

Policing and Crime Bill 2008-09 Briefing Paper The ethics of retaining DNA

The Policing and Crime Bill includes a clause that would allow the Secretary of State to make regulations as to the retention, use and destruction of DNA and fingerprints. In advance of the Committee Stage debates in June and July 2009, this paper outlines some of the ethical issues raised by the retention of innocent people's DNA by the police, as set out in the Nuffield Council on Bioethics' report *The forensic use of bioinformation: ethical issues*.

Current law

DNA can currently be taken from anyone arrested for a 'recordable' offence, and retained indefinitely without their consent on the DNA Database, regardless of the outcome of the case.

Home Office proposals

Ministers have accepted, following the *S & Marper* case in the European Court of Human Rights, that it is inappropriate to keep indefinitely samples and profiles from people who are arrested but not subsequently convicted. The current Home Office proposal is for the regulations to limit the retention of DNA profiles to 6 or 12 years, depending on the seriousness of the case involved.

Proportionality

In making regulations about the retention of DNA, a proportionate balance should be struck between respecting individual rights to liberty, autonomy and privacy, and the need to restrict these rights, in appropriate circumstance, to protect people from crime.

The 'no reason to fear if you are innocent' argument

It is sometimes argued that innocent people have nothing to fear from being on the National DNA Database. However, this argument ignores several points:

- If your DNA is on the Database, it could be matched to that found at a crime scene even if you are innocent, for example if you had been at the crime scene at an earlier date. This does not mean you will be charged, but any involvement in a criminal investigation is distressing.
- Stigma: the Database was originally intended to represent the criminal community and people may feel that being on it implies they are a criminal.
- Sensitive genetic information can be ascertained from DNA profiles, such as family relationships. The fact that the police and others have access to people's DNA without their consent could be seen as an intrusion of privacy.

Evidence

Often-quoted statistics about 'matches' to unconvicted people on the Database (for example, 'involving 114 murders, 55 attempted murders and 116 rapes') do not tell us whether these cases actually resulted in a conviction or whether DNA evidence was essential or even relevant to the case. In the absence of any good evidence that retaining the DNA of innocent people helps tackle crime, and in light of privacy concerns, the Nuffield Council concluded in 2007 that it could not be justified. In its current consultation document 'Keeping the Right People on the DNA Database', the Home Office has presented new evidence to justify its proposals of retaining for 12 years the DNA of people arrested but not convicted for serious offences, and 6 years for people arrested for all other recordable offences. This evidence requires thorough analysis.