

# Court mulls DNA sampling

## State's criminals protest practice

Posted by the [Asbury Park Press](#) on 09/27/06

BY MICHAEL RISPOLI  
GANNETT STATE BUREAU

TRENTON — Criminals have to give up their belts and shoelaces when they go to prison, but they may be able to hold onto their DNA.

The state Supreme Court Tuesday heard arguments from lawyers who maintain the sampling and storage of DNA from those who are convicted under the state Database and Databank Act of 1994 is unconstitutional.

Opponents of the law say the retrieval of DNA is in direct violation of the Fourth Amendment, which protects people from unlawful search and seizure.

Larry Lustberg, director of the Gibbons Fellowship in Public Interest and Constitutional Law, argued before the court that only in certain situations can evidence be taken without reasonable suspicion.

"There are very few times in our society when we allow people to be searched without any reason to believe they in particular did something wrong. We require individualized consideration. This really flies in the face of that," Lustberg said. "Its main use is to solve crimes, and the law is that when you're trying to gather evidence to solve crimes, you must have some level of individualized suspicion."

In special situations, such as school and car searches, a warrant is not needed for a search. In everyday law enforcement, however, a warrant is necessary.

The Office of the Attorney General says this DNA sampling does not violate the Fourth Amendment and does not require a search warrant. Larry Etzweiler, senior deputy attorney general, said this situation is unique because the law is concerned with not everyday citizens, but the convicted.

"The criminal has no expectation of privacy. You sacrifice it permanently," Etzweiler said.

To its supporters, the law not only aids in the recording of identification but also helps deter crime and can even help free innocent people behind bars.

"It very much helps to convict the guilty and exonerate the innocent. It enhances accuracy in the criminal justice process," Etzweiler said.

Justice Barry Albin cited the recent case of Jeffrey Mark Deskovic of White Plains, N.Y., who was released after 16 years in prison after being convicted in the beating, raping and murder of a classmate. Although DNA evidence at the time showed he was not the murderer, police testified in court that he had confessed.

Lustberg does not see it as that cut and dry. He said that although the issue seems reasonable at first glance, there are consequences if the law is not repealed.

"The next step, if this is affirmed, is that everybody is going to be asked for DNA," said Lustberg.

Copyright © 2006 Asbury Park Press. All rights reserved.

Use of this site signifies your agreement to the [Terms of Service](#) and [Privacy Policy](#). (Updated June 7, 2005) Site design by [Asbury Park Press](#) / [Contact us](#)