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Justices to decide who must contribute to the DNA databank

Sunday, April 02, 2006

BY ROBERT SCHWANEBERG
Star-Ledger Staff

In 1994, reacting to the rape and murder of 7-year-old Megan Kanka, the state established a DNA databank to collect samples from convicted sex offenders.

Soon, it was expanded to require samples from violent criminals. And by 2003, anyone convicted of an indictable crime had to provide DNA. So far, more than 140,000 samples have been collected -- typically by swabbing the inside of the cheek.

Now, some lawmakers want the law extended to everyone convicted in municipal court of a disorderly persons offense.

Civil libertarians want to know where it will end.

"The next step will be people charged with crimes and the step after that will be all of us," said Lawrence Lustberg, a Newark lawyer who lost a challenge to the constitutionality of New Jersey's DNA collection law before a state appeals court last month.

On Tuesday, the New Jersey Supreme Court agreed to review that ruling. As a result, the justices postponed arguments scheduled for this week on a challenge to the law by the state Public Defender's Office. The cases are expected to be heard together in September.

Around the country, courts have reviewed the constitutionality of DNA databanks established by the federal government and all 50 states. Without exception, those courts have ruled the ability of DNA to solve crimes, catch recidivists and exonerate the innocent outweighs the minimal intrusion of requiring a blood sample or cheek-swabbing.

While those rulings have been uniform, they have not been unanimous.

Last year, a panel of the U.S. Court of Appeals based in Philadelphia split 2-1

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in upholding a federal law requiring a paroled bank robber to provide his DNA sample. The full federal appeals court based in San Francisco split 6-5 in upholding the same law.

"The act is unprecedented in scope and threatens only to expand," U.S. Circuit Judge Stephen Reinhardt wrote for the dissenters. "All Americans will be at risk, sooner rather than later, of having our DNA samples permanently placed on file in federal cyberspace."

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