on behalf of the state to provide
7 a blood sample, oral sample, or both, or when requested by a juvenile or adult
8 correctional, probation, or parole officer or a peace officer to provide an oral sample,
9 the person refuses to provide the sample or samples and the person [HAS BEEN]

10 (1) has been ordered to submit to DNA testing as part of a sentence
11 imposed under AS 12.55.015; [OR]

12 (2) has been convicted of an offense that requires DNA testing under
13 the provisions of AS 44.41.035; or

14 (3) is required to register as a sex offender or child kidnapper
15 under AS 12.63.

16 * Sec. 3. AS 11.56.760(c) is amended to read:

17 (c) Violating an order to submit to DNA testing is a class C felony [A
18 MISDEMEANOR].

19 * Sec. 4. AS 11.56 is amended by adding a new section to read:

20 **Sec. 11.56.762. Unlawful use of DNA samples.** (a) A person commits the
21 crime of unlawful use of DNA samples if the person knowingly, without authorization
22 under AS 44.41.035, possesses or allows another person access to (1) a blood, oral, or
23 tissue sample collected for inclusion in the deoxyribonucleic identification registration
24 system under AS 44.41.035, or (2) identification data or records derived from those
25 samples.

26 (b) Unlawful use of DNA samples is a class C felony.

27 * Sec. 5. AS 44.41.035(b) is amended to read:

28 (b) The Department of Public Safety shall collect for inclusion into the DNA
29 registration system a blood sample, oral sample, or both, from (1) a person convicted
30 of a crime against a person [, (2) A PERSON CONVICTED OF BURGLARY] or a
31 felony under AS 11 or AS 28.35, (2) [ATTEMPT TO COMMIT BURGLARY, AND

1 (3)] a minor 16 years of age or older, adjudicated as a delinquent for an act that would
2 be a crime against a person [, A BURGLARY,] or a felony under AS 11 or AS 28.35
3 [ATTEMPT TO COMMIT BURGLARY], if committed by an adult, (3) a voluntary
4 donor, (4) an anonymous DNA donor for use in forensic validation, forensic
5 protocol development, quality control, or population or statistical data bases, and
6 (5) a person required to register as a sex offender or child kidnapper under
7 AS 12.63. The department also may collect for inclusion into the DNA
8 registration system a blood sample, oral sample, or tissue sample from crime
9 scene evidence or from unidentified human remains. The DNA identification
10 registration system consists of the blood, [OR] oral, or tissue samples drawn under
11 this section, any DNA or other blood grouping tests done on those samples, and the
12 identification data related to the samples or tests. Blood samples, [AND] oral
13 samples, and tissue samples [FROM PERSONS] not subject to testing under this
14 section, and test or identification data related to those samples, may not be entered
15 into, or made a part of, the DNA identification registration system.

16 * Sec. 6. AS 44.41.035(c) is amended to read:

17 (c) The Department of Public Safety may [PROVIDE]

18 (1) analyze DNA for [ANALYSIS SERVICES TO] law enforcement
19 agencies [THROUGHOUT THE STATE]; and

20 (2) assist [ASSISTANCE TO] law enforcement officials and
21 prosecutors in the preparation and use [UTILIZATION] of DNA evidence for
22 presentation in court.

23 * Sec. 7. AS 44.41.035(f) is amended to read:

24 (f) The DNA identification registration system is confidential, is not a public
25 record under AS 40.25.110 - 40.25.140, and may be used only for

26 (1) providing DNA or other blood grouping tests for identification
27 analysis;

28 (2) [LAW ENFORCEMENT PURPOSES INCLUDING] criminal
29 investigations, [AND] prosecutions, and identification of human remains;

30 (3) statistical blind analysis; [OR]

31 (4) improving the operation of the system; or

1 **(5) exoneration of the innocent**

2 * **Sec. 8.** AS 44.41.035(j)(1) is amended to read:

3 (1) "crime against a person" means an [A FELONY] offense, or an [A
4 FELONY] attempt or solicitation to commit an offense, under AS 11.41 [, OTHER
5 THAN AS 11.41.320, OR UNDER AS 11.46.400];

6 * **Sec. 9.** AS 44.41.035(j) is amended by adding a new paragraph to read:

7 (3) "convicted" means that an adult, or a juvenile charged as an adult
8 under AS 47.12 or a similar procedure in another jurisdiction, has entered a plea of
9 guilty, guilty but mentally ill, or nolo contendere, or has been found guilty, or guilty
10 but mentally ill, by a court or jury, regardless of whether the judgment was set aside
11 under AS 12.55.085 or a similar procedure in another jurisdiction or was the subject of
12 a pardon or other executive clemency; a person is not "convicted" if the judgment
13 against the person was reversed or vacated by a court.

14 * **Sec. 10.** AS 44.41.035 is amended by adding a new subsection to read:

15 (k) The Department of Public Safety may adopt regulations to carry out the
16 purposes of this section.

17 * **Sec. 11.** AS 44.41.035 is amended by adding new subsections to read:

18 (l) The provisions of this section apply to a person from another state that this
19 state has accepted under any interstate corrections or probation agreement or compact,
20 regardless of whether the person is confined or released, if the person was convicted of
21 an offense that is similar to an offense described in (b) of this section.

22 (m) The Department of Public Safety may not include in the DNA registration
23 system a blood sample, oral sample, or tissue sample of the victim of a crime, unless
24 that person would otherwise be included under (b)(1) - (5) of this section.

25 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 **APPLICABILITY.** The changes made by this Act apply to

28 (1) all convictions or adjudications of delinquency included under
29 AS 44.41.035(b), as amended by sec. 5 of this Act, that

30 (A) occur on or after the effective date of sec. 5 of this Act;

31 (B) occurred before the effective date of sec. 5 of this Act if the person

1 is incarcerated or is under supervised probation or parole for the offense on or after the
2 effective date of sec. 5 of the Act; and

3 (2) all persons required to register as a sex offender or child kidnapper under
4 AS 12.63 before, on, or after the effective date of sec. 5 of this Act.

5 * Sec. 13. The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 TRANSITION: REGULATIONS. The Department of Public Safety may proceed to
8 adopt regulations necessary to carry out the changes made by secs. 5 - 9 and 11 of this Act.
9 The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
10 effective date of the statutory changes.

11 * Sec. 14. The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 INSTRUCTION TO COMMISSIONER OF PUBLIC SAFETY. The commissioner of
14 public safety shall notify the president of the senate and the speaker of the house of
15 representatives if, at any time after the effective date of sec. 1 of this Act, the federal
16 government fails to pay the costs of the DNA identification registration system.

17 * Sec. 15. Sections 10 and 13 of this Act take effect immediately under AS 01.10.070(c).

18 * Sec. 16. Except as provided in sec. 15 of this Act, this Act takes effect July 1, 2003.

24-LS0528\G
Luckhaupt
2/24/05

CS FOR SENATE BILL NO. 95(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR BUNDE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the collection of, and the use of reasonable force to collect, a
2 deoxyribonucleic acid sample from persons convicted of or adjudicated delinquent for
3 certain crimes."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. AS 44.41.035(b) is amended to read:

6 (b) The Department of Public Safety shall collect for inclusion into the DNA
7 registration system a blood sample, oral sample, or both, from (1) a person convicted
8 of a crime against a person or a felony under AS 11 or AS 28.35 or a law or
9 ordinance with elements similar to a crime against a person or a felony under
10 AS 11 or AS 28.35. (2) a minor 16 years of age or older, adjudicated as a delinquent
11 for an act that would be a crime against a person or a felony under AS 11 or AS 28.35
12 [.] if committed by an adult or for an act that would violate a law or ordinance
13 with elements similar to a crime against a person or a felony under AS 11 or
14 AS 28.35 if committed by an adult, (3) a voluntary donor, (4) an anonymous DNA

1 donor for use in forensic validation, forensic protocol development, quality control, or
2 population or statistical data bases, and (5) a person required to register as a sex
3 offender or child kidnapper under AS 12.63. The department also may collect for
4 inclusion into the DNA registration system a blood sample, oral sample, or tissue
5 sample from crime scene evidence or from unidentified human remains. The DNA
6 identification registration system consists of the blood, oral, or tissue samples drawn
7 under this section, any DNA or other blood grouping tests done on those samples, and
8 the identification data related to the samples or tests. Blood samples, oral samples,
9 and tissue samples not subject to testing under this section, and test or identification
10 data related to those samples, may not be entered into, or made a part of, the DNA
11 identification registration system.

12 **Sec. 2.** AS 44.41.035 is amended by adding a new subsection to read:

13 (o) A juvenile or adult correctional, probation, or parole officer or a peace
14 officer may use reasonable force to collect an oral sample for inclusion into the DNA
15 registration system from a person required to submit to collection of a sample under
16 this section, AS 12.55.015(h), 12.55.100(d), AS 33.16.150(a), or another law. The
17 state, a municipality, a juvenile or adult correctional, probation, or parole officer, or a
18 peace officer is immune from civil or criminal liability for using reasonable force to
19 collect an oral sample from a person required to submit to collection of a sample for
20 inclusion into the DNA registration system.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

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February 23, 2005

Senator Kim Elton
State Capitol Building
Juneau, Alaska 99801-1182

Re: SB 104 (PFD Fraud Unit/Crimes)
Our File: 773-05-0051

Dear Senator Elton:

You raised a question in the Senate State Affairs Committee hearing of February 22, 2005 regarding whether there is data to show a correlation between the commission of felony level property offense and the commission of offenses against a person or other felony level property offenses. I have consulted with the Criminal Division of the Department of Law in researching your question.

Enclosed is pie graph depicting the types and percentages of crimes solved as a result of collecting DNA from a person convicted of forgery in Virginia between 1996 and 2002. The data depicted in this pie graph was collected by Virginia Division of Forensic Science. Virginia passed legislation in 1990 requiring a DNA sample from all convicted felons. According to Virginia's Department of Criminal Justice Services website (www.dejs.virginia.gov/forensic/information/dna.cfm), as of January 31, 2005, Virginia has had 2,204 'hits' based on the data compiled in their DNA Databank. From those 2,204 'hits' that resulted in crimes solved, 37 percent of the violent crimes solved were perpetrated by individuals with previous property crime convictions. Similar information was not readily available for the State of Alaska at this time.

//
//

Senator Kim Elton
Re: SB 104 (PFD Fraud Unit/Crimes)
Our File: 773-05-0051

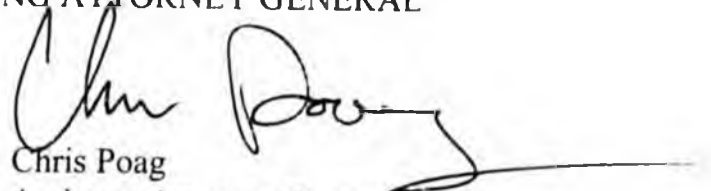
February 23, 2005
Page 2

Hopefully, this information will answer your question and demonstrate the value of collecting DNA samples from all felony offenders. If you need additional information, please contact me at 465-4132.

Sincerely,

SCOTT J. NORDSTRAND
ACTING ATTORNEY GENERAL

By:


Chris Poag
Assistant Attorney General

Enclosure

cc: David Marquez, Department of Law, Civil Division
Deborah Behr, Department of Law, Civil Division
Sharon Barton, Department of Revenue, Permanent Fund Dividend Division
Kevin Jardell, Office of the Governor, Legislative Office
✓ Senator Gene Therriault, chair Senate State Affairs Committee
Senator Thomas Wagoner, Co-chair Senate State Affairs Committee
Senator Charlie Huggins, Senate State Affairs Committee
Senator Bettye Davis, Senate State Affairs Committee

Virginia's "Cold Hits" on the DNA Database

Forgery to Type of Crime Solved



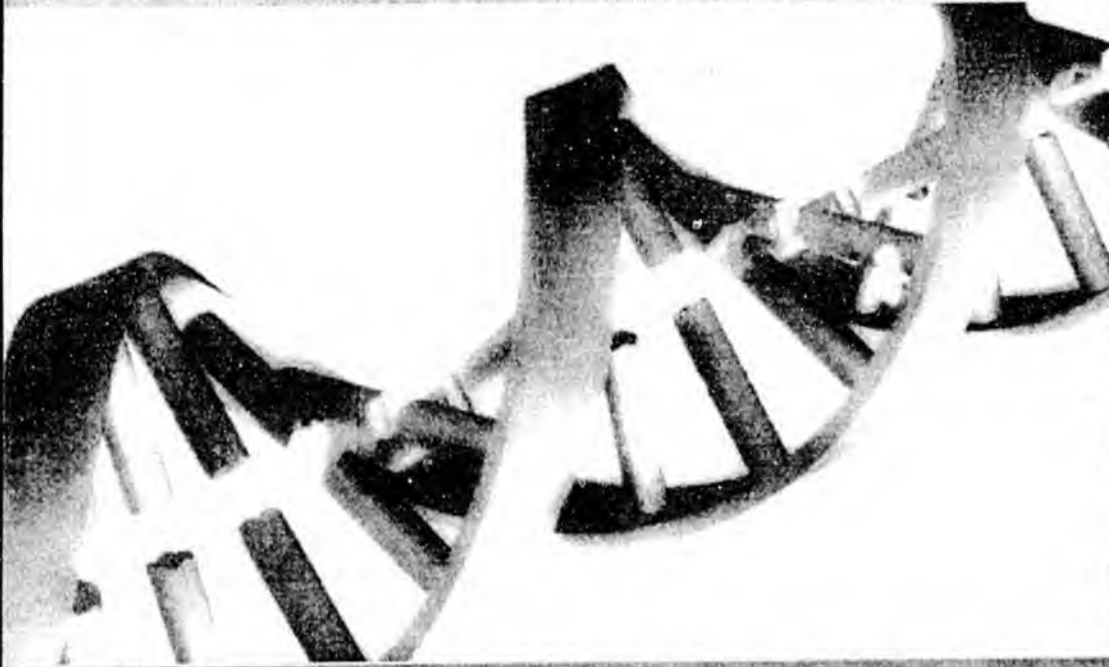
* Numbers as of October 31, 2002

JULY 02

NIJ

Special

REPORT



Using DNA to Solve Cold Cases



**U.S. Department of Justice
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the World Wide Web at the following sites:

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National Institute of Justice
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JULY 02

Using DNA to Solve Cold Cases

NCJ 194197

NIJ



Sarah V. Hart
Director
National Institute of Justice

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Findings and conclusions of the research reported here are those of the authors and do not reflect the official position or policies of the U.S. Department of Justice

The National Institute of Justice is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

National Commission on the Future of DNA Evidence

In 1995, the National Institute of Justice (NIJ) began research that would attempt to identify how often DNA had exonerated wrongfully convicted defendants. After extensive study, NIJ published the report *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*, which presents case studies of 28 inmates for whom DNA analysis was exculpatory.

On learning of the breadth and scope of the issues related to forensic DNA, the Attorney General asked NIJ to establish the National Commission on the Future of DNA Evidence as a means to examine the most effective use of DNA in the criminal justice system. The Commission was appointed by the NIJ Director and represented the broad spectrum of the criminal justice system. Chaired by the Honorable Shirley S. Abrahamson, Chief Justice of the Wisconsin Supreme Court, the Commission consisted of representatives from the prosecution, the defense bar, law enforcement, the scientific community, the medical examiner community, academia, and victims' rights organizations.

The Commission's charge was to submit recommendations to the Attorney General that will help ensure the best use of DNA as a crimefighting tool and foster its use throughout the entire criminal justice system. Other focal areas for the Commission's consideration included crime scene investigation and evidence

collection, laboratory funding, legal issues, and research and development. The Commission's working groups, consisting of commissioners and other experts, researched and examined various topics and reported back to the Commission. The working groups' reports were submitted to the full Commission for approval, amendment, or further discussion and provided the Commission with background for its recommendations to the Attorney General.

By nature of its representative composition and its use of numerous working groups, the Commission received valuable input from all areas of the criminal justice system. The broad scope of that input enabled the Commission to develop recommendations that both maximize the investigative value of the technology and address the issues raised by its application.

Commission members

Chair

The Honorable Shirley S. Abrahamson
Chief Justice
Wisconsin Supreme Court

Members

Dwight E. Adams
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Federal Bureau of Investigation Laboratory

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Executive Assistant

Crime Scene Investigation Working Group

The Crime Scene Investigation Working Group is a multidisciplinary group of criminal justice professionals from across the United States who represent both urban and rural jurisdictions. Working group members and contributors were recommended and selected for their experience in the area of criminal investigation and evidence collection from the standpoints of law enforcement, prosecution, defense, the forensic laboratory, and victim assistance.

DNA has proven to be a powerful tool in the fight against crime. DNA evidence can identify suspects, convict the guilty, and exonerate the innocent. Throughout the Nation, criminal justice professionals are discovering that advancements in DNA technology are breathing new life into old, cold, or unsolved criminal cases. Evidence that was previously unsuitable for DNA testing because a biological sample was too small or degraded may now yield a DNA profile. Development of the Combined DNA Index System (CODIS) at the State and national levels enables law enforcement to aid investigations by effectively and efficiently identifying suspects and linking serial crimes to each other. The National Commission on the Future of DNA Evidence made clear, however, that we must dedicate more resources to empower law enforcement to use this technology quickly and effectively.

Using DNA to Solve Cold Cases is intended for use by law enforcement and other criminal justice professionals who have the responsibility for reviewing and investigating unsolved cases. This report will provide basic information to assist agencies in the complex process of case

review with a specific emphasis on using DNA evidence to solve previously unsolvable crimes. Although DNA is not the only forensic tool that can be valuable to unsolved case investigations, advancements in DNA technology and the success of DNA database systems have inspired law enforcement agencies throughout the country to reevaluate cold cases for DNA evidence. As law enforcement professionals progress through investigations, however, they should keep in mind the array of other technology advancements, such as improved ballistics and fingerprint databases, which may substantially advance a case beyond its original level.

Chair

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Introduction



In 1990, a series of brutal attacks on elderly victims occurred in Goldsboro, North Carolina, by an unknown individual dubbed the "Night Stalker." During one such attack in March, an elderly woman was brutally raped and almost murdered. Her daughter's early arrival home was the only thing that saved the woman's life. The suspect fled, leaving behind materials intended to burn the residence and the victim in an attempt to conceal the crime. In July 1990, another elderly woman was brutally raped and murdered in her home. Three months later, a third elderly woman was raped and stabbed to death. Her husband was also murdered. Their house was burned in an attempt to cover up the crime, but fire/rescue personnel pulled the bodies from the house before it was engulfed in flames.

When DNA analysis was conducted on biological evidence collected from vaginal swabs from each victim, authorities concluded that the same perpetrator had committed all three crimes. However, there was no suspect.

For 10 years, both the Goldsboro Police Department and the crime laboratory refused to forget about these cases. With funding from the National Institute of Justice, the crime laboratory retested the biological evidence in all three cases with newer DNA technology and entered the DNA profiles into North Carolina's DNA database. This would allow the DNA profile developed from the crime scene evidence to be compared to thousands of convicted offender profiles already in the database.

In April 2001, a "cold hit" was made to the perpetrator's convicted offender DNA profile in the database. The perpetrator

had been convicted of shooting into an occupied dwelling, an offense that requires inclusion in the North Carolina DNA database. The suspect was brought into custody for questioning and was served with a search warrant to obtain a sample of his blood. That sample was analyzed and compared to the crime scene evidence, thereby confirming the DNA database match. When confronted with the DNA evidence, the suspect confessed to all three crimes.

Mark Nelson, special agent in charge of the North Carolina State Crime Laboratory, said, "Even though these terrible crimes occurred more than 10 years ago, we never gave up hope of solving them one day."

Every law enforcement department throughout the country has unsolved cases that could be solved through recent advancements in DNA technology. Today, investigators who understand which evidence may yield a DNA profile can identify a suspect in ways previously seen only on television. Evidence invisible to the naked eye can be the key to solving a residential burglary, sexual assault, or murder. The saliva on the stamp of a stalker's threatening letter, the perspiration on a rapist's mask, or the skin cells shed on the ligature of a strangled child may hold the key to solving a crime.

In Austin, Texas, for example, an investigator knowledgeable about DNA technology was able to solve the rape of a local college student. Having read about the potential for obtaining DNA evidence from the ligature used to strangle a victim, the investigator requested DNA testing on the phone cord used to choke the victim in his case. He realized that in the course of

The successful review and investigation of unsolved cases require cooperation among law enforcement, the crime laboratory, and the prosecutor's office.

choking someone, enough force and friction is applied to the rope or cord that the perpetrator's skin cells may rub off his hands and be left on the ligature.

The investigator's request paid off in an unanticipated way. In spite of the attacker's attempt to avoid identification through DNA evidence by wearing both a condom and rubber gloves, a reliable DNA profile was developed from the evidence. During the struggle, the attacker was forced to use one hand to hold the victim down, leaving only one hand to pull the phone cord tight. The attacker had to grab the remaining end of the cord with his mouth, thereby depositing his saliva on the cord. Although the developed profile came from saliva rather than skin, DNA not only solved the case in Austin, but also linked the perpetrator to a similar sexual assault in Waco.

Without the investigator's understanding of DNA technology and where DNA might be found, the case may have gone unsolved. The successful review and investigation of unsolved cases require the same basic elements as the investigation of new cases: cooperation among law enforcement, the crime laboratory, and the prosecutor's office. Investigators should be aware of technological advances in DNA testing that may yield profiles where previous testing was not performed or was unsuccessful. The crime laboratory can be essential to the preliminary review of unsolved cases, for example, by providing investigators with laboratory reports from previous testing and consultation regarding the investigative value of new DNA analysis techniques and DNA database search capabilities. Additionally, the prosecutor's office should be involved as soon as a case is reopened so that legal issues are addressed appropriately. It is also extremely important that case reconstruction considers the victim or victim's family and the importance of finality to closing a case.

Although DNA is not the only forensic tool available for the investigation of unsolved cases, advancements in DNA testing and the success of DNA database systems have inspired law enforcement agencies throughout the country to reevaluate cases previously thought unsolvable. The purpose of this report is to provide law enforcement with a practical resource for the review of old, cold, or unsolved cases that may be solved through DNA technology and DNA databases. "The Long and Short of DNA" and "How Can DNA Databases Aid Investigations?" will educate the reader about the science and technology of DNA testing and DNA databases. "Practical Considerations" provides important background information on legal and practical considerations regarding the application of DNA technology to old, cold, or unsolved cases. Finally, a step-by-step process is provided to help investigators select cases that would most likely be solved with DNA evidence. As investigators advance through this process, they should also keep in mind the array of other technology advancements, such as improved ballistics and fingerprint databases, that may benefit their investigation.

Advancements in DNA technology

Advancements in DNA analysis, together with computer technology and the Combined DNA Index System (CODIS),¹ have created a powerful crimefighting tool for law enforcement. CODIS is a computer network that connects forensic DNA laboratories at the local, State, and national levels. DNA database systems that use CODIS contain two main criminal indexes and a missing persons index. When a DNA profile is developed from crime scene evidence and entered into the forensic (crime scene) index of CODIS, the database software searches thousands of convicted offender DNA profiles

(contained in the offender index) of individuals convicted of offenses such as rape and murder. Similar to the Automated Fingerprint Identification System (AFIS), CODIS can aid investigations by efficiently comparing a DNA profile generated from biological evidence left at a crime scene against convicted offender DNA profiles and forensic evidence from other cases contained in CODIS. CODIS can also aid investigations by searching the missing persons index, which contains DNA profiles of unidentified remains and DNA profiles of relatives of those who are missing. Because of the recidivistic nature of violent offenders, the power of a DNA database system is evident not only in the success of solving crimes previously thought unscivable, but perhaps more importantly, through the *prevention* of crime.

When properly documented, collected, and stored, biological evidence can be analyzed to produce a reliable DNA profile years, even decades, after it is collected. Just as evidence collected from a crime that occurred yesterday can be analyzed for DNA, today evidence from an old rape kit, bloody shirt, or stained bedclothes may contain a valuable DNA profile. These new analysis techniques, in combination with an evolving database system, make a powerful argument for the reevaluation of unsolved crimes for potential DNA evidence.

Knowledgeable law enforcement officers are taking advantage of powerful DNA analysis techniques by investigating crime scenes with a keener eye toward biological evidence. The same new approach being applied to crime scene processing and current case investigation can be applied to older unsolved cases. Law enforcement agencies across the country are establishing cold-case squads to systematically review old cases for DNA and other new leads. This report will serve as a resource to assist law enforcement with maximizing the potential of DNA evidence

in unsolved cases; by covering the basics of DNA analysis and its application to forensic casework. The report will also demonstrate how DNA database systems, advancing technology, and cooperative efforts can enhance unsolved case investigative techniques.

New laws

Advancements in DNA technology have led to significant changes in many States' statutes, which may affect the manner in which unsolved cases are investigated, filed, and prosecuted. Advancements in the technology have been so significant that laws are being created, amended, and even repealed to take advantage of its ability to identify and convict the guilty and exonerate the innocent. Laws regarding DNA admissibility in court, its use in post-conviction appeals, the creation and expansion of databases, and the extension or elimination of statutes of limitation are examples of the quickly evolving impact of DNA on the criminal justice system. Given the legal changes occurring throughout the country, constant contact and consultation with the local prosecutor is critical not only for the investigation of older cases but for all cases in which DNA may be relevant evidence.

Statutes of limitation

Statutes of limitation may be one of the most difficult issues to overcome when examining older cases. Statutes of limitation establish time limits under which criminal charges can be filed for a particular offense. These statutes are rooted in the protection of individuals from the use of evidence that becomes less reliable over time. For example, witnesses' memories fade as time goes by. However, although some evidence, such as eyewitness accounts, can lose credibility over time, DNA evidence has the power to determine truth 10, 15, even 20 years

The power of a DNA database system is evident not only in the success of solving crimes previously thought unsolvable, but through the prevention of crime.

*The reliability of
DNA technology
may necessitate
the reevaluation
of statutes
of limitation.*

after an offense is committed. States are beginning to realize that the reliability of DNA technology may necessitate the reevaluation of statutes of limitation in the filing of cases.

Database expansion

The use of DNA evidence and convicted offender DNA databases has expanded significantly since the first U.S. DNA database was created in 1989. Although State and local DNA databases established in the early 1990s contained only DNA profiles from convicted murderers and sex offenders, the undeniable success of DNA databases has resulted in a national trend toward database expansion. All States require at least some convicted offenders to provide a DNA sample to be collected for DNA profiling and, in 2000, the Federal Government began requiring certain offenders convicted of Federal or military crimes to also provide a DNA sample for the criminal DNA database. Recognizing that the effectiveness of the DNA database relies on the volume of data contained in both the forensic index (crime scene samples) and the convicted offender index of CODIS, many States are changing their database statutes to include less violent criminals. Many States are enacting legislation to require

all convicted felons to submit a DNA profile to the State database. The tendency for States to include all convicted felons in their databases dramatically increases the number of convicted offender DNA profiles against which forensic DNA evidence can be compared, thus making the database system a more powerful tool for law enforcement.

New legal approaches

DNA technology and DNA databases have encouraged the development of new approaches to old cases. One such approach is the filing of charges by "John Doe" warrant. These warrants are based on the unique DNA profile obtained from the analysis of unsolved crime scene evidence. Although John Doe warrants are traditionally filed based on the physical description or alias of an unnamed suspect, investigators and prosecutors are now filing charges using the suspect's DNA profile as the identifier. This innovative approach has allowed charges to be filed that will permit old cases to be prosecuted when the person matching the John Doe DNA profile is identified. John Doe DNA warrants are one way to permit cases to remain active, allowing them the chance to be solved through the DNA database in the future.

The Long and Short of DNA

DNA is the fundamental building block for an individual's entire genetic makeup. It is a component of virtually every cell in the human body, and a person's DNA is the same in every cell. That is, the DNA in a person's blood is the same as the DNA in his skin cells, saliva, and other biological material.

DNA analysis is a powerful tool because each person's DNA is unique (with the exception of identical twins). Therefore, DNA evidence collected from a crime scene can implicate or eliminate a suspect, similar to the use of fingerprints. It also can analyze unidentified remains through comparisons with DNA from relatives. Additionally, when evidence from one crime scene is compared with evidence from another using CODIS, those crime scenes can be linked to the same perpetrator locally, statewide, and nationally.

DNA is also a powerful tool because when biological evidence from crime scenes is collected and stored properly, forensically valuable DNA can be found on evidence that may be decades old. Therefore, old cases that were previously thought unsolvable may contain valuable DNA evidence capable of identifying the perpetrator.

Similar to fingerprints

DNA is often compared with fingerprints in the way matches are determined. When using either DNA or fingerprints to identify a suspect, the evidence collected from the crime scene is compared with a "known" standard. If identifying features are the same, the DNA or fingerprint can be determined to be a match. However, if identifying features of the DNA profile or fingerprint are different from the known

standard, it can be determined that it did not come from that known individual.

DNA technology advancements

Recent advancements in DNA technology have improved law enforcement's ability to use DNA to solve old cases. Original forensic applications of DNA analysis were developed using a technology called restriction fragment length polymorphism (RFLP). Although very old cases (more than 10 years) may not have had RFLP analysis done, this kind of DNA testing may have been attempted on more recent unsolved cases. However, because RFLP analysis required a relatively large quantity of DNA, testing may not have been successful. Similarly, biological evidence deemed insufficient in size for testing may not have been previously submitted for testing. Also, if a biological sample was degraded by environmental factors such as dirt or mold, RFLP analysis may have been unsuccessful at yielding a result. Newer technologies could now be successful in obtaining results.

Newer DNA analysis techniques enable laboratories to develop profiles from biological evidence invisible to the naked eye, such as skin cells left on ligatures or weapons. Unsolved cases should be evaluated by investigating both traditional and nontraditional sources of DNA. Valuable DNA evidence might be available that previously went undetected in the original investigation.

If biological evidence is available for testing or retesting in unsolved case investigations, it is important that law enforcement and the crime laboratory work together to review evidence. Logistical issues

If biological evidence is available for testing or retesting in unsolved case investigations, it is important that law enforcement and the crime laboratory work together to review evidence.





If the convicted offender or forensic index of CODIS is to be used in the investigative stages of an unsolved case, DNA profiles must be generated using STR analysis.

regarding access to and the cost of DNA analysis will be a factor, as well as issues that relate to the discriminating power of each technology and that might affect the outcome of the results. Laboratory personnel can also provide a valuable perspective on which evidence might yield valuable and probative DNA results. Finally, if previously tested biological evidence produced a DNA profile but excluded the original suspect, revisiting those "exclusion" cases in the context of comparing them with DNA databases might prove to be very valuable to solving old cases.

PCR analysis

PCR (polymerase chain reaction) enhances DNA analysis and has enabled laboratories to develop DNA profiles from extremely small samples of biological evidence. The PCR technique replicates exact copies of DNA contained in a biological evidence sample without affecting the original, much like a copy machine. RFLP analysis requires a biological sample about the size of a quarter, but PCR can be used to reproduce millions of copies of the DNA contained in a few skin cells. Since PCR analysis requires only a minute quantity of DNA, it can enable the laboratory to analyze highly degraded evidence for DNA. On the other hand, because the sensitive PCR technique replicates any and all of the DNA contained in an evidence sample, greater attention to contamination issues is necessary when identifying, collecting, and preserving DNA evidence. These factors may be particularly important in the evaluation of unsolved cases in which evidence might have been improperly collected or stored.

STR analysis

Short tandem repeat (STR) technology is a forensic analysis that evaluates specific regions (loci) that are found on nuclear DNA. The variable (polymorphic) nature of

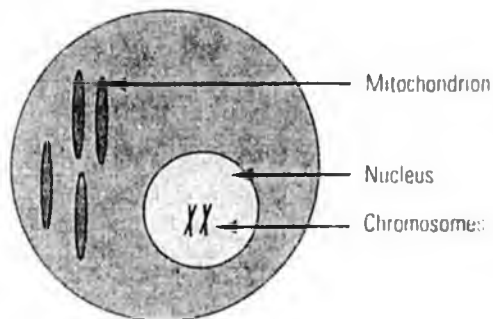
the STR regions that are analyzed for forensic testing intensifies the discrimination between one DNA profile and another. For example, the likelihood that any two individuals (except identical twins) will have the same 13-loci DNA profile can be as high as 1 in 1 billion or greater. The Federal Bureau of Investigation (FBI) has chosen 13 specific STR loci to serve as the standard for CODIS. The purpose of establishing a core set of STR loci is to ensure that all forensic laboratories can establish uniform DNA databases and, more importantly, share valuable forensic information. If the forensic or convicted offender CODIS index is to be used in the investigative stages of unsolved cases, DNA profiles must be generated by using STR technology and the specific 13 core STR loci selected by the FBI.

Mitochondrial DNA analysis

Mitochondrial DNA (mtDNA) analysis allows forensic laboratories to develop DNA profiles from evidence that may not be suitable for RFLP or STR analysis. While RFLP and PCR techniques analyze DNA extracted from the nucleus of a cell, mtDNA technology analyzes DNA found in a different part of the cell, the mitochondrion (see exhibit 1). Old remains and evidence lacking nucleated cells—such as hair shafts, bones, and teeth—that are unamenable to STR and RFLP testing may yield results if mtDNA analysis is performed. For this reason, mtDNA testing can be very valuable to the investigation of an unsolved case. For example, a cold case log may show that biological evidence in the form of blood, semen, and hair was collected in a particular case, but that all were improperly stored for a long period of time. Although PCR analysis sometimes enables the crime laboratory to generate a DNA profile from very degraded evidence, it is possible that the blood and semen would be so highly degraded that nuclear DNA analysis would not yield a DNA profile. However, the hair

shaft could be subjected to mtDNA analysis and thus be the key to solving the case. Finally, it is important to note that all maternal relatives (for example, a person's mother or maternal grandmother) have identical mtDNA. This enables unidentified remains to be analyzed and compared to the mtDNA profile of any maternal relative for the purpose of aiding missing persons or unidentified remains investigations. Although mtDNA analysis can be very valuable to the investigation of criminal cases, laboratory personnel should always be involved in the process.

Exhibit 1. Cell diagram



Y-chromosome analysis

Several genetic markers have been identified on the Y chromosome that can be used in forensic applications. Y-chromosome markers target only the male fraction of a biological sample. Therefore, this technique can be very valuable if the laboratory detects complex mixtures (multiple male contributors) within a biological evidence sample. Because the Y chromosome is transmitted directly from a father to all of his sons, it can also be used to trace family relationships among males. Advancements in Y-chromosome testing may eventually eliminate the need for laboratories to extract and separate semen and vaginal cells (for example, from a vaginal swab of a rape kit) prior to analysis.

Cooperative efforts with the crime laboratory are essential to deciding which analysis methods will be most valuable in a particular case. It is important to note, however, that while RFLP and mtDNA testing may be valuable to the investigation of an old case, current DNA databases are being populated with DNA profiles that are generated using STR analysis. RFLP and mtDNA profiles are not compatible with the convicted offender or forensic indexes of CODIS.⁷

How Can DNA Databases Aid Investigations?

The development and expansion of databases that contain DNA profiles at the local, State, and national levels have greatly enhanced law enforcement's ability to solve cold cases with DNA. Convicted offender databases store hundreds of thousands of potential suspect DNA profiles, against which DNA profiles developed from crime scene evidence can be compared.

SUCCESS STORY

A "forensic hit" occurred in the National DNA Index System (NDIS) that linked a dead Florida man's DNA profile to eight serial unsolved rapes in Washington, D.C. and three offenses in Florida.

In 1999, Leon Dundas was killed in a drug deal. Investigators remembered Dundas refusing to give a blood sample in connection with a rape investigation in 1998. They were able to obtain Dundas' blood sample through the medical examiner's office and forwarded it to the DNA lab at the Florida Department of Law Enforcement. Dundas' DNA profile was compared with the national forensic index and a match was made between Dundas and DNA evidence from a rape victim in Washington, D.C.

The FBI then entered DNA evidence from additional unsolved rapes committed in Washington. Dundas' DNA matched seven additional rapes in Washington and three more in Jacksonville, Florida. Police in Washington said that without DNA, they would have never identified Dundas, who had no prior recorded history of violent crime.

Given the recidivistic nature of many crimes, such as sexual assault and burglary, a likelihood exists that the individual who committed the crime being investigated was convicted of a similar crime and already has his or her DNA profile in a DNA database that can be searched by CODIS. Moreover, CODIS also permits the cross-comparison of DNA profiles developed from biological evidence found at crime scenes. Even if a perpetrator is not identified through the database, crimes

may be linked to each other, thereby aiding an investigation, which may eventually lead to the identification of a suspect.

What is CODIS?

CODIS is a computer software program that operates local, State, and national databases of DNA profiles from convicted offenders, unsolved crime scene evidence, and missing persons. Every State in the Nation has a statutory provision for the establishment of a DNA database that allows for the collection of DNA profiles from offenders convicted of particular crimes. CODIS software enables State, local, and national law enforcement crime laboratories to compare DNA profiles electronically, thereby linking serial crimes to each other and identifying suspects by matching DNA profiles from crime scenes with profiles from convicted offenders. The success of CODIS is demonstrated by the thousands of matches that have linked serial cases to each other and cases that have been solved by matching crime scene evidence to known convicted offenders.

The missing persons index consists of the unidentified persons index and the reference index. The unidentified persons index contains DNA profiles from recovered remains, such as bone, teeth, or hair. The reference index contains DNA profiles from related individuals of missing persons so that they can be periodically compared to the unidentified persons index. All samples for this index are typed using mtDNA and STR DNA analysis (if possible) to maximize the power of advancing technology.

The offender index contains DNA profiles of individuals convicted of certain crimes. The forensic index contains DNA profiles obtained from crime scene evidence.

How does CODIS work?

CODIS uses two indexes to generate investigative leads in crimes for which biological evidence is recovered from a crime scene. The convicted offender index contains DNA profiles of individuals convicted of certain crimes ranging from certain misdemeanors to sexual assault and murder. Each State has different "qualifying offenses" for which persons convicted of them must submit a biological sample for inclusion in the DNA database. The forensic index contains DNA profiles obtained from crime scene evidence, such as semen, saliva, or blood. CODIS uses computer software to automatically search across these indexes for a potential match.

A match made between profiles in the forensic index can link crime scenes to each other, possibly identifying serial offenders. Based on these "forensic hits," police in multiple jurisdictions or States can coordinate their respective investigations and share leads they have developed independent of each other. Matches made between the forensic and convicted offender indexes can provide investigators with the identity of a suspect(s). It is important to note that if an "offender hit" is obtained, that information typically is used as probable cause to obtain a new DNA sample from that suspect so the match can be confirmed by the crime laboratory before an arrest is made.

LDIS, SDIS, and NDIS

CODIS is implemented as a distributed database with three hierarchical levels (or tiers)—local, State, and national. All three levels contain forensic and convicted offender indexes and a population file (used to generate statistics). The hierarchical design provides State and local laboratories with the flexibility to configure CODIS to meet their specific legislative and technical needs.

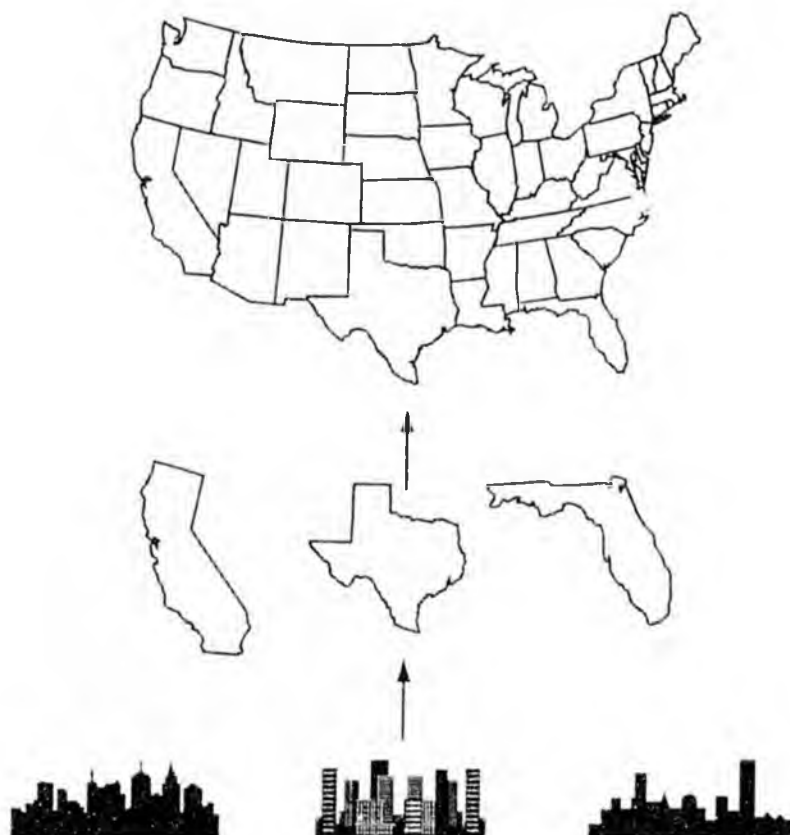
A description of the three CODIS tiers follows (see exhibit 2).

- **Local.** Typically, the Local DNA Index System (LDIS) installed at crime laboratories is operated by police departments or sheriffs' offices. DNA profiles originated at the local level can be transmitted to the State and national levels.
- **State.** Each State has a designated laboratory that operates the State DNA Index System (SDIS). SDIS allows local laboratories within that State to compare DNA profiles. SDIS also is the communication path between the local and national tiers. SDIS is typically operated by the agency responsible for implementing and monitoring compliance with the State's convicted offender statute.
- **National.** The National DNA Index System (NDIS) is the highest level of the CODIS hierarchy and enables qualified State laboratories that are actively participating in CODIS to compare DNA profiles. NDIS is maintained by the FBI under the authority of the DNA Identification Act of 1994.

Limitations of using the DNA database

The more data contained in the forensic and offender indexes of CODIS, the more powerful a tool it becomes for law enforcement, especially in its application to unsolved case investigation. However, because many jurisdictions are in the process of developing and populating their DNA databases, convicted offender and forensic casework backlogs have been created over time and continue to grow for several reasons. First, as States recognize the crime-solving potential of DNA databases, they continue to expand the scope of their convicted offender legislation, which increases the number of

Exhibit 2. CODIS tiers



samples to be collected and analyzed by the DNA laboratory. As a result, more than 1 million uncollected convicted offender DNA profiles are "owed" to the system.

An equally important but more difficult problem to quantify is that of unprocessed casework that contains biological evidence. This casework backlog may include nonsuspect or unsolved cases that could be analyzed and solved as a result of advancements in DNA technology.

Convicted offender backlogs

Although all 50 States have passed DNA database legislation, many States have backlogs of convicted offender samples

that have been collected but have not yet been analyzed. Although Federal funding has played an important role in reducing existing backlogs, the crimefighting potential of DNA has prompted many States to revise their statutes to require nonviolent convicted offenders to provide a DNA sample for analysis and upload into CODIS. The trend toward expanding convicted offender DNA statutes to include nonviolent offenders has significantly increased the number of DNA samples requiring collection and analysis. Although the success of using the DNA database as a crime-solving and crime-prevention tool can easily be demonstrated once convicted offender backlogs are reduced, it should be recognized that new backlogs

are instantly created by the passage of expanded DNA legislation laws. Convicted offender backlogs are an ongoing logistical issue that can compound the complexity of investigating cold cases by using the DNA database.

Forensic casework backlogs

Addressing issues that affect the efficient and effective use of DNA databases in the United States is complicated further by the existence of casework backlogs. This refers to biological evidence in perhaps tens of thousands of criminal cases, including violent and nonviolent crimes, that has not been tested or retested for DNA.

Unprocessed rape kits are a clear example of this kind of backlog. Despite the established fact that rape typically yields biological evidence, as of October 1999, at least 180,000 rape kits remained on shelves across the country, unprocessed, because no suspects have been identified. The DNA evidence from these and other criminal cases often is not analyzed and entered into the DNA database because forensic laboratories have to prioritize their work and cases scheduled for trial take precedence over cases in which no suspect is known. In most jurisdictions, non-suspect criminal cases that contain

biological evidence are not being analyzed and entered into the DNA database. In many jurisdictions, DNA from crime scenes is still primarily used to prosecute offenders, not to investigate crimes. The convicted offender backlog and limited resources for casework going to trial preclude State forensic laboratories from analyzing all biological evidence for DNA, which in turn prevents law enforcement from being able to realize the full crime-solving potential of CODIS.

The backlog of forensic cases has practical consequences for most law enforcement agencies in the United States. Laboratory capacity limitations result in the ability to process crime scene samples from only the most serious of offenses. More and more, however, agencies such as those in the United Kingdom are discovering the value of DNA technology in solving property crimes. Blood left on a broken apartment window or saliva found on a discarded beer bottle can be used to identify burglars, and the skin cells rubbed off onto the steering wheel of a stolen vehicle can solve car thefts. However, as long as forensic laboratories remain able to process only the most serious cases, the full potential of DNA technology to solve crime will remain untapped.

Local prosecutors can provide valuable insight into legal issues. Victim/witness units or advocates can help locate, educate, and encourage witnesses. Consultation with representatives from the crime laboratory is critical.

Practical Considerations

A broad range of considerations must be made long before any DNA testing is actually attempted in older, unsolved cases. These include—

- Legal considerations, such as the application or expiration of statutes of limitation.
- Technological considerations, such as the nature and condition of the evidence as originally collected, stored, and in some instances, subjected to other forensic tests.
- Practical considerations, such as the availability of witnesses in the event DNA testing would identify a suspect and lead to an arrest and a trial.
- Resource issues, such as the time and money available for investigation and forensic analysis.

The nature and scope of these issues require that any approach to reexamining old cases for potential DNA evidence be collaborative, whether by an individual investigator or by a specialized unit developed specifically for cold case review. Local prosecutors can provide valuable insight into legal issues that might prevent or help a future prosecution. Victim/witness units or advocates can provide valuable assistance with locating, educating, and encouraging witnesses. Consultation with representatives from the crime laboratory is critical to ensuring that potential DNA evidence can be successfully analyzed

Evidence considerations

When collecting unsolved case evidence from storage facilities, the case investigator should be ready to handle all types of packaging disasters. Evidence may be stored in heavy-duty plastic bags, stapled

shut as the past form of "sealing." Multiple items may be sealed in one plastic bag, or even unpackaged in large, open, cardboard boxes. Unprotected microscope slides from medical facilities might also be found as a result of investigating old cases. No attempt should be made on the part of the investigator to separate and repackage evidence. The condition and position that the evidence has been stored in could provide valuable clues to the forensic scientist for testability of evidence. Only when evidence is found unpackaged should the investigator properly package and label the item(s) to minimize the possibility for contamination from that point forward. It is important that any evidence items are handled minimally and only by individuals wearing disposable gloves. As always, it is also very important that all actions taken as a result of opening, evaluating, packaging, or repackaging evidence are documented thoroughly in the case folder.

Degraded evidence

Prior to the frequent use of DNA technology, biological evidence may have been collected and stored in ways that were not necessarily the best methods for preserving samples for future DNA testing. For example, evidence containing biological fluids that were originally collected for ABO Blood Typing analysis or other serology methods may have been packaged or stored in ways that can limit DNA testing. Some methods of collection and storage may promote the growth of bacteria and mold on the evidence. Bacteria can seriously damage or degrade DNA contained in biological material and inhibit the ability to develop a DNA profile; however, evidence can still sometimes yield DNA results. For example, PCR technology can allow the laboratory to develop profiles

from some moldy biological samples, whereas other evidence may fail to yield a usable DNA profile, even when no mold is visible. Therefore, close consultation with the laboratory is important to determine the type of DNA testing most likely to yield results on the available evidence.

Contamination issues

Because of the particularly sensitive nature of DNA technology, the potential contamination of evidence should be carefully considered. Technologies used to analyze evidence prior to the forensic application of DNA were not always sensitive to contaminants. Evidence in older cases may have been collected in ways that lacked appropriate contamination or cross-contamination safeguards, which can make the DNA results less useful or even misleading. In these cases, clarifying results by identifying the contributor of an additional profile can determine whether the DNA results may now be used. When a mixture is detected, a careful reconstruction of the evidence collection, storage, and analysis process must be undertaken. It may be determined that DNA profiles will be required from on-scene officers, evidence technicians, or laboratory scientists who had access to the evidence for comparison with evidence results. In these instances, proper chain-of-custody reconstruction is critical

It is also important to avoid contamination when handling biological evidence during the course of the current review. If evidence that may contain biological material is already sealed, do not reopen it before sending it to the laboratory. (See Evidence Handling Recommendations.)

Legal considerations

Numerous legal issues might arise when examining older cases for potential DNA evidence. These issues are most likely jurisdictionally specific and may differ from State to State. Although most jurisdictions maintain no statute of limitation for filing charges in a homicide case, States can vary widely in the time allowed for filing charges in other cases, such as rape and other sexual assault crimes. Furthermore, in recognition of DNA technology's ability to solve old cases, many States are extending or even eliminating statutes of limitation for certain crimes.

Chain of custody

When a case remains unsolved for a long period of time, evidence is usually handled by an increased number of individuals. Many unsolved cases to be reviewed for DNA evidence may have been previously reinvestigated or handled by several different investigators as a result of new leads or periodic, systematic reviews. Furthermore, as cases age, the likelihood increases that evidence may be moved to new or remote storage locations as evidence from newer cases fills police department shelves.

Many cases may also have had evidence submitted to the laboratory for various forms of forensic testing. Evidence in older cases may have been submitted for standard serological testing, but can now be tested for DNA with much greater success. Hair previously submitted for standard microscopic hair analysis may now

EVIDENCE HANDLING RECOMMENDATIONS

- Wear gloves. Change them between handling each item of evidence.
- Use disposable instruments or clean instruments thoroughly before and after handling each evidence sample.
- Avoid touching the area where you believe DNA may exist.
- Avoid touching your face, nose, and mouth when examining and repackaging evidence.
- Put dry evidence into new paper bags or envelopes; do not use plastic bags.
- Do not use staples.
- If repackaging of evidence is necessary, consult with laboratory personnel.

be submitted for mtDNA testing. As with all criminal investigations, chain-of-custody issues are critical to maintaining the integrity of the evidence. In all cases, the ultimate ability to use DNA evidence will depend on the ability to prove that the chain of custody was maintained.

Statutes of limitation

One of the first issues to address when reviewing an unsolved case is whether the statutes of limitation on a case have run out. Several considerations arise when addressing a statute of limitation issue. Good communication between law enforcement and local prosecutors is critical when examining these legal questions.

Changes in statutes. Advances in DNA technology and the creation of DNA databases are leading many criminal justice professionals to rethink time limits placed on the filing of criminal charges. Because biological evidence can yield reliable DNA analysis results years after the commission of a crime, many State legislatures have begun to extend, and in some cases eliminate, the statutes of limitation for some crimes and in certain circumstances. Many States have extended the length of time for which a complaint can be filed, other States have eliminated statutes of limitation for certain crimes, and some legislation is retroactive.

Exceptions to statutes. Exceptions often exist under existing and new statutes. Under such exceptions, time can be added to the statute of limitation, giving police the legal authority to arrest even if it appears as though the statute has run out. For example, many jurisdictions have exceptions for a suspect's flight from jurisdiction. In a case for which there is a 5-year statute of limitation, if the government can prove that the suspect has been absent from the jurisdiction for 2 years, the State can still file against the suspect

for up to 7 years after the commission of the crime. Exceptions also exist for cases in which child victims are assaulted by a family member, which can be valuable in the context of a current investigation.

Victim and witness considerations

Another important consideration to be made early in the process is the willingness of victims and witnesses to proceed. Although many victims may continuously monitor the progress of their investigations, some choose to detach from the process over time. Reinvestigating a case may cause renewed psychological trauma to the victim and victim's family. It should not be assumed that victims and witnesses, even if they were eager to pursue the case when it occurred, are still interested in pursuing the case. A phone call from an investigator years later may not be a welcome event. Whenever possible, enlist the aid of victim service providers. If a new officer is handling the investigation, enlisting the assistance of the original investigator to make the first contact with the victim may also be helpful.

The older a case is, the more difficult it may be to locate witnesses. However, early identification of victim and witness availability may ultimately save significant resources. Consultation with prosecutors is mandatory when considering whether a witness would be necessary at trial.

It should not be assumed that victims and witnesses are still interested in pursuing the case. Whenever possible, enlist the aid of victim service providers.

STATUTE OF LIMITATION RECOMMENDATIONS

- Know the original statute of limitation.
- Determine whether the law has changed regarding time limits for filing. If so, is the law retroactive?
- Determine whether there are exceptions to the statute.
- Consult with the prosecutor.

Identifying, Analyzing, and Prioritizing Cases

Good communication between police, laboratories, and prosecutors can help identify and convict serious offenders and save valuable time and resources.

Whether the process of reviewing unsolved cases is initiated by a single officer or by a specialized unit, it must ultimately be a team effort. At all stages of the process, investigators should avail themselves of the scientific advice of the laboratory and the legal expertise of the local prosecutor's office. Close consultation with the laboratory can ensure that evidence integrity is maintained and that limited laboratory resources are allocated effectively. Similarly, prosecutors can help identify issues that might occur at trial if a suspect is identified and arrested upon successful DNA testing. Good communication between police, laboratories, and prosecutors can help identify and convict serious offenders and save valuable time and resources.

Identify potential cases for review

An initial step in the DNA review of unsolved cases is to identify cases that might be amenable to DNA testing. While the cases considered for this kind of review will vary from jurisdiction to jurisdiction, it is important to define minimum requirements that will likely benefit from this approach. Issues such as statutes of limitation and solvability factors should be thoroughly examined in cooperation with a prosecutor and the forensic laboratory to establish guidelines for case selection. It also will be important to identify the ultimate goals of the program so that the selection criteria can be tailored to meet those specific goals.

Cases that could benefit from a review for potential DNA evidence can be identified from numerous sources. In some instances a single police officer or investigator may remember an unsolved case

from years ago. In some departments a formalized cold-case unit may systematically review cases for the potential of DNA testing. Other cases may be identified by coordinated, interdepartmental efforts, victims or witnesses who have heard about the potential of DNA evidence, and laboratories taking inventory of their storage facilities. If a department is pursuing a systematic review of cases, either by one or two officers or by a formal unit, there are many sources that can be consulted for valuable investigative information, such as—

- Autopsy, laboratory, prosecutor, and local agency logbooks.
- Retired investigators.
- Computer databases.

Identify statute of limitation issues

Statute of limitation issues might affect the ultimate ability to prosecute a case. Cases should be preliminarily reviewed by investigators in conjunction with the prosecutor's office to identify which prosecutions would be barred by the statutes of limitation. If the goal of the unsolved case review program is to obtain convictions and statutes of limitation have expired on a particular case, a department may wish to save its resources for cases likely to yield convictions. However, if the goal of the program is to solve and close unsolved cases regardless of whether a conviction could be obtained, a jurisdiction may decide to review all cases that qualify under its guidelines. This is an important consideration in the context of investigating serial offenders whose criminal acts might span the course of years or decades.

Define categories of cases— solvability factors

Because the number of cases that qualify for reinvestigation might be very large, it may be beneficial for a jurisdiction to define cases according to several solvability factors. Solvability factors include facts and circumstances of a case that influence the likelihood that it might be solved through advancements in DNA technology. For example, a high probability exists that analysis of nonsuspect rape kits will yield valuable DNA results. Profiles generated as a result of DNA analysis can now be entered into CODIS, which can solve a case by matching to a convicted offender, or aid investigations by linking serial rapes to each other. Additionally, if an unsolved murder case contains biological evidence foreign to the victim that did not produce viable results from ABO blood typing or RFLP DNA analysis, evidence could be reanalyzed with the more discriminating and powerful STR technology. It is also important to recognize and sort out cases that might not be as likely to be solved with DNA technology. An example might be an unsolved drive-by homicide because the perpetrator most likely would not have left biological evidence at this kind of crime scene.

Case review— establish priorities

Once solvability factors and statute of limitation issues are addressed, it is important to continue the process by identifying the cases to be reviewed first. To preserve investigative resources when considering a larger number of unsolved cases for review, jurisdictions may prioritize according to the likelihood that cases will be solved or the likelihood that investigations will be aided. In establishing this priority, the following criteria can be considered.

- How many qualifying cases are there?
- Where are the case files located?
- Are case summaries available?
- How many cases will be assigned to an investigator?

To establish an investigative hierarchy, qualifying cases should be reviewed by experienced, proficient investigators. A checklist can be used throughout the review process so that managers can decide which cases will be worked first. A checklist can also provide review process consistency throughout the agency. (See Sample Checklist at the end of this report.) The following categories may serve as a model for a hierarchy in prioritizing cases:

- There is a known suspect and physical evidence appears to have been preserved in a manner consistent with successful DNA testing and use of CODIS.
- There is no known suspect but physical evidence has been preserved in a manner consistent with successful DNA testing and use of CODIS.
- There is no known suspect and evidence was collected and preserved in a manner that may make it difficult to obtain a DNA profile.

Locating case files, obtaining evidence logs, and other documentation

Locating the case file and original evidence for the investigation may be a challenging endeavor. Changes in personnel, procedure, and facilities and the passage of time may complicate the process. When searching for a case file or evidence, an investigator may need to look in numerous

places. Potential locations include, but are not limited to, the following:

- Police department property rooms (case files, evidence logs, whole evidence).
- Property warehouses (case files, evidence logs, whole evidence).
- Public crime laboratories (previously tested/submitted evidence, lab reports).
- Private laboratories (previously tested evidence, lab reports).
- Hospital/medical facilities (rape kits, medical reports, slides).
- Coroner/medical examiners' offices (autopsy reports).
- Courthouse property rooms.
- Prosecutors' offices (previous trial or suspect investigation).
- Retired investigators' files (case notes and details not contained in file).
- Other investigating agency offices (investigative leads—serial offender).

Forensic testing reports and previously tested evidence

Because advancements in DNA technology enable laboratories to successfully analyze old evidence that might have been improperly stored or subjected to previous forensic analysis, it will be very valuable to locate any and all forensic reports that were produced as a result of previous analysis and/or testing. ABO blood typing, microscopic hair analysis, RFLP DNA analysis, or fingerprint analysis (among others) might have been performed in the course of the original investigation. The original case file should indicate whether and which types of forensic analysis were attempted. These reports also serve to

memorialize proper chain of custody. Cooperation with the crime laboratory is crucial to locate and interpret existing forensic reports and to determine whether evidence would be amenable to reanalysis with new DNA techniques.

Many combinations of options are available to investigators and laboratory personnel if biological evidence was available and previously tested. Exhibit 3 may serve to help investigators as they work with the laboratory to discuss options throughout the course of the investigation.

Locate biological evidence

When reviewing the case file for potential DNA evidence, it is important to know what kinds of evidence may yield a DNA profile. Given the power and sensitivity of newer DNA testing techniques, DNA can be collected from virtually anywhere. Only a few cells can be sufficient to obtain useful DNA information to help solve a case. Exhibit 4 identifies some common items of evidence that may have been collected previously but not analyzed for the presence of DNA evidence. Remember, if a stain is not visible it does not mean that there are not enough cells for DNA typing. Further, DNA does more than just identify the source of the sample; it can place a known individual at a crime scene, in a home, or in a room where the suspect claimed not to have been. It can refute a claim of self-defense and put a weapon in the suspect's

DNA CAN DO MORE . . .

. . . than identify a suspect. It can also—

- Place a known individual at a crime scene.
- Refute a claim of self-defense.
- Put a weapon in a suspect's hand.
- Change a suspect's story from an alibi to one of consent.

hand. It can also provide irrefutable evidence that can change a suspect's story from an alibi to one of consent.

Evaluate for probative DNA evidence

On completion of reviewing the case file, reports, and evidence in consultation with the laboratory, it will be necessary to identify which evidentiary items will be amenable to DNA analysis. Consultation with the laboratory will be essential to determine the likelihood of obtaining results from DNA analysis, and consultation with a prosecutor is very important to determine which evidence will be probative to the case. Building the new investi-

gation on cooperative efforts between the laboratory and prosecutor can save valuable resources, develop leads, and identify previously overlooked evidence that may yield a DNA profile.

Continue investigative protocol

If DNA analysis is to be conducted, it may be important to obtain reference samples from prior suspects, and it might be necessary to be creative when obtaining these samples. While a biological sample in the form of blood or saliva can be obtained voluntarily through a consent form, a standard reference sample might already exist if previous forensic analysis,

Exhibit 1. Investigative options

Test conducted	Original results	Original interpretation	Options for investigators
RFL PCR	Obtained profiles	No suspects identified.	Is the original extract remaining? 1 If so, retest using STR technique and submit to CODIS 2 If not, reextract the original sample using STR technique and submit to CODIS.
HFL	Inconclusive or no results obtained	Sample size may have been insufficient or not concentrated enough	Is the original extract remaining? 1 If so, retest using STR technique and submit to CODIS 2 If not, reextract the original sample using STR technique and submit to CODIS
PCR	Inconclusive or result intensity below "S" and "C" dots	Sample size may have been insufficient	Is the original extract remaining? 1 If so, retest using STR technique and submit to CODIS 2 If not, reextract the original sample using STR technique and submit to CODIS
Conventional serology (ABO, secretor status, enzymes such as EsD, PGM, GLO I, EAP, ADA, AKI)	Obtained a type in these systems	Poor statistics and no searching capability	If original evidence still exists, extract the sample using STR technique and submit to CODIS
None		1 Limited sample size 2 No suspects, did not process further 3 No request at the time of analysis	If original evidence still exists, extract the sample using STR technique and submit to CODIS

such as serological testing, was performed during the course of the original investigation.

Additionally, elimination samples from anyone who had lawful access to the crime scene, such as family members, may be required if the laboratory determines that there is more than one DNA profile present in the evidence sample. Early identification of the location and status of persons who might be requested to submit an elimination sample could save valuable time and resources if the laboratory needs such information. Consultation with the laboratory is essential to properly coordinating this process.

Follow agency procedures for submitting the DNA profile to CODIS

On successful laboratory analysis resulting in a DNA profile developed from crime scene evidence, existing and/or new suspect DNA profiles should be compared with the evidence profile. If the laboratory determines a match between a suspect and the evidence, the prosecutor's office should be consulted on how to proceed. However, if a match is not found, agency procedures should be followed, in accordance with the crime laboratory, to submit the crime scene evidence DNA profile into CODIS.

Exhibit 4. Common items of evidence

Evidence	Possible location of DNA on the evidence	Source of DNA
Baseball bat	Handle	Skin cells, sweat, blood, tissue
Hat, bandanna, or mask	Inside surfaces	Sweat, hair, skin cells, dandruff, saliva
Eyeglasses	Nose or ear piece, lens	Sweat, skin cells
Facial tissue, cotton swab	Surface	Mucus, blood, sweat, semen, ear wax
Dirty laundry	Surface	Blood, sweat, semen, saliva
Toothpick	Surface	Saliva
Used cigarette	Cigarette butt (filter area)	Saliva
Used stamp/envelope seal	Moistened area	Saliva
Tape or ligature	Inside or outside surface	Skin cells, sweat, saliva
Bottle, can, or glass	Mouthpiece, rim, outer surface	Saliva, sweat, skin cells
Used condom	Inside/outside surface	Semen, vaginal or rectal cells
Bed linens	Surface	Sweat, hair, semen, saliva, blood
"Through and through" bullet	Outside surface	Blood, tissue
Bite mark	Surface of skin	Saliva
Fingernail/partial fingernail	Scrapings	Blood, sweat, tissue, skin cells

Note: When reviewing evidence, it is important to maintain chain of custody, consult with laboratory personnel, and take all appropriate precautions against contamination, including wearing gloves and changing them between handling of different pieces of evidence.

Because CODIS contains hundreds of thousands of convicted offender DNA profiles, it is possible that the person who committed the unsolved crime being investigated was convicted of a qualifying offense that required submission of a DNA profile to the database. If that person has not previously been convicted of a qualifying offense, especially in light of expanding database law, it is possible that they will be convicted in the future. Further, because the forensic index of CODIS contains thousands of crime scene evidence profiles, the investigation could be aided if a match is made to another forensic DNA profile already in the database. Finally, an investigator should not assume that a new DNA profile generated from unsolved case evidence and submitted to the laboratory for entry into CODIS will be compared with every possible convicted offender or crime scene index profile. The investigator may need to proactively request that his CODIS administrator search the new profile against the local, State, and national DNA databases.

Prepare a John Doe warrant

CODIS is a powerful crime-solving and crime-prevention tool, but many cases will not be solved as a result of entering a DNA profile into the forensic index of the database. Additionally, many cases will

have statute of limitation issues that might prevent the prosecution of the case if a match is not determined in a timely manner. Therefore, if no offender match occurs in cases in which statutes of limitation are an issue, consideration may be given, in consultation with the prosecutor, to preparing a John Doe warrant. These types of warrants can identify the perpetrator according to his or her DNA profile. The 13-loci profile generated by the crime laboratory should be clearly printed on the face of the warrant. The John Doe warrant is not novel, however, the unconventional method of describing an individual by his or her DNA profile may allow for prosecution of a case if a DNA match is determined in the course of future investigations or as a result of the CODIS system being populated with more convicted offender and forensic DNA profiles.

Notes

1 CODIS uses two indexes—the forensic index and the offender index—to generate investigative leads in crimes where biological evidence is recovered from crime scenes. The forensic index contains DNA profiles of biological crime scene evidence and the offender index contains DNA profiles of individuals convicted of a qualifying offense.

2 CODIS has a missing persons index that exclusively contains mtDNA profiles, the convicted offender and forensic indexes of CODIS exclusively contain STR DNA profiles.

SAMPLE CHECKLIST

- Identify potential cases.
 - Identify any statute of limitation issues (consult with prosecutors).
 - Define case categories according to solvability factors.
- Prioritize cases (consider solvability factors).
- Locate and review the case file; obtain evidence logs and other documentation such as laboratory and autopsy reports.
- Locate previous forensic testing reports and location of previously tested evidence. For example—
 - Blood previously ABO typed.
 - Hair analyzed microscopically.
 - Fingerprint evidence.
- Locate crime scene evidence containing biological material.
- Evaluate the case and evidence for potential probative DNA. Be sure to—
 - Consider all evidentiary possibilities.
 - Take appropriate precautions against contamination.
- In consultation with the laboratory and prosecutors, submit appropriate (probative) evidence to the laboratory for testing.
- Continue investigative protocol. If needed, obtain reference samples from suspects—
 - Voluntarily using a consent form.
 - By using a previously obtained sample (e.g., if a reference sample was used for standard serological testing).
- Identify witness issues—
 - Legal availability.
 - Willingness to proceed.
 - Location.
- If a profile does not match suspect profiles, follow agency procedures for submitting the evidence profile to CODIS.
- If no offender match occurs in cases in which statutes of limitation are an issue, prepare a John Doe warrant.

About the National Institute of Justice

NIJ is the research, development, and evaluation agency of the U.S. Department of Justice and is solely dedicated to researching crime control and justice issues. NIJ provides objective, independent, nonpartisan, evidence-based knowledge and tools to meet the challenges of crime and justice, particularly at the State and local levels. NIJ's principal authorities are derived from the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. §§ 3721-3722).

NIJ's Mission

In partnership with others, NIJ's mission is to prevent and reduce crime, improve law enforcement and the administration of justice, and promote public safety. By applying the disciplines of the social and physical sciences, NIJ—

- Researches the nature and impact of crime and delinquency.
- Develops applied technologies, standards, and tools for criminal justice practitioners.
- Evaluates existing programs and responses to crime.
- Tests innovative concepts and program models in the field.
- Assists policymakers, program partners, and justice agencies.
- Disseminates knowledge to many audiences.

NIJ's Strategic Direction and Program Areas

NIJ is committed to five challenges as part of its strategic plan: 1) *rethinking* justice and the processes that create just communities; 2) *understanding* the nexus between social conditions and crime; 3) *breaking* the cycle of crime by testing research-based interventions; 4) *creating* the tools and technologies that meet the needs of practitioners; and 5) *expanding* horizons through interdisciplinary and international perspectives. In addressing these strategic challenges, the Institute is involved in the following program areas: crime control and prevention, drugs and crime, justice systems and offender behavior, violence and victimization, communications and information technologies, critical incident response, investigative and forensic sciences (including DNA), less-than-lethal technologies, officer protection, education and training technologies, testing and standards, technology assistance to law enforcement and corrections agencies, field testing of promising programs, and international crime control. NIJ communicates its findings through conferences and print and electronic media.

NIJ's Structure

The NIJ Director is appointed by the President and confirmed by the Senate. The NIJ Director establishes the Institute's objectives, guided by the priorities of the Office of Justice Programs, the U.S. Department of Justice, and the needs of the field. NIJ actively solicits the views of criminal justice and other professionals and researchers to inform its search for the knowledge and tools to guide policy and practice.

NIJ has three operating units. The Office of Research and Evaluation manages social science research and evaluation and crime mapping research. The Office of Science and Technology manages technology research and development, standards development, and technology assistance to State and local law enforcement and corrections agencies. The Office of Development and Communications manages field tests of model programs, international research, and knowledge dissemination programs. NIJ is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

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Mayor Mark Begich

Anchorage Police Department

February 15, 2005

Senator Con Bunde
State Capitol, Room 506
Juneau, AK 99801-1182

Senator:

I support the idea of SB 95, Reasonable Force DNA Collection, to better equip law enforcement in the identification, apprehension and conviction of those who commit serious crimes against the citizens of our state.

DNA forensic evidence has helped resolve such crimes as sexual assault and homicide, and the conviction of those responsible not only promotes a feeling of safety in the community but also provides closure to the victims and families of victims.

I have two pending cases, one of which is a homicide and the other a sexual assault which, I am told by the State Crime Lab, were committed by the same suspect. Unfortunately, CODIS, the DNA data bank, does not have the available match to provide us with a name yet. Experience tells me that this rapist and murderer, more than likely, committed other crimes. The enhancement of this statute, the Reasonable Force DNA Collection, would more rapidly develop the database and with our diligence, we'd be in a better position to stop that suspect before he victimizes yet again. This is just one example, and undoubtedly, other Alaskan law enforcement agencies would have similar examples of crimes that could be more easily and quickly solved with the passage of the Reasonable Force DNA Collection bill.

Sincerely,

Walt Monegan
Chief of Police

WM/ta

Community, Security, Prosperity



The Empire State

New York State Division of Criminal Justice Services

Governor
Pataki

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Reducing crime and improving the effectiveness of c

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DNA Case Highlights

Preventable Crimes : case studies on the potential of DNA technology to reduce crime

Chautauqua County

On the morning of November 25, 1998, a woman was confronted by a rapist in her home in Jamestown, Chautauqua County. In June 2001, a Chautauqua County Probation officer secured a DNA sample from Andrew Tehoke who was serving a probation term for a 2000 Burglary 3rd conviction. Tehoke's DNA profile hit against the DNA profile developed from forensic evidence recovered in connection with the 1998 sexual assault and he was subsequently convicted of the offense.

Erie County

A DNA Databank hit linked Lamont Coleman, a man with a history of sex offenses, with the sexual assault of a female professor which took place on March 31, 2000. The attack occurred in the same building on the campus where, in 1987 another female professor had been assaulted. Coleman was convicted of the 1987 attack and his DNA profile was entered in the State's DNA Databank. It matched with the profile developed from the physical evidence recovered at the scene of the 2000 assault. Coleman was a national fugitive for two years and was on the FBI's Most Wanted list prior to his capture in July, 2002.

Following a DNA Databank hit in April 2000, Ishmael Saladeen was indicted for the 1982 murder of an elderly male and an 84 year-old female who were killed during a robbery in a photography studio in the commission of this crime, the owner of the studio and five other victims who entered the store and were robbed. The elderly female was strangled to death and the male victim fatally shot. One of the other victims was also raped and sodomized. The surviving victims all had a caustic solution splashed on them in an effort to blind them and prevent identification of the perpetrator. With the advent of the DNA Databank, the Erie County Department of Central Police Services Forensic Science Laboratory identified the perpetrator's DNA profile from evidence recovered from the victim who was sexually assaulted in 1982. Within a year of these crimes, Saladeen was convicted for a separate incident of attempted murder in the Second Degree and sentenced to a lengthy prison term. Pursuant to the amendments to the DNA database law, a DNA specimen was collected from Saladeen and his DNA profile was found to match the DNA profile of the perpetrator of the sexual assault. The Statute of Limitations for the indictment of the defendant on the rape and sodomy charges; however, as a result of him being identified at the photography studio scene through the sexual assault evidence, Saladeen was convicted in a December 11, 2001 for Murder in the Second Degree.

Madison County

In 1992, the small village of Cazenovia (20 miles east of Syracuse) was celebrating the Fourth of July. A 15 year old boy left the restaurant where he worked to meet his parents for the festive five minute walk along a wooded footpath to meet his parents, the boy was abducted, sexually assaulted and murdered. His body was discovered in Cazenovia Lake the next day. Thousands of leads were put out in the country (given the fact there were so many transient people in town that weekend of the case). In February 2001, the case was solved when forensic evidence recovered from the victim was found to match a DNA profile sample of Jeffrey Clark. Clark's DNA specimen had been collected for inclusion in the State's DNA Databank based on his conviction for Sodomy 1st in 2000. Clark subsequently entered a plea of guilty to the murder.

Monroe County

In November 2002 a man was killed during a failed burglary when he woke up to the sounds of a burglar. The victim approached the intruder and during the ensuing struggle managed to call police. The burglar was mortally wounded. Police arrived to find the victim but no suspect in the house. Crime scene technicians collected 10 blood samples from the victim's NY home, 9 of which matched the victim, but the tenth sample was loaded into the State DNA Databank in January 2003. This sample returned a hit on Bryan R

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had been required to submit a sample for inclusion in the databank for a previous Burglary conviction as a result of the 1999 amendments to the DNA Databank law. Armed with this information police officer Hawkins, who denied involvement in the murder, requested that he submit a sample for confirmation. Hawkins agreed and upon testing, the sample matched the DNA found at the scene. Subsequent police were able to find two witnesses that remembered seeing Hawkins with a cut finger on the night the Homicide occurred. Hawkins is now serving a term of 25 years to life for the 2nd degree murder.

Because of the variation in the ages of the victims and the modus operandi, investigators were unable to determine if there was a connection between three sexual assaults that occurred between 1997 and 1999 in Rochester, New York. In 2000, DNA testing of physical evidence recovered at the scenes of these assaults indicated that one suspect had committed the three crimes. In one of the cases, a 4 year old girl was taken from her home during the night, molested and left on a residential street miles from her home. In another case, a 10 year old girl was beaten and raped by an intruder in her home. In the third case, a 67 year old woman was raped, beaten and robbed in the parking lot of her apartment building. In March 2003, a DNA sample from Robert Griffin was taken as a result of his recent conviction for Attempted Burglary 1st. Griffin entered into the State DNA Databank. Griffin's DNA profile matched the DNA profiles developed from the three sexual assaults. Griffin was convicted of these assaults following a jury trial.

New York City

On January 5th 2004 a serial rapist was sentenced to 35 years in prison for a series of robberies and sexual assaults covering 5 months and 3 boroughs. The attacker, Tyrone Williams, started his crime spree in 2003 by following a woman into an apartment complex in Chelsea where he robbed and sodomized her. Days later he then followed three more women into an apartment building in the Bronx raping two and sexually assaulting the third. The following week Williams returned to Chelsea where he followed two women into an apartment, raping one victim and robbing victims number five and six. Williams then moved to Manhattan raping one victim in a stairwell in Mid-April 2003 followed by a second Manhattan rape in the early part of May 2003. The evidence collected at the scenes of these vicious attacks was quickly analyzed by the New York City Office of the Chief Medical Examiner and submitted for a search early in 2003. Williams was arrested by the New York City Police Department the day they were notified of his DNA hit. Williams was required to provide a DNA sample for the NYS DNA Databank following a 2000 conviction for an attempted burglary.

One early morning in October 2000, a young financial analyst on her way to work in midtown Manhattan was pulled into a freight elevator and viciously choked, raped and beaten. The victim bit her assailant and blood bled onto her jacket. A DNA profile was developed from the blood stain by the New York City Medical Examiner Forensic Biology Laboratory and entered into CODIS. The profile from the crime scene matched against the DNA profile of Richard Navas. He was subsequently arrested and convicted for Rape 1st Degree Assault.

In the early morning hours of December 21, 1999, as an NBC Producer walked home from her job in Manhattan, she was confronted by a man who threatened to kill her. He pulled her into an open area and raped her. She lured him to an ATM machine by offering him money, hoping to capture his picture on the security camera. Unfortunately, the perpetrator could not be identified in the ATM photo. Two months later, in an attack, a DNA specimen was collected from Lashange Legrand who was on parole for Attempted Robbery 1st. His DNA specimen had been collected under the 1999 amendments to the DNA database law. When his DNA profile was entered into the state DNA Databank, it matched with the profile recovered from forensic evidence collected from the scene of the 1999 attack. Legrand subsequently was convicted of the rape.

In 1998, a female employee of a major department store had gone into the stock room of the store to change a robe. The assailant choked her and proceeded to rape her. Using the pin of her employee badge, the assailant stabbed him which caused him to bleed onto the robe and card board that covered the floor. Subsequent to the rape, the rapist fled the stock room covering his face so that he could not be identified on a security camera. In April 2002, the DNA profile developed from the blood stain hit against the DNA profile of Joe Felder. Felder provided a DNA sample for inclusion in the Databank in February 2002 when he was committed to the New York State Department of Correctional Services for Burglary 3rd. On April 15, 2003, Felder was convicted of Rape 1st Degree.

In November 1995, a woman was abducted, raped and terrorized in an apparent attempt to get information about drug dealers that the perpetrators viewed as competition. She was unable to identify her assailant. A DNA profile was developed from forensic evidence recovered from the scene and, when entered into the state DNA database, was found to match the DNA profile of Kyle Hardison. Hardison's DNA specimen had been collected as a result of amendments to the state DNA database law as a result of a Robbery conviction. He was subsequently convicted of First Degree Rape and First Degree Sodomy.

In 1991, a 17-year-old girl Harlem girl was sodomized, raped and robbed in New York City. Due to the limitations of DNA science at the time of trial, DNA could not be extracted from the rape kit evidence. At his arrest and subsequent prosecution for these crimes, a Manhattan man was convicted and sentenced to 20 to 40 years incarceration. Recently, advances in DNA science enabled law enforcement

authorities to conduct a new test on the evidence in the case, and a DNA profile from that evidence to the databank in April of this year. A subsequent comparison of the crime DNA to the DNA of the Manhattan man proved that, in fact, he had not committed the crime for which he was incarcerated. DNA was then searched against the DNA databank, and matched to another incarcerated felon whose sample was added to the databank as a result of the 1999 expansion. Sadly, the existing statute has expired for these crimes, thereby hindering the prosecution of the true perpetrator. However, the databank to exonerate the innocent, as well as implicate the guilty, is made abundantly clear and the need to eliminate the statute of limitations for such violent crimes is reaffirmed.

Onondaga County

In November 1975 a woman was found murdered on the shores of Otisco Lake just outside Syracuse. To her body police found the business card of a Madison, NY cabinetmaker, Donald Sigsbee. Sigsbee was a prime suspect for a number of years in the rape and stabbing death of the victim but police were unable to positively connect him to the crime. In 1975 the use of DNA evidence had yet to be conceived, but through the diligence of a single State Police forensic scientist, a sample of the semen from the crime scene was preserved as a microscope slide. That thoughtfulness led to the DNA profile that matched the DNA of Sigsbee from a discarded drinking straw. Now 28 years later the family of the victim has their justice and a final resting place for the death of a loved one. Sigsbee now faces a mandatory minimum of 15 years to life in prison.

In December, 1999, an individual broke into Onondaga County home of an 80 year old woman and sodomized her. She was unable to identify her assailant. Forensic evidence recovered at the scene was analyzed and the resulting DNA profile entered into the DNA Databank. The profile was found to match the DNA profile of Sean Coyne who was on probation for an Attempted Robbery 2nd conviction. He is now required to provide a DNA specimen as a result of the 1999 amendments to the DNA database law.

Sullivan County

Nearly 18 years of mystery ended when Rommal Bennett pleaded guilty in August of 2004 to the murder of the owner of a diner in Monticello. A cold hit in CODIS, the national DNA Database system, linked the DNA profile recovered from a cigarette butt found in a beer bottle at the victim's residence. The cigarette butt was analyzed by the New York State Police Forensic Investigation Center in Albany. Bennett was put into the national database by the forensic laboratory in Minnesota based on a 1994 conviction for a violent offense.

Westchester County

Thirsty? Apparently Angelo Powell was following an October 2003 burglary where he thought it would help himself to a soda from the victim's home. That thirst was the final straw in a string of burglaries Powell had committed during his 25 year career as a criminal. The DNA that he left on the rim of a soda bottle was compared to the NYS DNA Databank and hit against a sample Powell provided in 2001 for a conviction for Burglary in the Second Degree. Based upon the DNA evidence left behind and Angelo Powell had no legitimate reason to be in the home of the victim, Powell pleaded guilty and was sentenced to life as a persistent violent felony offender.

The first match against the State DNA Databank solved a 21-year-old murder in Westchester County. In 1979, a 22-year-old woman was brutally stabbed to death in her Mt. Vernon apartment. The victim's blood was apparently cut himself in the commission of this offense. Bloodstains found at the scene of the crime were preserved and DNA analysis was performed in 2000 by the Westchester County Forensic Science Laboratory. The resulting DNA profile was uploaded to the State's DNA Databank and found to match the DNA profile of Walter Gill. Mr. Gill was serving time in State prison for robbery, an offense that did not require a DNA profile until the 1999 amendment to the DNA database law. Gill was convicted of First Degree Manslaughter.