

# DoD Use of CODIS:

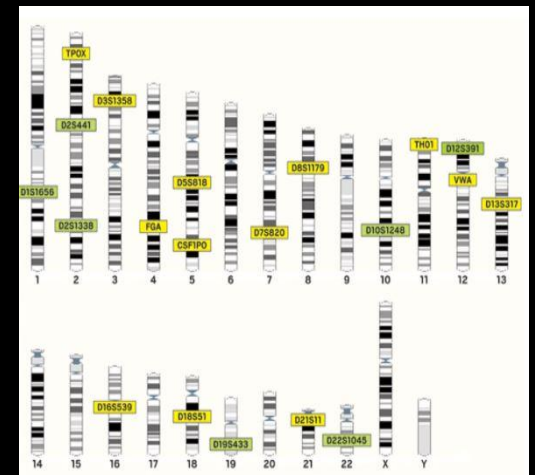
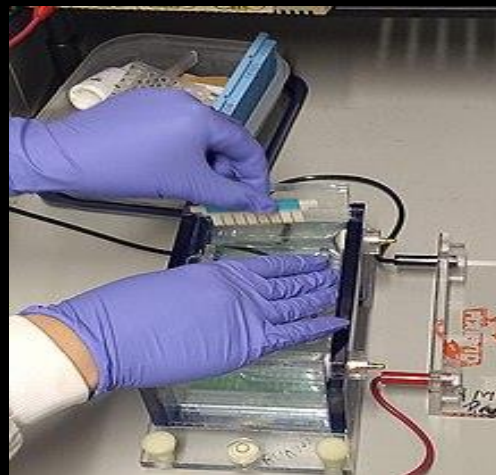
## Overbroad, Misuse, or Necessary Law Enforcement Tool?

---

Ryan M. Farrell, Maj, ANG  
Christopher J. Goewert, Lt Col, USAF

The views expressed in this brief are solely those of the briefers and are not endorsed by the Department of Defense or its subcomponents.

# Individual and forensic samples...



# CODIS Submissions

## Arrestee

DNA profiles of  
arrested persons

## Convicted Offender

DNA profiles of  
individuals convicted  
of crimes

## Forensic

DNA profiles developed  
from crime scene  
evidence, such as blood  
stains attributed to the  
putative perpetrator of the  
crime



Database



Continuous  
updating and  
comparison

# CODIS Successes...

## DNA From 'Unproveable' 1994 Rape Hits to CODIS, 1979 Cold Case Murder

March 15, 2023 | Michelle Taylor Editor-in-Chief



A murder suspect in a 1979 cold case in California has been arrested after investigators found a DNA match to a rape committed 15 years later in Washington.

On Sept. 28, 1979, Patricia Carnahan was beaten, strangled and left for dead at a South Lake Tahoe campground. Investigators gathered evidence from the crime scene, including a sexual assault kit and DNA sample. But at the time, Carnahan's identity was unknown, and no suspects arrested.

In 1994, the same man who allegedly murdered Carnahan raped a different woman in Washington state. Investigators collected a sexual assault kit, but the rape was deemed "unproveable." The untested sexual assault kit was then placed on a storage shelf.

### From unidentified to identified to justice

After authorities failed to identify her, Carnahan was buried in a nondescript grave marked "Unidentified Female" in 1994.



Credit: El Dorado DA

CRIME >

## Forensics experts are using Touch DNA to solve Maryland's crimes



By Cristina Mendez  
October 19, 2022 / 11:10 PM EDT / CBS Baltimore



Law enforcement intercepted a parcel containing a kilogram of fentanyl, according to the Maryland State Police.

During a search warrant, a respirator that contained fentanyl residue was put into evidence and swabbed for DNA. The profile matched a man's DNA that had been collected and added to the DNA database after a previous drug conviction.



# Comparative Statistics...

## West Virginia

Statistical Information	Total
Offender Profiles	46,876
Arrestee	0
Forensic Profiles	3,760
NDIS Participating Labs	1
Investigations Aided	1,340

## Wisconsin

Statistical Information	Total
Offender Profiles	355,273
Arrestee	26,229
Forensic Profiles	24,854
NDIS Participating Labs	2
Investigations Aided	10,789

## Wyoming

Statistical Information	Total
Offender Profiles	32,043
Arrestee	0
Forensic Profiles	2,333
NDIS Participating Labs	1
Investigations Aided	730

## Tennessee

Statistical Information	Total
Offender Profiles	278,385
Arrestee	154,775
Forensic Profiles	18,190
NDIS Participating Labs	4
Investigations Aided	7,292

## Texas

Statistical Information	Total
Offender Profiles	1,024,508
Arrestee	179,078
Forensic Profiles	105,339
NDIS Participating Labs	17
Investigations Aided	51,396

## US Army

Statistical Information	Total
Offender Profiles	34,254
Arrestee	146,814
Forensic Profiles	5,216
NDIS Participating Labs	1
Investigations Aided	307

# Statutory & Regulatory Authority

---

## 10 U.S.C. § 1565

- *Must collect DNA from servicemembers convicted of qualifying offenses*

## 34 U.S.C. § 40702

- *Atty Gen. may collect DNA samples from anyone arrested, facing charges, or convicted of qualifying offenses*
- *BOP must collect DNA from inmates in custody for qualifying offenses*

## 28 C.F.R. § 28.12

- *All federal agencies must collect DNA from anyone arrested, facing charges, or convicted of qualifying offenses*

# *Maryland v. King*, 569 U.S. 435 (2013)

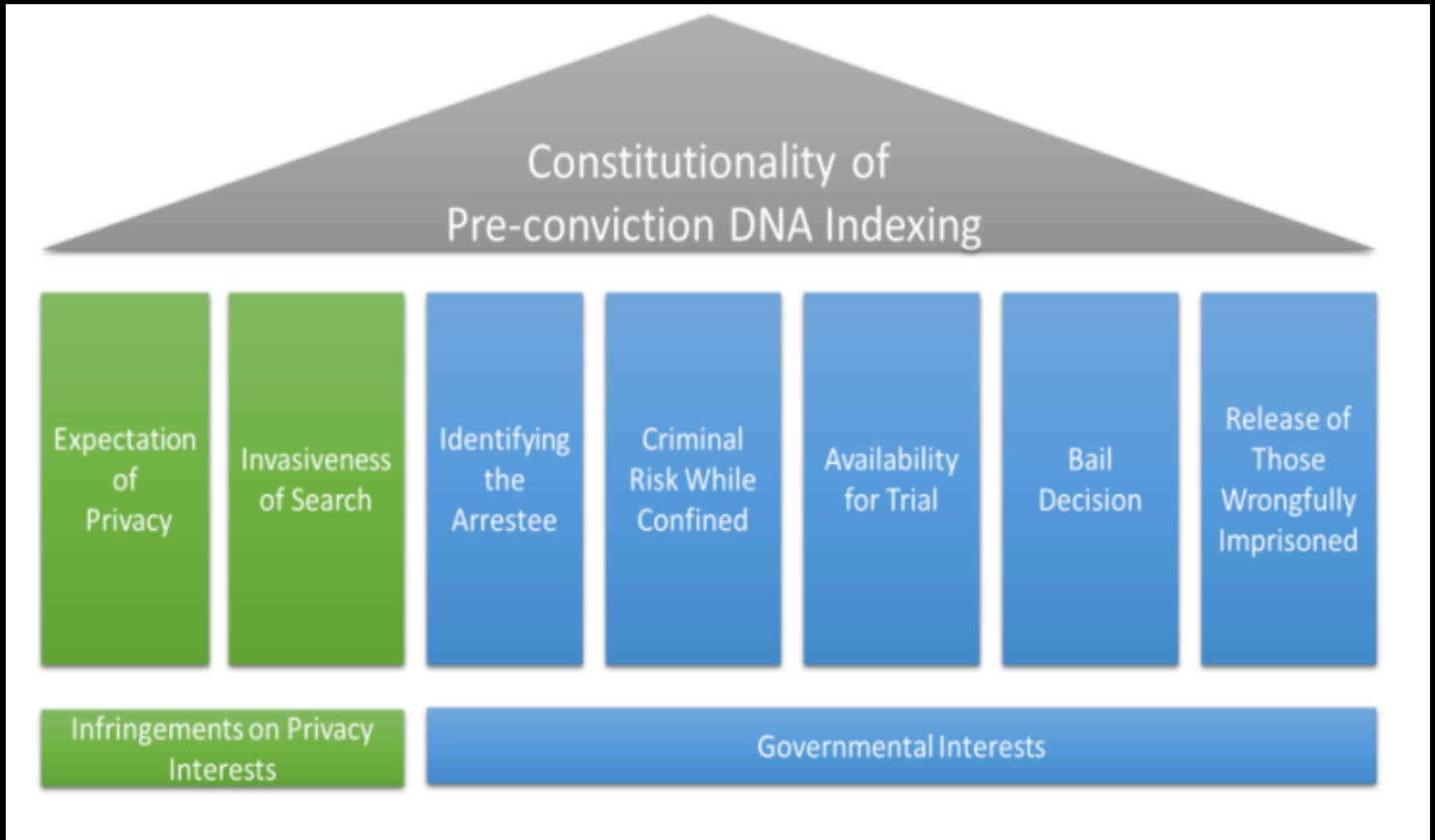
---

Is it constitutional to collect DNA from an arrestee and run it through CODIS?

Seems like a seizure without probable cause, followed by a search for evidence of new crimes.



# *Maryland v. King, cont'd*





# *Maryland v. King, cont'd*

---

## **Privacy concerns**

1. Diminished expectation of privacy
2. Buccal swab is a minimal intrusion
3. The loci tested only reveal identity—not genetic traits
4. Statutory protections guard against add'l invasion of privacy

## **Government's interests**

1. Accurately ID arrestee
2. Allows LE to make informed detention decisions
3. Ensures arrestee appears for trial
4. Allows judge to make informed bail decisions
5. May free the wrongfully convicted

# DODI 5505.14 Collection Triggers

---

1. During investigation when there is probable cause to believe SUB committed offense punishable by imprisonment
2. Preferral of charges
3. When ordered into pretrial confinement
4. Conviction by general or special court-martial

# Service Specific Regulations

---

1. Army
2. Air Force
3. Navy-Marine Corps

# Why is DoD Collection Discordant with *King*?

---

1. King's Arrest and Custody Scenarios Rarely Occur in the Military
2. There Is No Bail in the Military
3. There is rarely an "Arrest"
4. Apprehended Military Members Are Rarely Processed for Confinement; (Little Deprivation of Privacy Due to Law Enforcement Detention)

# Why is DoD Collection Discordant with *King* cont'd...

---

1. The Governmental Interest at Stake in King: “Identification” Does Not Exist in the Military Context
2. There Are No Express Limitations on the Use of Collected DNA
3. Seizing DNA Based Solely on the Act of Preferral Violates King



# CODIS Hit Leads to Court Martial Case Analysis

---

1. Severity of offense resulting in sample
2. Defense challenge as a warrantless search & seizure w/o probable cause
3. Distinguishing factors present in *King*

# Considerations Regarding DoD Collection of DNA Samples...

---

1. No limitation on use of collected samples
2. Privacy interests at stake?
3. Predicated upon a kind of legal fiction

Most Samples in CODIS are for  
Cases that Will Never Proceed to  
Court-Martial

4. Expansive surveillance?
5. The Innocent May Be Erroneously Implicated
6. Utility of Military CODIS submissions?

# Efficacy of DoD CODIS Submissions...



Figure 2: U.S. Military (USACIL) DNA Submissions Have Been Among the Least Effective in Aiding Investigations (based on Oct 2020 NDIS statistics).



JSTOR

# DAILY

from JSTOR, nonprofit library for the intellectually curious

Newsletter

SCIENCE & TECHNOLOGY

# How Forensic DNA Evidence Can Lead to Wrongful Convictions

Forensic DNA evidence has been a game-changer for law enforcement, but research shows it can contribute to miscarriages of justice.

At times, DNA evidence has been misused or misunderstood, leading to miscarriages of justice. A man with Parkinson's disease who was unable to walk more than a few feet without assistance was convicted of a burglary based on a partial DNA profile match. His lawyer insisted on more DNA tests, which exonerated him. In 2011, **Adam Scott's DNA matched with a sperm sample taken from a rape victim in Manchester**—a city Scott, who lived more than 200 miles away, had never visited. Non-DNA evidence subsequently cleared Scott. The mixup was due to a careless mistake in the lab, in which a plate used to analyze Scott's DNA from a minor incident was accidentally reused in the rape case.

QUESTIONS?