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Arrested in O.C.? DNA sample could buy release

By TAMI ABDOLLAH
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Orange County, which already has one of the nation's most aggressive programs for taking DNA samples from convicts, has quietly begun offering a deal to some people who have only been arrested: give a DNA sample and have your charges dropped.

The district attorney's office, which runs its own database, has started expanding its program by handling some cases "informally," Orange County Dist. Atty. Tony Rackauckas told the Board of Supervisors this week. In those cases, if a person who has been arrested agrees to give a DNA sample, "we would not even file" charges.

"There'd be no necessity for a guilty plea, and a dismissal, or anything like that," he said. "It's advantageous to the defense, and it's advantageous to us, because we're able to handle more cases with fewer resources."

The DNA sample could act as a deterrent for potential criminals and be a useful investigative tool for law enforcement, Rackauckas told supervisors. But the deal to drop charges in exchange for DNA samples, which appears to be unique in the country, has drawn objections both from civil libertarians and from some in law enforcement.

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The plan became public when Rackauckas sought approval from supervisors to add a mandatory \$75 fee to the deal. Supervisors approved the fee, allowing Rackauckas' department to process more DNA profiles at a time of state budget cuts. The plan applies to people arrested for nonviolent misdemeanors, including petty theft, trespassing and low-level drug-possession felonies.

Representatives of some Orange County police agencies objected to the idea of the district attorney releasing suspects whom their officers have arrested and booked.

"All law enforcement will be demoralized, especially on narcotics cases," said Wayne Quint, president of the Assn. of Orange County Deputy Sheriffs.

"I don't believe any plea deals for DNA should ever occur, period," he said. "There's absolutely no scientific empirical evidence to show that it's a deterrent."

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Civil liberties advocates and defense attorneys say the plan would allow prosecutors to wrongly pressure people who have not been convicted of any crime to give the government a DNA sample.

Federico Sayre, an attorney based in Santa Ana who represented Rodney King in his case against Los Angeles, said most attorneys would be obliged to advise clients to provide a sample and pay the fee if they can afford it -- even if the client asserts his or her innocence -- to avoid a possibly prolonged, and more punitive, legal experience.

The district attorney's office is essentially saying that "the person who is arrested, though not convicted, is someone who has given up some of their rights as a regular citizen," Sayre said.

Erwin Chemerinsky, the UC Irvine Law School dean and constitutional scholar, said he was troubled by the program although he supports reducing the number of people imprisoned for nonviolent offenses.

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This "troubles me because I do not think that we yet have adequate safeguards to protect privacy," Chemerinsky said. He also questioned whether a \$75 fee would prevent release for those too poor to afford it.

Rackauckas launched the DNA database in January 2007 with \$875,000 approved by the Board of Supervisors. It is one of a small number of databases maintained by local governments separate from the larger databases maintained by states and the FBI.

Critics call such local databases "rogues" because they are not subject to state and federal guidelines designed to prevent DNA profiles from being misused. The Orange County database is even more unusual because it is not run by an accredited crime lab.

Rackauckas' decision to expand DNA collection to some people who are merely arrested is an example of why critics are concerned about databases that exist outside the federal system, said UCLA Law School professor Jennifer Mnookin, an expert on the subject.

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When DNA collection was established, the state and federal government created limits, and "there was debate and public discussion, to some extent, of when it's appropriate to do this," Mnookin said. "So I'm quite troubled by these so-called rogue databases, where prosecutors are claiming for themselves the power to decide when we ought to be keeping biological samples for people.

"I don't think it should be up to individual prosecutors without broader legislative oversight," she said.

In January, the state database began accepting local jurisdictions' DNA profiles of people arrested on suspicion of serious crimes but not yet convicted. This does not apply to people arrested for misdemeanors.

Rackauckas could not be reached for comment Wednesday because he was at a DNA conference, but a district attorney spokeswoman defended the plan. "It's completely voluntary, so no one has to do this," said Susan Kang Schroeder. "There's consequences when you commit a crime. This is actually a better option for them than other avenues of, I guess, going through the penal process."

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As of December 2008, 4,000 people had given DNA samples and signed a consent form to be in the county's database. Schroeder said she could not provide figures on how much the database has grown since then, but said the new plan would allow prosecutors to more aggressively expand it.

Fountain Valley Police Chief Paul Sorrell, president of the Orange County Chiefs of Police and Sheriffs Assn., also backed the plan, saying that expanding the DNA database was "absolutely vital" in the effort to use DNA to deal with property crimes, which may lead to more violent crimes.

"In a perfect world, I think most of us would prefer that were someone accused and arrested for a crime, they proceeded through the criminal justice system in a more traditional sense," Sorrell said. "However, these are very difficult times, and the volume of crimes has had a huge impact on the D.A.'s office and law enforcement agencies."

On Wednesday, Supervisor Chris Norby said the program, though not perfect, would help save the county money and prevent crime. Those who truly feel they are not guilty should fight the charges but weigh the risks of doing so, he said.

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"Our judicial system gives everybody the opportunity for a fair trial," Norby said. "But if everybody takes advantage of it, it'd break down. . . . No system's perfect, but weighing the trade-offs, I think this is a positive."

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