

# Current and Proposed Laws Related to the Use of DNA in the Criminal Justice System

June 25, 2009  
Washington, DC

*Presented by:*

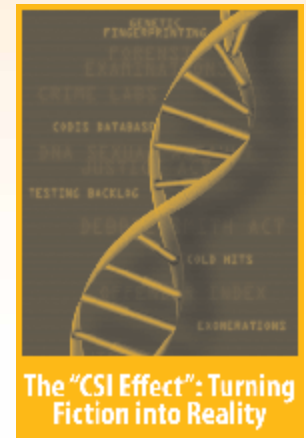
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*Lisa Hurst*

*[lhurst@gth-gov.com](mailto:lhurst@gth-gov.com)*

*Washington, DC (202) 251-8978*

National Center for Victims of Crime  
Regional DNA Trainings



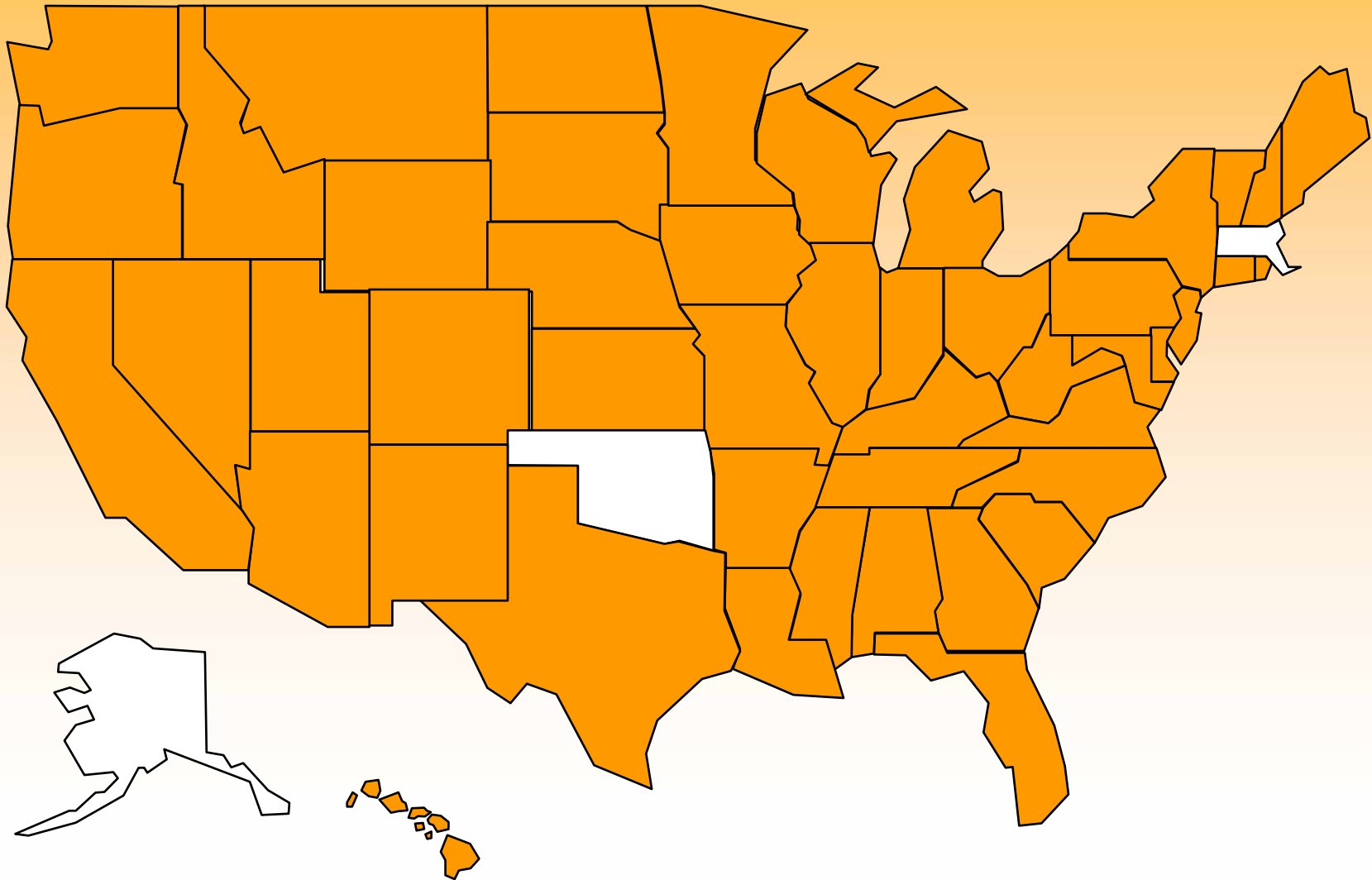
# Politicians have significant role in determining how forensic DNA is used



# POST CONVICTION DNA TESTING

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*Legislation Enacted*



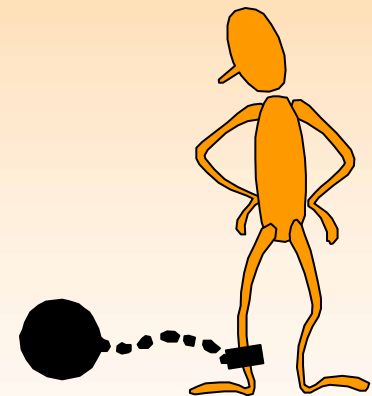
# POST CONVICTION DNA TESTING

## *Legislation Considered by States*

1. What types of convictions / sentences?
2. Was identity an issue at trial?
3. Has inmate always maintained innocence?
4. Would evidence be exonerating?
5. Who pays?

## *Emerging Issues*

- ✓ Compensation Laws
- ✓ Evidence Retention
- ✓ Innocence Commissions



# The Washington Post

JUNE 19, 2009

## *Court Limits Access to DNA Evidence*

*Justices Rule That Inmates Lack Constitutional Right to Testing*

Prisoners do not have a constitutional right to DNA testing after their conviction, the Supreme Court ruled yesterday, even though the technology provides an "unparalleled ability both to exonerate the wrongly convicted and to identify the guilty."

In the court's first examination of how to treat the rapidly evolving field of biological testing, Chief Justice John G. Roberts Jr. wrote for a majority that said it is up to the states and Congress to decide who has a right to testing that might prove innocence long after conviction.

# STATUTE OF LIMITATIONS

# STATUTE of LIMITATIONS & FORENSIC DNA

## ***Parkway Rapist – Salt Lake City, Utah***

11 victims raped between March 1990 and July 1993

Primarily teenagers, with the youngest 9 years-old

5 of the rapes linked by DNA, *MO* links other cases

Utah statute of limitations for rape is 4 years



### ***Rudy Romero***

Aggravated Robbery conviction in 1994 with a sentence of 5 to life

January 2004 - Paroled

Spring 2004 – Returned to prison on parole violation

July 2004 – Scheduled release date

# STATUTE of LIMITATIONS

## Giving DNA databases a chance to work

*DNA databases have made it possible to identify suspects in cold cases – sometimes 20 years or more later*

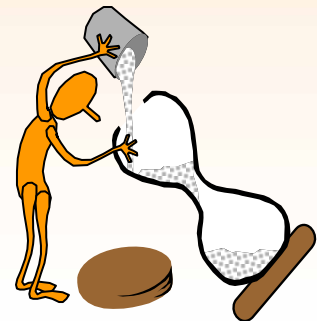
### *Legislation Considered by States*

1. Codification of “John Doe” warrants or indictments
2. Elimination
3. Extension for a set number of years
4. Elimination / Extension if a DNA profile from the crime scene is available

### *Circumventing Legislation*

Prosecutors instituting policies of indicting “John Doe”

Use of DNA database hits at parole hearings



CASE NUMBER: 01XF1363  
WARRANT NUMBER:

STATE OF WISCONSIN      CIRCUIT COURT      MILWAUKEE COUNTY

# FELONY WARRANT (and AUTHORIZATION FOR EXTRADITION)

The State of Wisconsin, Plaintiff  
v.

Doa, John #13, Unknown Male  
with Matching Deoxyribonucleic  
Acid (DNA) Profile at Genetic  
Locations D3S1358 (15,16), vWA  
(17,19), FGA (22,26), D9S1179  
(14), D21S11 (29,30), D18S51 (12,  
16), D5S818 (12, 13), D13S317  
(11, 12), D7S820 (8, 9), D16S539  
(8, 13), TH01 (7, 9), TPOX (8),  
CSF1PO (7)

Defendant

### AUTHORIZATION FOR EXTRADITION (Check One)

- Extradition is authorized from any location within the United States.
- Extradition is authorized from any adjoining state.
- Extradition is not authorized.

Date \_\_\_\_\_

\_\_\_\_\_  
Deputy / Assistant District Attorney

### RETURN

I arrested the named Defendant on \_\_\_\_\_ date  
\_\_\_\_\_, 2000, at \_\_\_\_\_ M.  
month \_\_\_\_\_ time  
at \_\_\_\_\_  
address

city/village of \_\_\_\_\_

Fees: Service - \$ \_\_\_\_\_  
Travel - \$ \_\_\_\_\_  
Total - \$ \_\_\_\_\_

### CRIME(S) AND STATUTE(S) VIOLATED:

Count 01: Sexual Assault, First Degree (Armed) In Violation Of Wisconsin Statutes Section 940.225(1)(b)

### COMPLAINING WITNESS:

Detective Lori Gaglione

### THE STATE OF WISCONSIN TO ANY LAW ENFORCEMENT OFFICE

A Complaint, copy of which is attached, having been filed with me, accusing the Defendant(s) of committing above stated crime(s) contrary to the above stated statutory sections of the Wisconsin Statutes, I find that prob cause exists that the crime(s) was/were committed by the Defendant(s).

You are, therefore, commanded to arrest and bring the named Defendant(s) before a presiding Judge of the CI Court, Criminal Division of Milwaukee County, or, if he is not available, before any acting Judge of the Circuit Cr Criminal Division of said County.

Dated \_\_\_\_\_

\_\_\_\_\_  
Court Commissioner as Judge

ORIGINAL FELONY WARRANT

**STATE OF WISCONSIN      CIRCUIT COURT      MILWAUKEE COUNTY**  
**CRIMINAL DIVISION**

**STATE OF WISCONSIN      Plaintiff      CRIMINAL COMPLAINT**

**vs.**

John Doe #12, Unknown  
Male with Matching  
Deoxyribonucleic Acid (DNA)  
Profile as Genetic Locations:  
D3S1358, vWA, FGA,  
D8S1179, D21S11, D18S51,  
D5S818, D13S317, D7S820,  
D16S539, TH01, TPOX,  
CSF1PO

**Complaining Witness:**

Detective Lori Gaglione

**DA Case Number: 00XF8921**

**Circuit Court Case Number:**

**Defendant(s)**

**THE ABOVE NAMED COMPLAINING WITNESS BEING DULY SWORN SAYS THAT THE ABOVE NAMED DEFENDANT(S) IN THE COUNTY OF MILWAUKEE, STATE OF WISCONSIN.**

**COUNT 01: KIDNAPPING (CARRIES FORCIBLY)**

On December 7, 1994, beginning in the 4300 block of North 60th Street and continuing to two locations in between North 60th Street and the corner of 91st Street and Appleton Avenue, City of Milwaukee, by threat of imminent force did carry the victim from one place to another without consent and with intent to cause her to be held to service against her will contrary to Wisconsin Statutes section 940.31(1)(a).

**COUNT 02: SEXUAL ASSAULT, FIRST DEGREE (ARMED)**

On December 7, 1994, beginning in the 4300 block of North 60th Street and continuing to two locations in between North 60th Street and the corner of 91st Street and Appleton Avenue, City of Milwaukee, did have sexual contact (hand to breast) with the victim without consent by threat of use of a dangerous weapon contrary to Wisconsin Statutes Section 940.225(1)(b).

**COUNT 03: SEXUAL ASSAULT, FIRST DEGREE (ARMED)**

On December 7, 1994, beginning in the 4300 block of North 60th Street and continuing to two locations in between North 60th Street and 91st and Appleton Avenue, City of Milwaukee, did have sexual intercourse (penis to mouth) with the victim without consent by threat of use of a dangerous weapon contrary to Wisconsin Statutes Section 940.225(1)(b).

**COUNT 04: SEXUAL ASSAULT, FIRST DEGREE (ARMED)**

On December 7, 1994, beginning in the 4300 block of North 60th Street and continuing to two locations in between North 60th Street and the corner of 91st Street and Appleton Avenue, City of Milwaukee, did have sexual contact (hand to breast) with the victim without consent by threat of use of a dangerous weapon contrary to Wisconsin Statutes Section 940.225(1)(b).

# STATUTE of LIMITATIONS & FORENSIC DNA

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Aggravated Robbery conviction in 1989 with a sentence of 5 to life

January 2004 - Parole

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**PAROLE DENIED**

# STATUTE of LIMITATIONS & FORENSIC DNA

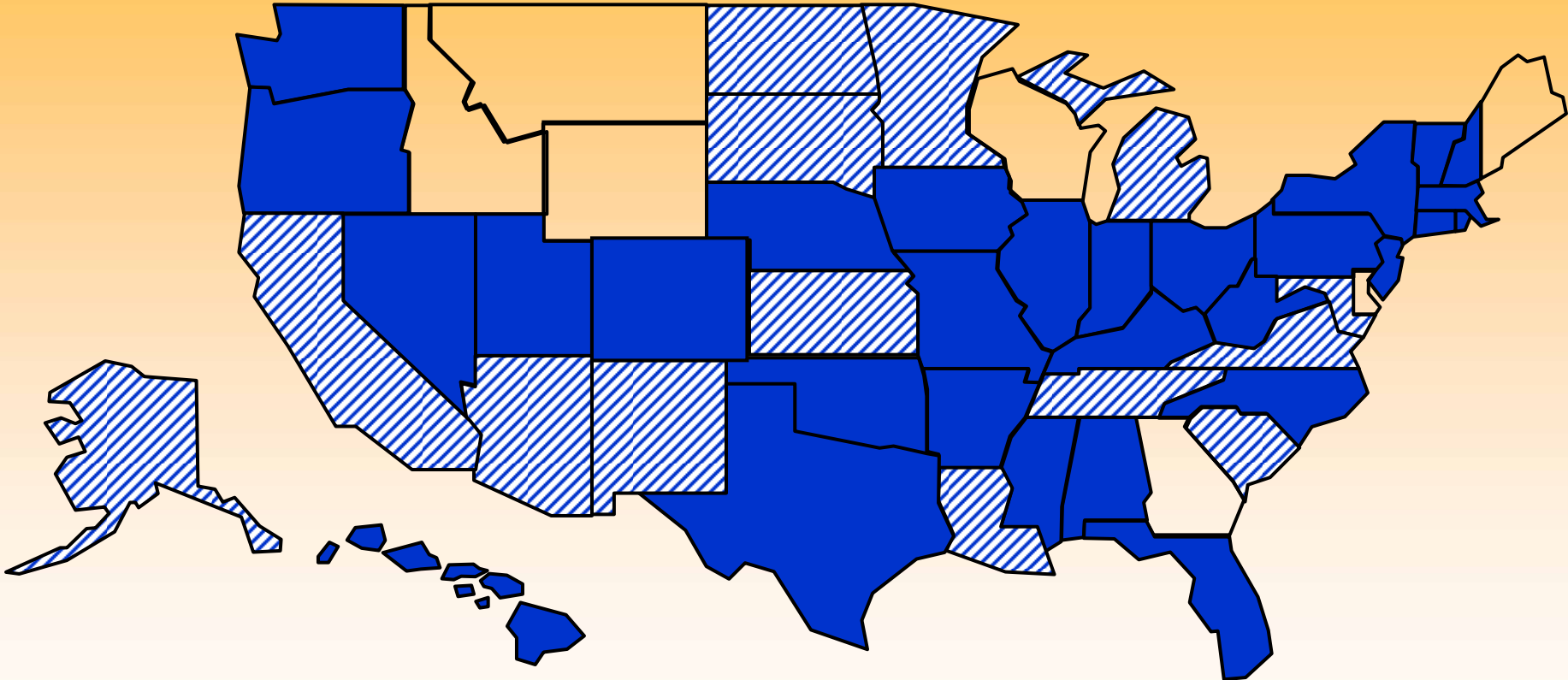
## ***TEXAS SOLUTION***

### *DNA Database Match Information on Criminal History Records*

- ✓ Submitted as an affidavit signed by an investigator and approved by a district judge
- ✓ Accompanied by a set of fingerprints
- ✓ Not limited to cases past the statute of limitations
- ✓ Information to be available for persons arrested for any felony or misdemeanor, other than fine-only misdemeanors

# DNA DATABASE EXPANSION

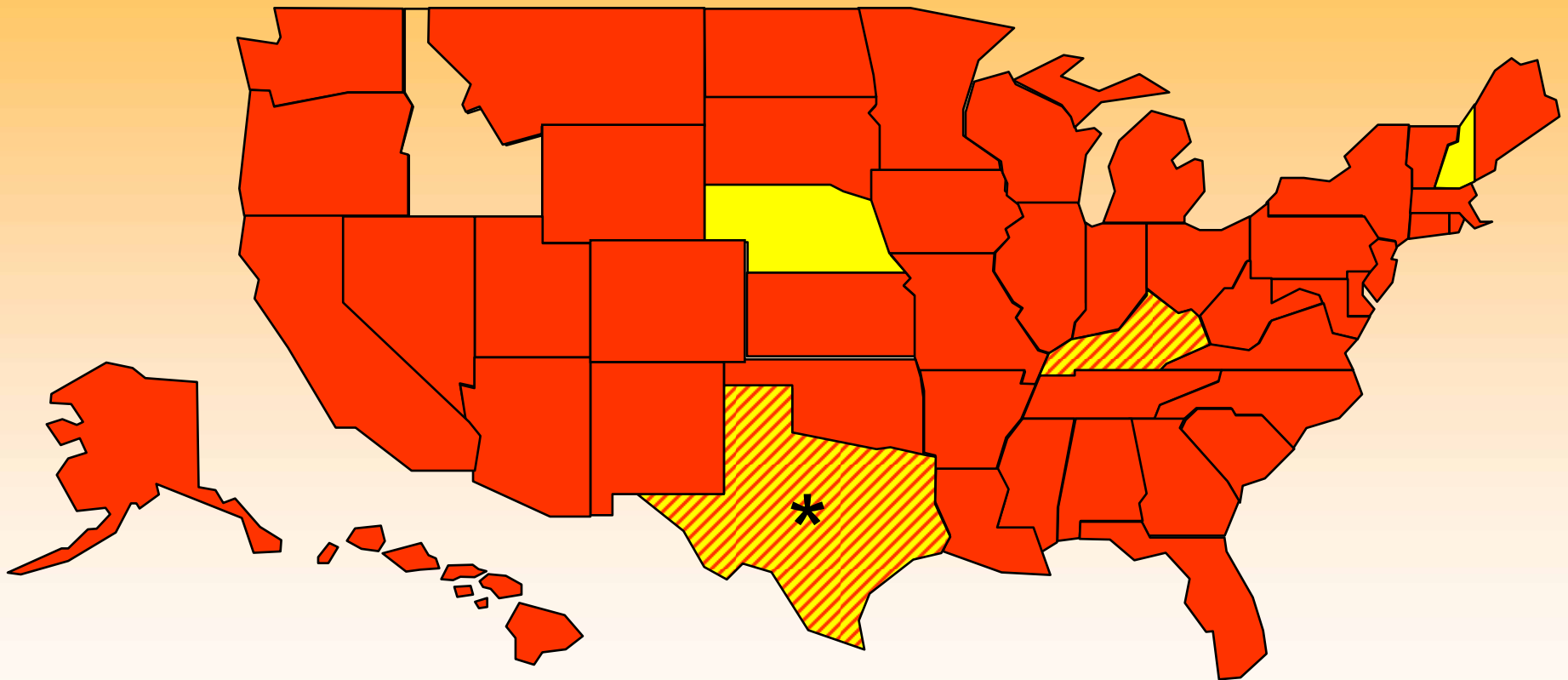
# 2009 Legislative Sessions DNA DATABASE EXPANSION BILLS (ALL TYPES)




- Introduced DNA database expansion legislation in 2009
- ▨ Previously passed arrestee DNA laws


# EXPANSION TO CONVICTED FELONS

# Update on DNA Database Expansion 2009 Legislative Sessions ALL CONVICTED FELONS



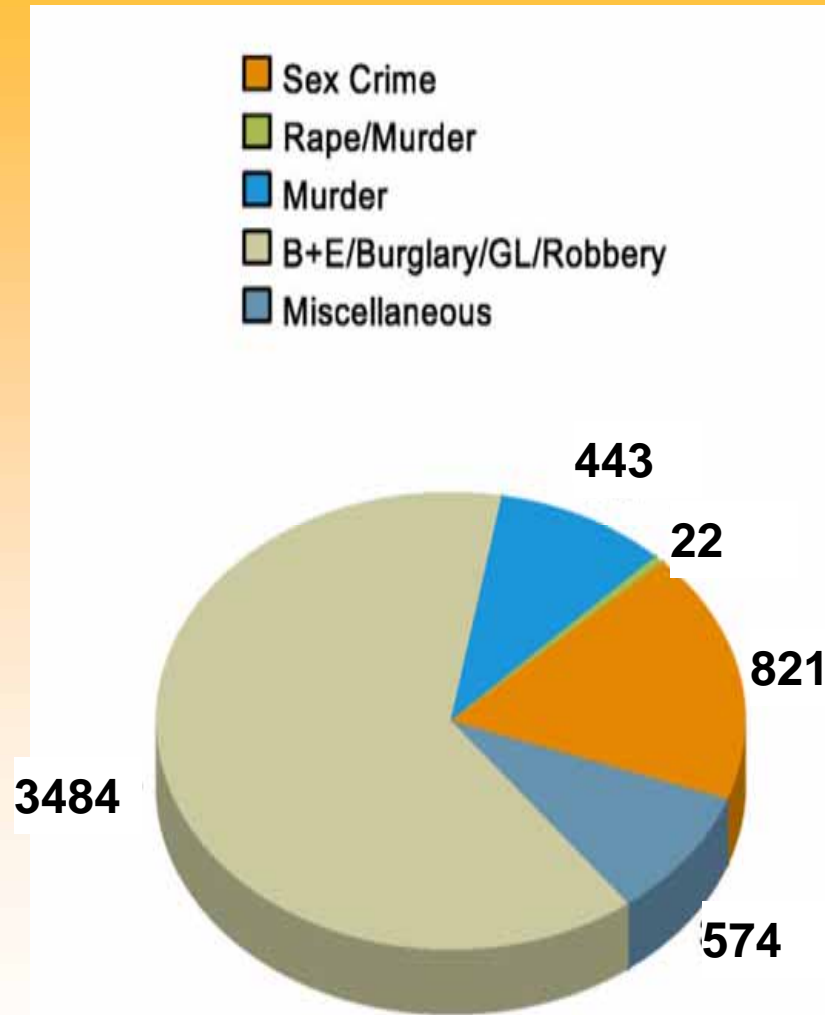
 Collects from all convicted felons (46)

 Passed all convicted felons law in 2009 (2)

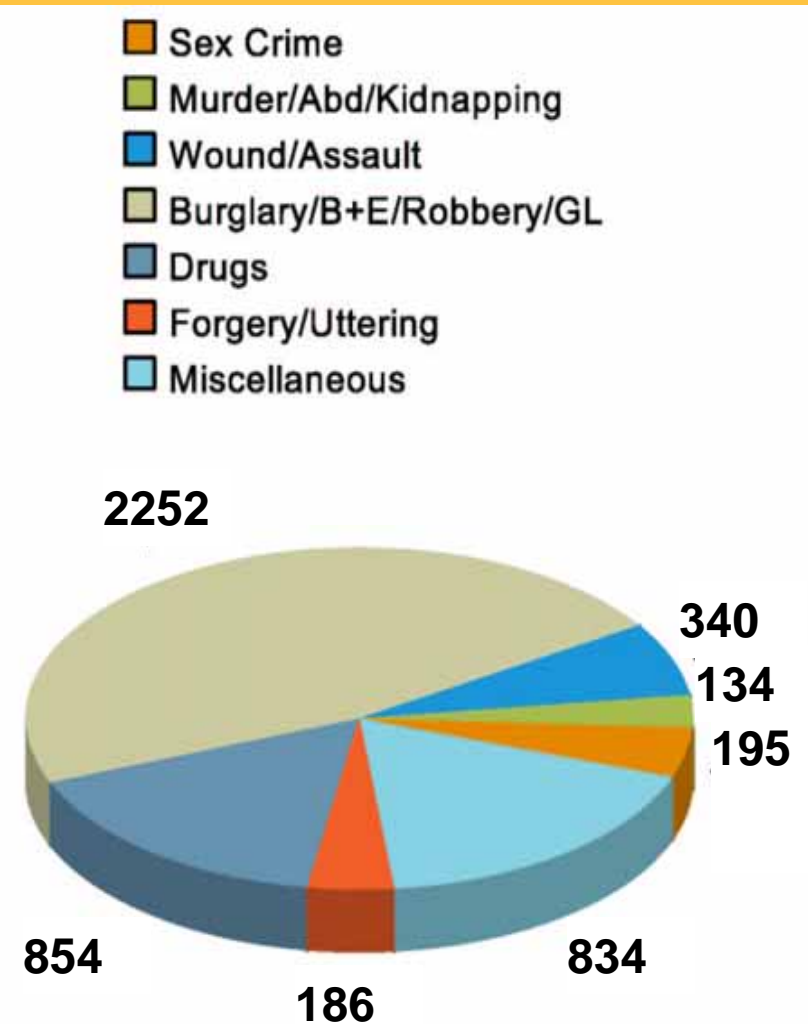
 Only felons in state prison

# Virginia DNA Database Hits

as of 2/28/2009



Types of Crimes Solved



Previous Criminal Conviction of Offender Identified

# KENTUCKY SUCCESS

## The Louisville Courier-Journal

### ***Arrest follows required DNA test***

*May 6, 2009*

In early 2000, a Louisville woman was tied up and then raped by someone who broke into her home.

The woman...did not know the assailant and police were never able to identify him.

... "This was one of those cases that you really don't forget about," said Sgt. Greg Burnette, who originally handled the case. "The act itself was real heinous."

Sawyers, 46, had been convicted last year of flagrant nonsupport, and was serving a probationary sentence. The new state law required him to provide a DNA sample ...



# Misdemeanor Convictions

- The majority of states already collect from certain misdemeanors (stalking, indecent exposure)
- Adam Walsh Child Safety Protection Act requires DNA samples for all sex offender registrations
- Several states are expanding to include broader groups of misdemeanor convictions
  - Utah – All Class A misdemeanors
  - New York – over 30 additional misdemeanors
  - Washington – 12 additional misdemeanors

# *New York successes from adding misdemeanors*

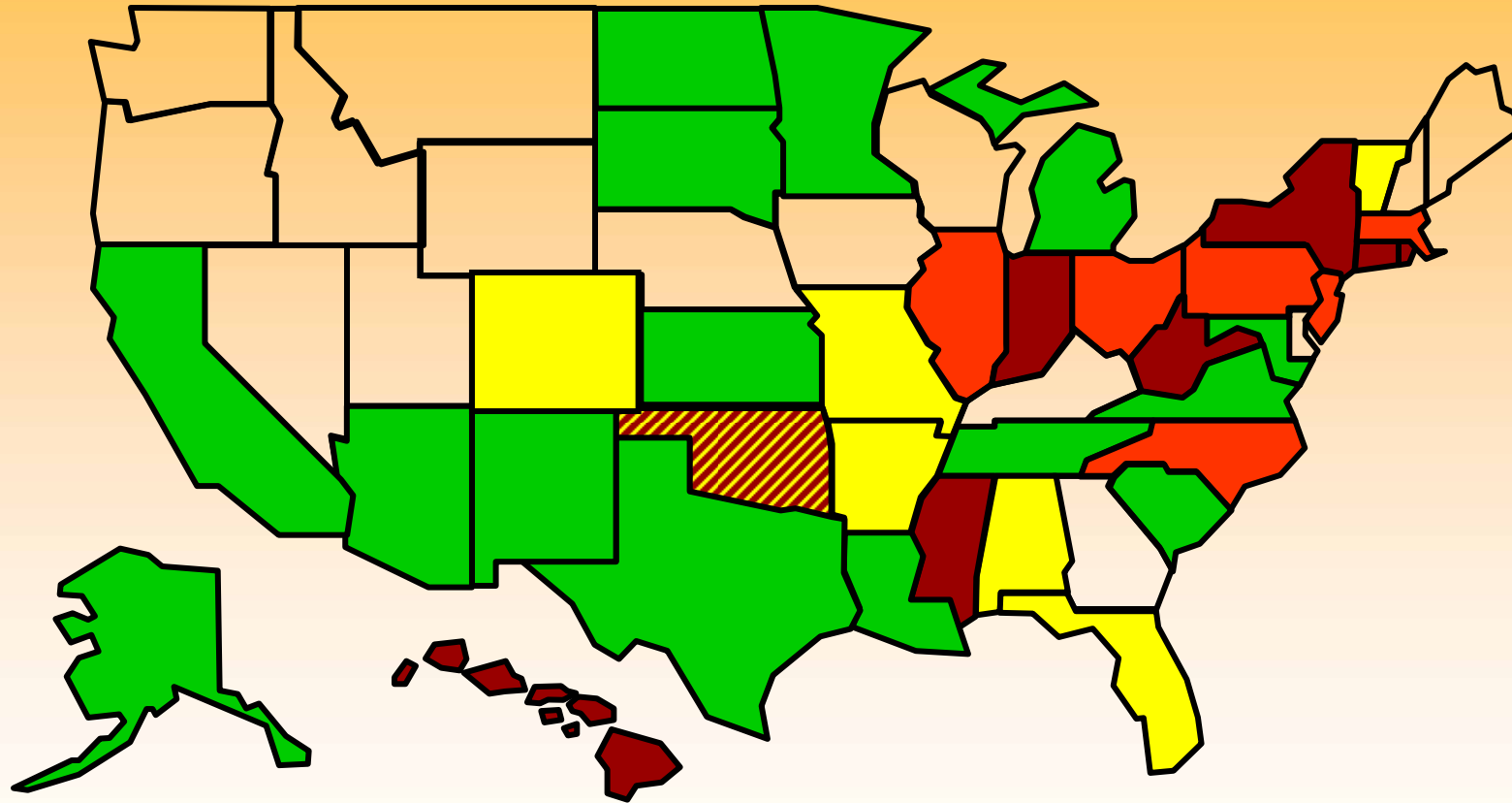
## *Since 2006 Expansion – over 1,000 additional matches*

2006 Qualifying Offense	Case Type						Totals
	Assault	Burglary	Homicide	Larceny	Robbery	Sexual Assault	
Arson	0	1	1	0	0	1	3
Assault 2nd, 3rd	4	38	11	2	11	73	144
Auto Stripping 1st	0	2	0	0	0	1	3
Bribery of Public Servant	1	0	0	0	0	0	1
Conspiracy 1st, 4th	1	1	2	0	3	1	6
Criminal Contempt	0	1	0	0	1	2	4
<b>Criminal Poss./Sale Various</b>	<b>10</b>	<b>39</b>	<b>33</b>	<b>7</b>	<b>15</b>	<b>106</b>	<b>232</b>
Criminal Mischief 1st, 3rd	0	8	0	2	0	2	13
<b>Criminal Trespass 1st</b>	<b>3</b>	<b>27</b>	<b>10</b>	<b>6</b>	<b>5</b>	<b>38</b>	<b>91</b>
<b>Endangering Welfare of Child</b>	<b>0</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>17</b>	<b>26</b>
Falsifying Business Records 1st	0	0	1	0	0	0	1
Forgery 2nd	0	4	1	1	1	2	10
Grand Larceny 2nd, 3rd, 4th	2	17	6	3	5	21	55
Unauthorized use of a vehicle	0	1	0	0	0	2	3
Insurance Fraud 3rd	0	0	1	0	0	0	1
Menacing 2nd	1	5	3	3	2	11	29
<b>Petit Larceny</b>	<b>9</b>	<b>158</b>	<b>15</b>	<b>29</b>	<b>25</b>	<b>84</b>	<b>329</b>
Possession Forged Instrument 2nd	1	5	0	0	0	6	13
Possession of Burglar Tools	0	3	1	2	1	2	9
Possession of Stolen Property 1st, 2nd	0	15	0	5	3	15	40
Reckless Endangerment 2nd	0	4	0	0	0	10	14
	31	338	85	60	73	399	1036

# EXPANSION TO FELONY ARRESTS

# Arrestee DNA Databases

*2009 State Legislative Sessions*



ENACTED in 2009 (6)

Previously passed arrestee legislation (15)

Bill is still viable (6)

Bill has died (7)

# *Illegal Immigration and Federal Arrestees Database*

- 📄 DNA Fingerprint Act passed by Congress in 2006
- 📄 Implementation began in January 2009
- 📄 Law applies to ANY arrest (including misdemeanors) made under federal authority, and to non US citizens who are sent to detention facilities
- 📄 Estimated annual collections: one million samples
  - 150,000 federal arrestees
  - 850,000 detainees

# WHAT IS DRIVING ARRESTEE DATABASE LEGISLATION?

# Legal Challenges to Arrestee Testing: Diverging Opinions

**Minnesota** – Unconstitutional. Violates 4<sup>th</sup> amendment search and seizure protections.

*In the Matter of the Welfare of: C.T.L., Minnesota Court of Appeals, A06-874, File No. J4-05-52203, 10/10/06*

**Virginia** – Constitutional. Not a violation of 4<sup>th</sup> amendment. Compared to fingerprinting.

*Anderson v. Com, Virginia Supreme Court, No. 062051, 9/14/07*

**Federal** -- Constitutional. Not a violation of 4<sup>th</sup>, 5<sup>th</sup> or 8<sup>th</sup> amendment. Compared to fingerprinting.

*United States v. Pool, 09-015-EJG-GGH, Eastern District of California, 5/27/09*



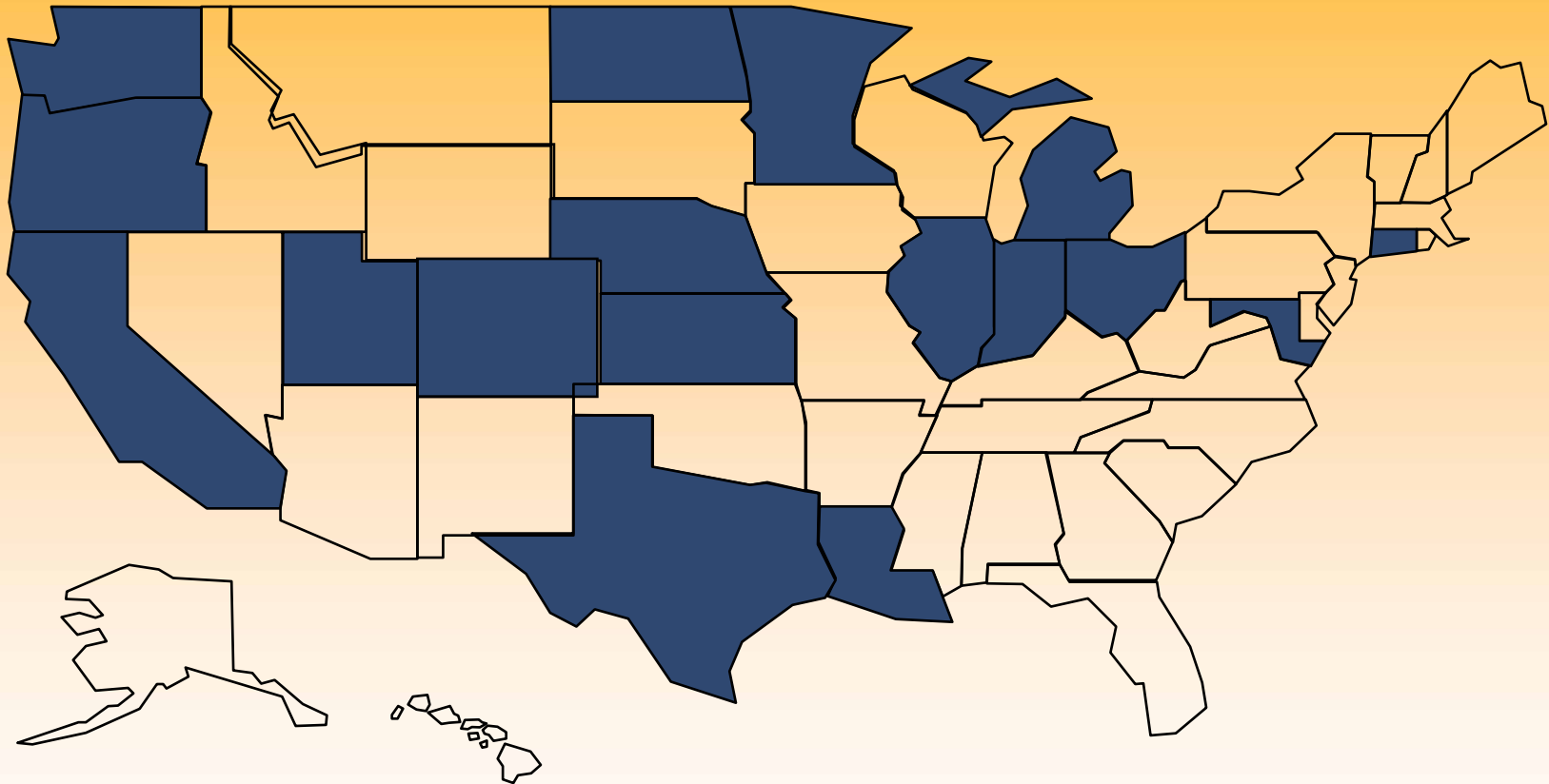
See [www.denverda.org](http://www.denverda.org) for more information

# Missing Persons

- Model Legislation from US Dept of Justice
- Requires coroners and medical examiners to forward DNA samples (tissue, bone, etc.) to crime laboratory for analysis and inclusion in database
- **FREE** testing of unidentified remains and family reference samples at University of North Texas (reference samples **MUST** be collected and submitted by law enforcement)

# Missing Persons

*Enacted Legislation since 2006*



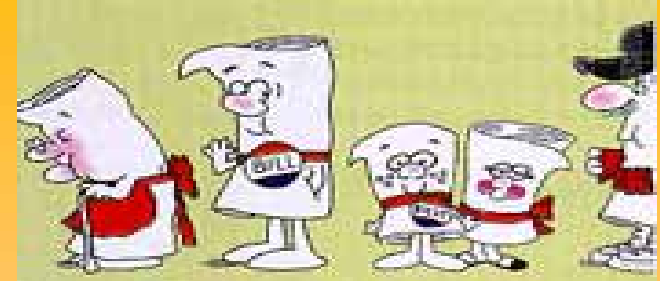
**FREE TESTING (Paid by US DOJ)**

**Contact the Center for Human Identification**

Phone: 1-800-763-3147

Email: [missingpersons@hsc.unt.edu](mailto:missingpersons@hsc.unt.edu)

# OTHER BILLS



- DNA collection from **abortions conducted on minors** – Alabama, California, Florida, Kansas, Tennessee
- DNA collection from **all registered sex offenders, regardless of conviction date** – Adam Walsh Child Safety & Protection Act
- Laboratory Oversight Committees, Mandated Accreditation, Regional Laboratories, **Department of Forensic Sciences** – Missouri, Pennsylvania, Texas, Virginia, Vermont
- **Mandatory course of instruction** for persons engaged in the storage of forensic DNA evidence – New York
- **Continuing education** required in forensic evidence collection for certain physicians and nurses – Texas
- **Expungement** of DNA records for convicted offenders – New Jersey, North Carolina
- **Voluntary Chemical castration** as permissible punishment for sex offenders if DNA evidence confirms identity – Oklahoma
- DNA collection from **homicide victims** – Louisiana, Illinois
- **Mandatory turn-around times** for offender samples and/or cases – Alaska, Minnesota, Illinois

# BACKLOGS & TURNAROUND

## Rape victim's truth

### *Sex con is busted 7 years after no one believed her*

- In 1997, 16 year-old victim was raped in her home on her birthday.
- At the forensic exam, victim was found to be two weeks pregnant (boyfriend).
- Victim was pressured to write a note “admitting” she made up the account of the rape
  - Prosecuted for filing a false report
  - Sentenced to pick up garbage for three days.
  - **CASE CLOSED**

**In 2000, New York City Rape Kit Backlog estimated at 16,000 rape kits**

*Volume too large for review -- all rape kits sent to crime lab for testing*



### ***Vincent Elias***

- 1999 arrest for raping two teens – sentence of 15 years.
- In 2003, detectives inform victim of arrest after a link on the DNA database.
- Elias pleaded guilty and was sentenced to an additional 22 years.

# CASEWORK TURNAROUND... THE MISSING PIECE?



## **Washington State 30-Day Stranger Rape Kit Project** *Coming soon to a city or state near you?*

Guarantees a 30 day turnaround time for all no-suspect stranger rape kits  
(from date of receipt by lab)

- Analyzed AND uploaded



Liaison from Washington Association of Sheriffs and Police Chiefs to work daily with law enforcement throughout state for timely submission of rape kits.

Need partnerships with private labs

# 30-Day Turnaround Time... First Success

**Feb. 5, 2007** 11 year old raped at knife point in her bed

## **SUSPECT #1: David Lynch**

- Lived in a bunker in nearby woods, journals found in bunker described fantasies of hunting children
- **Feb. 6** -- Arrested for the rape
- **Feb. 19** -- NO DNA MATCH
- Prosecutor: *“All the other kinds of evidence pointed pretty strongly at him. The DNA was clearly not his. We knew at that point it was time to refocus the investigation.”*

## **SUSPECT #2: Peter Inouye**

- Sketch matches a neighbor who recently shaved
- Criminal record includes domestic violence protection order
- **Feb. 21** – Surveillance sees suspect spitting on street, saliva collected for DNA testing
- **Feb. 25** -- DNA MATCH

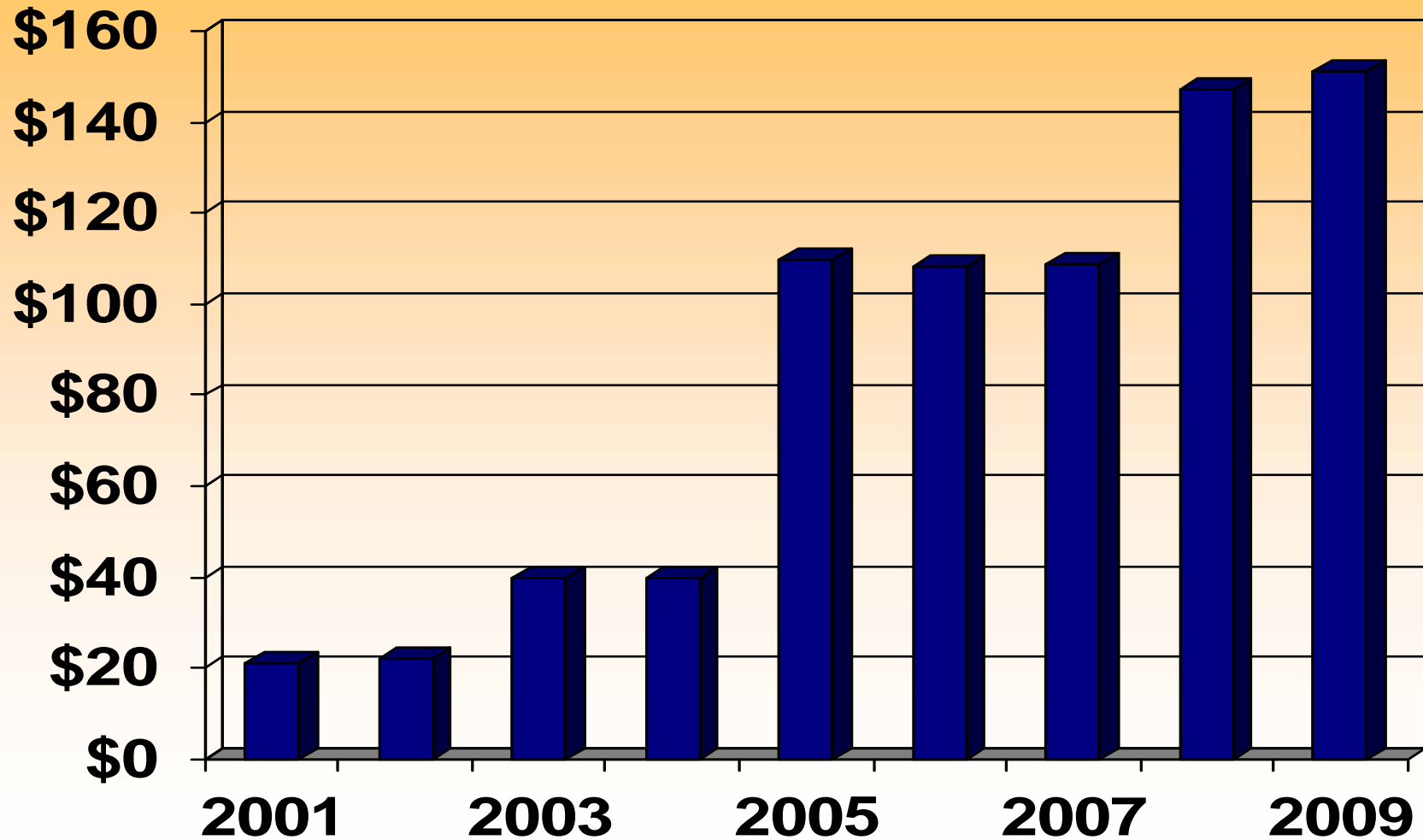


# FUNDING

Great, but how do we  
pay for it?

# Congressional Funding

**Results (in \$ millions) for federal DNA funding**

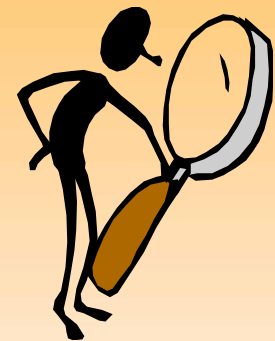


# Solving Cold Cases with DNA

To identify, review and investigate violent crime cold cases that have potential to be solved using DNA analysis and to locate and analyze biological evidence associated with these cases.

Examples of permissible uses:

- Overtime, contracts and part/full time salaries for case review
- Outsourcing of DNA cases, lab overtime



More than \$39 million made in awards to jurisdictions in 34 states

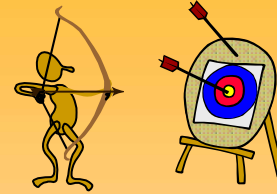
	2005	2007	2008	TOTAL
Maryland State Police	\$600,624	\$0	\$497,923	\$1,098,547
Montgomery County Police	\$171,159	\$0	\$202,757	\$373,916
County of Baltimore	\$0	\$0	\$187,186	\$187,186

***For more information: [www.dna.gov](http://www.dna.gov), Program Manager Chuck Heurich, 202-616-9264, [charles.heurich@usdoj.gov](mailto:charles.heurich@usdoj.gov)***

# STATE FUNDING OPTIONS

- **Earmarks**

New York City rape kit backlog (\$12 million)



- **Offender Pays (Ranges from \$25 to \$500)**

- **Local jurisdiction pays for testing**



- **Public Safety Fee**

~ **Alabama** -- \$2 fee on all criminal and civil cases

~ **Arizona** -- 3% assessment on all civil penalties and traffic fines

~ **California** -- \$1 on every \$10 in fines for criminal offenses (excluding parking tickets).

~ **New Jersey** -- \$2 fee on all vehicle and traffic violations

~ **Missouri** -- \$30 fee on felony convictions and \$15 fee on misdemeanor convictions

# STATE FUNDING OPTIONS

- **Non-Profit / Grassroots Fundraising**

- Women's DNA Initiative -- WDNA (Chicago)**

- ~ Non-profit formed to raise funds for Chicago's rape kit backlog
- ~ Over \$150,000 from corporate donations
- ~ 248 kits identified for testing
  - 102 rape kits yielded DNA
  - 22 matches to known offender profiles
  - 9 forensic case-to-case hits

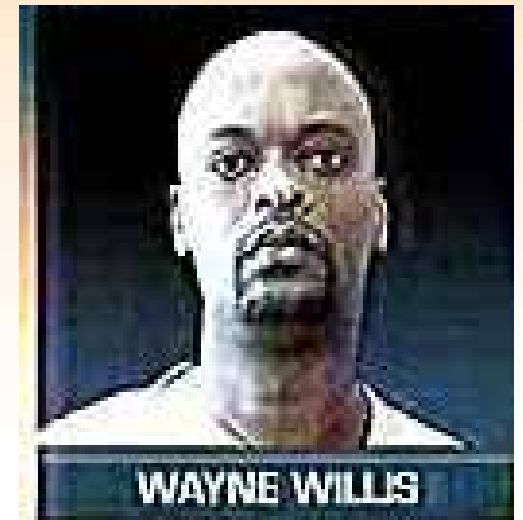
## **WDNA CASE STUDY: Wayne Willis**

Three WDNA rapes to Wayne Willis

Willis ADMITTED to 19 other rapes (primarily teens)

Sentenced to 55 years in Illinois for one rape, faces charges in North Carolina

At sentencing, victim who was raped on Halloween night at age 15 told a detective she took her own son trick-or-treating *for the first time*, now that Willis was apprehended



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Welcome to DNAResource.com, a website for anyone seeking information on the latest developments in forensic DNA policy.

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- [PRESENTATIONS](#)
- [DATABASE EXPANSION](#)
- **JANUARY FEATURE:**  
Reauthorization of Debbie Smith DNA Backlog Reduction Grants introduced in Congress...

### DNA RESOURCE REPORT

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• January 2008 •



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# THANK YOU

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[www.dnaresource.com](http://www.dnaresource.com)