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Case Study: Lawfully Owed DNA Cuyahoga County, OH

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DNA Swabbing Laws

1990 – CODIS begins as pilot project w/ 12 state and local forensic laboratories

1994 – DNA Identification Act (42 U.S.C. §14132)

- Authorizes establishment of National DNA Index

1995 – Ohio Senate Bill 5

- Authorizes BCI to establish DNA database
- Requires persons convicted of felonies to submit to DNA collection

1997 – Ohio begins taking blood samples from felony convicts and uploading to CODIS

2010 – Ohio Senate Bill 77 was passed (became effective 7/1/11)

- Requires persons arrested for felonies or certain misdemeanors to submit to DNA collection

DNA Profiles in CODIS

Ohio

Statistical Information	Total
Offender Profiles	474,132
Arrestee	207,992
Forensic Profiles	58,774
NDIS Participating Labs	8
Investigations Aided	19,083



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Problems Collecting DNA in Cuyahoga County

Anthony Sowell



- October/November 2009 – the remains of 11 women were found at Sowell's Imperial Avenue home
- Sowell's DNA was not in CODIS despite having served a 15-year prison sentence for a 1989 rape
- Investigation revealed Sowell was swabbed in prison, but his DNA was never entered into CODIS

Larry McGowan



- McGowan's DNA was linked to samples from three Cleveland rapes and one Cleveland homicide which occurred between 1996 and 2010, but he remained unknown until he was swabbed by a suburban police department after an arrest in 2012 for rape
- McGowan had been in prison for over a decade, so his DNA should have been in CODIS before he was released in 2012 (and arrested for rape two weeks later)
- Investigation revealed McGowan was swabbed between 2002 and 2003, but his DNA was never entered into CODIS

George Young (John Doe #1)



- Young's DNA was linked to samples from two Cleveland rapes, one in 1993 and one in 1996, but he remained unknown until he was convicted of a 2012 shooting and sentenced to 32 years prison
 - Young was swabbed upon entry into prison
 - Young should have been swabbed at arrest
- Young has since been convicted of the 1993 and 1996 sexual assaults

Causes of Lapses in Collecting DNA from Prisoners:

- DNA samples were being mailed via prison mailrooms that were staffed by inmates
- Prison officials were asking inmates before release if they had been swabbed and if they responded yes, then no swab was collected (officials had no way of verifying)
- 200 samples were not tested by the private lab that had been contracted to test the swabs

Cleveland Police Department (CPD) Swabbing of Felony Arrestees

- Contrary to state law, CPD's policy allowed offenders arrested for felonies to opt out of being swabbed for DNA in exchange for a misdemeanor obstruction of official business charge
- CPD did not document:
 - # of arrestees who refused DNA collection
 - Whether refusers were actually charged with obstruction of official business



Original Project Proposal

1. Conduct census
2. Swab offenders who lawfully owe
3. Make changes to policy/practice



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Progress on Census

BCI Arrestee Data

Dates: July 1, 2011 to December 31, 2016

Arresting agencies: Cleveland Police Department (CPD) & Cuyahoga County Sheriff's Office (CCSO)

Offenses: Felony offenses, according to computerized criminal history (CCH) – but many charged under state codes (which can be misdemeanor or felony)

Total: 16,213 offenders who “possibly” owe

Refining BCI's List

BCI data: people who “possibly” owe (n=16,213)

MERGED WITH

Justice Matters data: people who were charged with a felony between July 1, 2011 and May 2017 in the county

=

8,126 in both databases (owed DNA)

8,087 yet to be determined

Conducting Part 1 of Census

Anticipated

- Get arrestee data from CPD and use OHLEG to determine if in CODIS
- Maximum of several thousand who owe

Reality

- BCI provided list
- WAY MORE offenders who owe
- Database merging



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Progress on Swabbing

Swabbing Offenders

Anticipated

- Brainstorm ways to collect in Year 1
- Collect in Years 2 & 3
- Investigators find and swab offenders

Reality

- Commenced collection in Year 1
- Contacted partner agencies for assistance in swabbing
- Investigators more involved in data collection than actual swabbing

Proposed Ways to Swab

1. Suspect in SAKI investigation
2. **Pending criminal case**
3. Condition of expungement
4. Consent

Suspects in SAKI Investigations

Anticipated

- Swab most suspects who owe DNA

Reality

- Swabs only entered into CODIS if arrested/indicted

O.R.C. 2901.07

Can swab without court order:

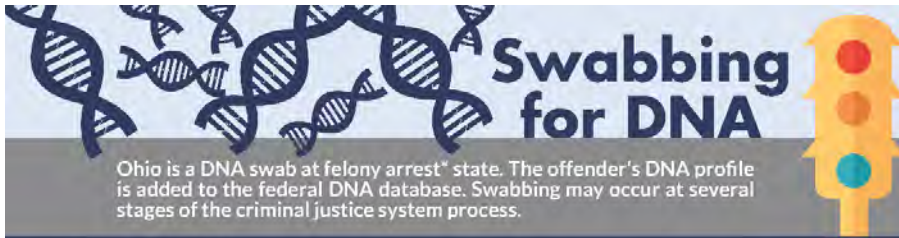
- If arrested for felony, arresting agency can swab during intake/booking process;
- If arrested for felony and missed during intake/booking process or no formal arrest, arresting agency can swab at time of arraignment or first appearance;
- If convicted of felony or qualifying misdemeanor and sentenced to prison, jail, or community-based correctional facility, detention facility can swab;
- If convicted of felony or qualifying misdemeanor and on probation, parole, or some other form of supervised release, probation department or adult parole authority can swab.

O.R.C. 2901.07

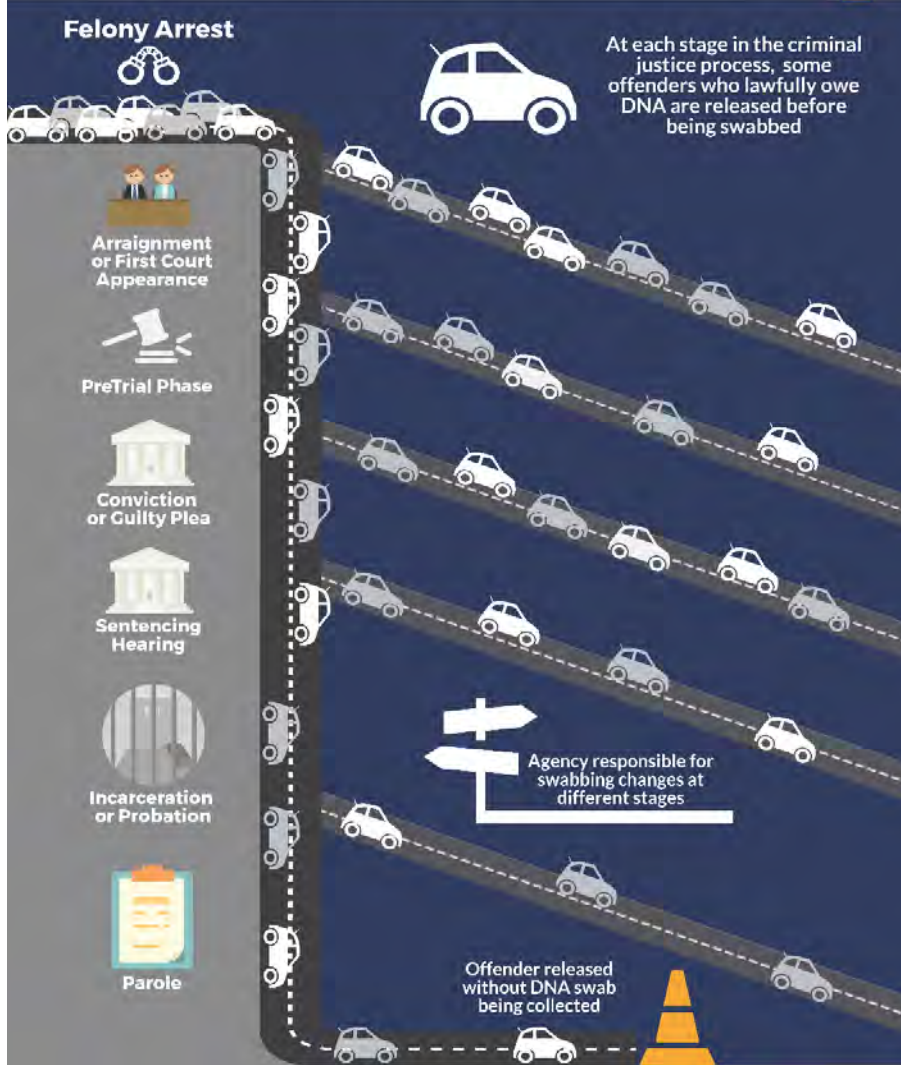
Need court order to swab:

- If arrested for felony and missed during intake/booking process or at time of arraignment/ first appearance, can swab during pre-trial phase;
- If convicted of felony or qualifying misdemeanor and missed up to that point, can swab at time of sentencing .

Swabbing for DNA



Ohio is a DNA swab at felony arrest* state. The offender's DNA profile is added to the federal DNA database. Swabbing may occur at several stages of the criminal justice system process.



Sheriff's Office

CCSO data: defendants in county jail (June 2017)

MERGED WITH

BCI data: people who “possibly” owe (n=16,213)

=

137 in both databases,

94 offenders actually owe DNA

Probation Department

Probation data: Currently on probation (June 2017)

MERGED WITH

BCI data: people who “possibly” owe (n=16,213)

=

846 in both databases,

688 offenders actually owe DNA



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Changes to Policy/Practice

Changes to Policy and Practice

Anticipated

- Occur in Year 3

Reality

- Each agency has a role in changing policy and practice
- Agencies want to change now, not Year 3

Tracking Swabbed Offenders

Anticipated

- Could track more easily, smaller number

Reality

- Way more offenders than anticipated
- Working with other agencies = not so easy to track what happens
- BCI providing reports of swabbing, connections
- What happens when connected to other crimes....don't have access to all law enforcement records

To be done.....

- Complete census
- Research likely reasons for not swabbing
- Provide recommendations based upon research for changes to policy and practice
- Assess if improvement over time

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