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## U.S. Set to Begin a Vast Expansion of DNA Sampling

By [JULIA PRESTON](#)

The Justice Department is completing rules to allow the collection of DNA from most people arrested or detained by federal authorities, a vast expansion of DNA gathering that will include hundreds of thousands of illegal immigrants, by far the largest group affected.

The new forensic DNA sampling was authorized by Congress in a little-noticed amendment to a January 2006 renewal of the Violence Against Women Act, which provides protections and assistance for victims of sexual crimes. The amendment permits DNA collecting from anyone under criminal arrest by federal authorities, and also from illegal immigrants detained by federal agents.

Over the last year, the Justice Department has been conducting an internal review and consulting with other agencies to prepare regulations to carry out the law.

The goal, justice officials said, is to make the practice of DNA sampling as routine as fingerprinting for anyone detained by federal agents, including illegal immigrants. Until now, federal authorities have taken DNA samples only from convicted felons.

The law has strong support from crime victims' organizations and some women's groups, who say it will help law enforcement identify sexual predators and also detect dangerous criminals among illegal immigrants.

"Obviously, the bigger the DNA database, the better," said Lynn Parrish, the spokeswoman for the Rape, Abuse and Incest National Network, based in Washington. "If this had been implemented years ago, it could have prevented many crimes. Rapists are generalists. They don't just rape, they also murder."

Peter Neufeld, a lawyer who is a co-director of the Innocence Project, which has exonerated dozens of prison inmates using DNA evidence, said the government was overreaching by seeking to apply DNA sampling as universally as fingerprinting.

"Whereas fingerprints merely identify the person who left them," Mr. Neufeld said, "DNA profiles have the potential to reveal our physical diseases and mental disorders. It becomes intrusive when the government begins to mine our most intimate matters."

[Immigration](#) lawyers said they did not learn of the measure when it passed last year and were dismayed by its sweeping scope.

"This has taken us by storm," said Deborah Notkin, a lawyer who was president of the American Immigration Lawyers Association last year. "It's so broad, it's scary. It is a terrible thing to do because people are sometimes detained erroneously in the immigration system."

Immigration lawyers noted that most immigration violations, including those committed when people enter

the country illegally, are civil, not criminal, offenses. They warned that the new law would make it difficult for immigrants to remove their DNA profiles from the federal database, even if they were never found to have committed any serious violation or crime.

Under the new law, DNA samples would be taken from any illegal immigrants who are detained and would normally be fingerprinted, justice officials said. Last year federal customs, Border Patrol and immigration agents detained more than 1.2 million immigrants, the majority of them at the border with Mexico. About 238,000 of those immigrants were detained in immigration enforcement investigations. A great majority of all immigration detainees were fingerprinted, immigration officials said. About 102,000 people were arrested on federal charges not related to immigration in 2005.

While the proposed rules have not been finished, justice officials said they were certain to bring a huge new workload for the [F.B.I.](#) laboratory that logs, analyzes and stores federal DNA samples. Federal Bureau of Investigation officials said they anticipated an increase ranging from 250,000 to as many as 1 million samples a year.

The laboratory currently receives about 96,000 samples a year, said Robert Fram, chief of the agency's Scientific Analysis Section.

DNA would not be taken from legal immigrants who are stopped briefly by the authorities, justice officials said, or from legal residents who are detained on noncriminal immigration violations.

"What this does is move the DNA collection to the arrest stage," said Erik Ablin, a Justice Department spokesman. "The general approach," he said, "is to bring the collection of DNA samples into alignment with current federal fingerprint collection practices." He said the department was "moving forward aggressively" to issue proposed regulations.

The 2006 amendment was sponsored by two border state [Republicans](#), Senator Jon Kyl of Arizona and Senator John Cornyn of Texas. In an interview, Mr. Kyl said the measure was broadly drawn to encompass illegal immigrants as well as Americans arrested for federal crimes. He said that 13 percent of illegal immigrants detained in Arizona last year had criminal records.

"Some of these are very bad people," Mr. Kyl said. "The number of sexual assaults committed by illegal immigrants is astonishing. Right now there is a fingerprint system in use, but it is not as thorough as it could be."

Ms. Parrish, of the rape victims' organization, pointed to the case of Angel Resendiz, a Mexican immigrant who was known as the Railroad Killer. Starting in 1997, Mr. Resendiz committed at least 15 murders and numerous rapes in the United States. Over the years of his rampage, Mr. Resendiz was deported 17 times. He was executed in Texas in June.

"That was 17 missed opportunities to collect his DNA," Ms. Parrish said. "If he had been identified as the perpetrator of the first rapes, it would have prevented later ones."

Immigration lawyers said the DNA sampling could tar illegal immigrants with a criminal stigma, even though most of them have never committed any criminal offense.

"To equate somebody with a possible immigration violation in the same category as a suspected sex offender

is an outrage,” said David Leopold, an immigration lawyer who practices in Cleveland.

Forensic DNA is culled either from a tiny blood sample taken from a fingertip (the F.B.I.’s preferred method) or from a swab of the inside of the mouth. Federal samples are logged into the F.B.I.’s laboratory, analyzed and transformed into profiles that can be read by computer. The profiles are loaded into a database called the National DNA Index System.

The F.B.I. also loads DNA profiles from local and state police into the federal database and runs searches. Only seven states now collect DNA from suspects when they are arrested; of those, only two states are authorized by their laws to send those samples to the federal database.

Mr. Neufeld, of the Innocence Project, said his group supported broad DNA collection from convicted criminals. But, he said, “There is no demonstrable nexus between being detained for an immigration matter and the likelihood you are going to commit some serious violent crime.”

The DNA amendment has divided women’s groups that are usually unified supporters of the Violence Against Women Act, which was adopted in 1994.

“We were stunned by the extraordinary, broad sweep of this amendment,” said Lisalyn Jacobs, vice president for government relations at Legal Momentum, a law group founded by the [National Organization for Women](#). Ms. Jacobs recalled that the amendment had been adopted by a voice vote with little debate. She said many lawmakers eager to renew the act, which enjoys solid bipartisan support, appeared unaware of the scope of the DNA amendment.

“The pervasive problems of profiling in the United States will only be exacerbated by such a system,” Ms. Jacobs said, because Latino and other immigrants will be greatly over-represented in the database. She noted that the law required a court order to remove a profile from the system.

Many groups warned that the measure would compound already severe backlogs in the F.B.I.’s DNA processing. Mr. Fram of the F.B.I. said there had been an enormous increase in the samples coming to the databank since it started to operate in 1998, but no new resources for the bureau’s laboratory. Currently about 150,000 DNA samples from convicted criminals are waiting to be processed and loaded into the national database, Mr. Fram said.

He said the laboratory had added robot technology to speed the processing. But in the “worst case scenario,” where the laboratory receives one million new samples a year, Mr. Fram said, “there is going to be a bottleneck.”

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