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May 19, 2010 5:36 PM PDT

House votes to expand national DNA arrest database

by [Declan McCullagh](#)

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Millions of Americans arrested for but not convicted of crimes will likely have their DNA forcibly extracted and added to a national database, according to a bill approved by the U.S. House of Representatives on Tuesday.

By a 357 to 32 [vote](#), the House approved [legislation](#) that will pay state governments to require DNA samples, which could mean drawing blood with a needle, from adults "arrested for" certain serious crimes. Not one Democrat voted against the database measure, which would hand out about \$75 million to states that agree to make such testing mandatory.

"We should allow law enforcement to use all the technology available to them...to reduce expensive and unjust false convictions, bring closure to victims by solving cold cases, better identify criminals, and keep those who commit violent crime from walking the streets," said Rep. Harry Teague, the New Mexico Democrat who sponsored the bill.

But civil libertarians say DNA samples should be required only from people who have been convicted of crimes, and argue that if there is probable cause to believe that someone is involved in a crime, a judge can sign a warrant allowing a blood sample or cheek swab to be forcibly extracted.

"It's wrong to treat someone as guilty before they're convicted," says [Jim Harper](#), director of information policy studies at the Cato Institute. "It inverts the concept of innocent until proven guilty."

House Speaker Nancy Pelosi and the Democratic leadership [scheduled](#) Tuesday's debate on the bill--called the Katie Sepich Enhanced DNA Collection Act of 2010--

using a procedure known as the "suspension calendar" intended to be reserved for non-controversial legislation.

"Suspension of the rules is supposed to be for praising the winner of the NCAA championship or renaming Post Offices," Harper says. "Things like collecting Americans' DNA are supposed to be fully debated in Congress."

In a surprise move, as the U.S. Congress was expanding the FBI's DNA database, the U.K.'s new coalition government was pledging sharp curbs on its own databases.

Created in the mid-1990s, the UK National DNA Database originally was supposed to store data on convicted criminals, but grew to include records on more than 5 million Britons, including many who were only arrested on suspicion of a crime.

U.K. Deputy Prime Minister Nick Clegg promised once-in-a-century privacy reforms in a [speech](#) on Wednesday: "We won't hold your Internet and e-mail records when there is just no reason to do so. CCTV will be properly regulated, as will the DNA database, with restrictions on the storage of innocent people's DNA. Britain must not be a country where our children grow up so used to their liberty being infringed that they accept it without question."

Background

The United States has followed a similar pattern: first, DNA was collected from convicted criminals, and then the practice was expanded to sweep in Americans arrested on suspicion of a crime.

A 2000 federal law called the [DNA Analysis Backlog Elimination Act](#) required that DNA samples be taken from anyone convicted of or on probation for certain serious crimes. This was challenged in court on Fourth and Fifth Amendment grounds, but a federal appeals court upheld ([PDF](#)) the DNA collection requirement as constitutional.

A second [bill](#) that President Bush signed in January 2006 said any federal police agency could "collect DNA samples from individuals who are arrested." Anyone who fails to cooperate is, under [federal law](#), guilty of an additional crime.

In addition, federal law and subsequent [regulations](#) from the Department of Justice authorize any means "reasonably necessary to detain, restrain, and collect a DNA sample from an individual who refuses to cooperate in the collection of the sample." The cheek swab or blood tests can be outsourced to "private entities."

A May 2009 [ruling](#) from a federal judge in California was the first decision to say that police can forcibly take DNA samples from Americans who have been arrested but not convicted of a crime. U.S. Magistrate Judge Gregory Hollows said the requirement of DNA-sampling felony arrestees did not violate the Fourth Amendment's prohibition of "unreasonable searches and seizures"--but noted that he took no position on whether or not DNA sampling for misdemeanor offenses was reasonable and constitutional.

But that law applied only to federal agencies, and the bill approved this week would provide a strong incentive for state and local governments to follow suit.

If states do follow suit, it's difficult to overstate how many more DNA samples would flood into the FBI's Convicted Offender DNA Index System (CODIS) database. Federal agencies arrested about 133,000 people in 2004, according to [data compiled](#) by the Urban Institute under a Justice Department grant.

But local and state governments arrested nearly 14 million Americans that year, not counting traffic offenses, according to [FBI data](#).

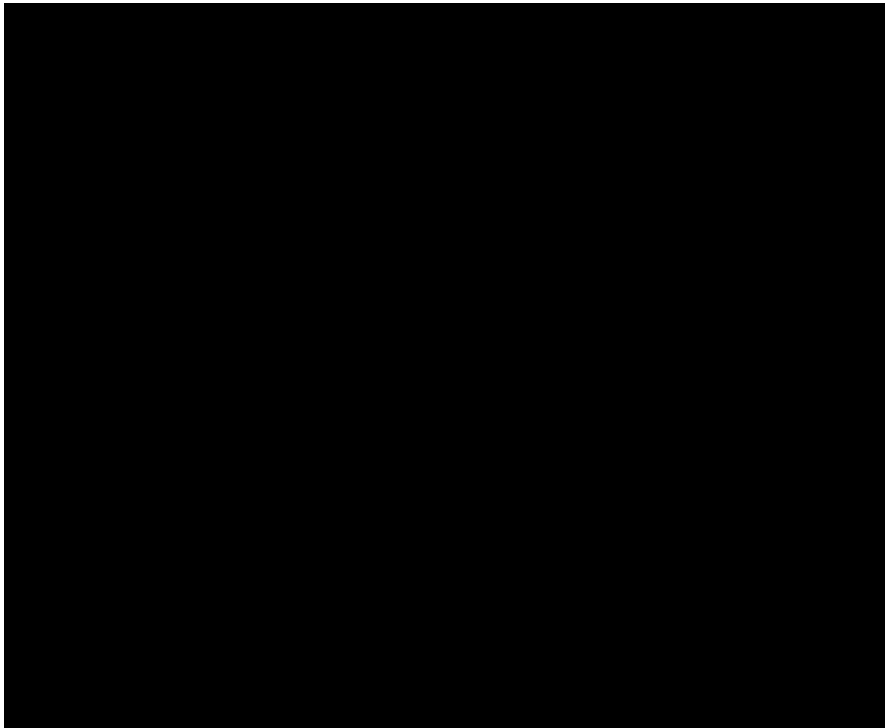
Rep. Teague's proposal would extend DNA sampling and testing to anyone arrested on suspicion of burglary or attempted burglary; aggravated assault; murder or attempted murder; manslaughter; sex acts that can be punished by imprisonment for more than one year; and [sex offenses](#) against minors. The attorney general would be required to report to Congress which states have and have not signed up for the DNA database.

Rep. Dave Reichert (R-Wash.), a former sheriff who spoke on the House floor in favor of the bill, said the measure is supported by the National Sheriffs' Association, the National District Attorney's Association, and the Rape, Abuse, and Incest National Network (RAINN).

The legislation would allow states to receive 15 percent "bonuses" from the Edward Byrne Memorial Justice Assistance Grant Program. The program gave out [\\$165](#)

[million](#) in local funding and [\\$318 million](#) in state funding for fiscal year 2009, not counting stimulus grants.

"We're strongly opposed to expanding collection," says Marc Rotenberg, executive director of the [Electronic Privacy Information Center](#) in Washington, D.C. He suggested the U.S. should follow the lead of the European Court of Human Rights, which [ruled](#) two years ago that holding DNA samples from people arrested but not convicted of a crime violates their privacy rights.



[Declan McCullagh](#) has covered the intersection of politics and technology for over a decade. [E-mail Declan](#).

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