Wash. Considers taking DNA upon arrest

by Associated Press

SEATTLE -- Anthony Dias is the poster boy for why police and prosecutors hope Washington will join a growing number of states that require people to give DNA samples as soon as they're arrested for a serious crime, rather than waiting until they're convicted. In 2005, Dias was released on bail while facing a felony hit-and-run charge in Pierce County. He went on to commit crimes against 19 more people before the year was up, including a half-dozen rapes. If he had given a DNA sample after his hit-and-run arrest, detectives could have caught him after the first rape -- not the last.

"By the time he committed his next rape crime, he could have been identified, arrested and taken off the streets," Charisa Nicholas, who was tied up and forced to watch as her roommate was raped, told lawmakers recently. "My case would have been the first case prevented." Nevertheless, the rush to expand DNA's use in criminal investigations worries privacy advocates, and courts around the country have disagreed about whether such laws violate the 4th Amendment to the U.S. Constitution, which protects people from unreasonable searches and seizures. Many judges have found that routinely collecting DNA from convicts is OK because, among other reasons, committing a serious crime reduces their expectation of privacy. It's not clear that reasoning would extend to people who have not been convicted and who are presumed innocent.

"The way judges come out depends in a sense on how much trust they have in the government," says Penn State Law School professor DH Kaye, who tracks the issue. "Some judges say, `What's the big deal? It's like a fingerprint.' But DNA samples contain a lot of information, and other judges say that sooner or later somebody is going to abuse the system."

Under bills before Washington's Legislature, the state would collect DNA from people when they're arrested for nearly all felonies or for violating a domestic violence protection order. Once a judicial officer finds that the arrest was supported by probable cause, the State Patrol crime lab could test the DNA to create a profile and enter that profile in a nationwide database used to help solve crimes. The cost of the measure -- more than $400,000 a year -- would be paid with money from traffic tickets.

If the person is exonerated or not charged, they could petition to have the crime lab destroy their sample and profile. The lab would be obligated to do so, but could run a check on the profile first.

About half the states and the federal government have similar laws.

The 3rd U.S. Circuit Court of Appeals in Philadelphia, the highest federal court to rule on the issue so far, closely upheld the federal law 8-6 last summer in a case that could be headed for the Supreme Court. The majority found that although crime labs typically maintain the actual DNA samples, the profiles entered into the national database comprise only a small portion of the information available in the

sample. There's no indication that the government has any intent to use the full samples, judges said.

The judges reasoned that the government has a right to confirm the identities of the people it arrests, and there are two parts to someone's identity: who they are, and what they've done. Using the DNA profile to see if arrestees have committed other crimes is a part of the government's interest in their identities, the judges said.

The dissent argued that the government doesn't need the DNA profile to identify arrestees. Officials want to be able to conduct an intrusive search of a person's body -- taking their DNA -- without a warrant and without suspicion, in hopes of finding evidence unrelated to what the person has been arrested for.

"We do not view a finding of probable cause for one crime as sufficient justification to engage in warrantless searches of arrestees' or pretrial detainees' homes for evidence of other crimes," the dissent noted. That's one of the analyses offered by Doug Klunder, privacy counsel at the American Civil Liberties Union of Washington.

"It's collecting really sensitive information about an individual without there being reason to suspect that person of a crime," he says. "There are many ways that law enforcement could collect information that would help solve crimes. They could rifle through my house every day and maybe they'll find it, but we don't allow that without a warrant. Certainly going into my body is as intrusive as going into my house."

Virginia's Supreme Court has upheld that state's law, and an appeals court in Arizona has OK'd the law there. However, California and Minnesota appeals courts have rejected their laws, and a panel of the 9th U.S. Circuit Court of Appeals has yet to rule on a federal challenge to California's law, even though the arguments took place 18 months ago.

Washington's proposal could face an even tougher legal road if passed, because the state Constitution is even more protective of people's right to be free from intrusion by the government. "There's not a definite answer on the constitutional questions," says Pierce County Prosecutor Mark Lindquist. "But the merits of this are so obvious it's worth having it go up to the courts."