

Testimony of

The Honorable Joseph R. Biden, Jr.

May 14, 2002

99.9 percent - that is how accurate DNA evidence is. 1 in 30 billion - those are the odds someone else committed a crime if a suspect's DNA matches evidence at the crime scene. 20 or 30 years - that is how long DNA evidence from a crime scene lasts.

The FBI tells us that since 1998 the national DNA database has helped put away violent criminals in 4,179 investigations in 32 states.

How? By matching the DNA crime evidence to the DNA profiles of offenders. Individual success stories of DNA "cold hits" in sexual assault cases makes these numbers all too real.

For instance, in Florida, Kellie Green was brutally attacked and raped in the laundry room of her apartment complex. Because of lack of funds, her rape kit sat on the shelf for three years until a persistent detective had it analyzed. The evidence matched the profile of a man already incarcerated for beating and raping a woman 6 weeks before Kellie. He was charged and convicted in Kellie's assault.

In light of the past successes and the future potential of DNA evidence, the reports about the backlog of untested rape kits and other crime scene waiting on shelves in police warehouses are simply shocking. I have called this hearing today to hear first-hand how DNA evidence has solved these "cold cases."

Today I am introducing legislation - "The DNA Sexual Assault Justice Act of 2002" - to strengthen the existing federal DNA regime as an effective crime fighting tool. And today I hope to get the answers to five basic questions:

First - exactly how bad is the backlog of untested rape kits nationwide? A 1999 government report found over 180,000 rape kits were sitting - untested - on the storage shelves of police department and laboratories all across the country.

While recent press reports estimate that the number today is approaching 500,000 untested rape kits, I am told that there is NO current, accurate numbers of the backlog.

Behind every single one of those rape kits is a victim who deserves recognition and justice. Accordingly, my legislation would require the Attorney General to survey every single law enforcement agency in the country to assess the backlog of rape kits waiting to undergo DNA testing.

Second, how can existing federal law be strengthened to make sure that state crime labs have the funds for the critical DNA analysis needed to solve sex assault cases? To fight crime most effectively, we must both test rape kits and enter convicted offender DNA samples into the DNA

database. The bill I'm introducing would: (1) increase current funding levels to both test rape kits AND to process and upload offender samples; and (2) allow local governments to apply directly to the Justice Department for these grants.

Third, what assistance does the FBI need to keep up with the crushing number of DNA samples which need to be tested or stored in the national database? I am told that the current national DNA database - known as the Combined DNA Index, or "CODIS" - is nearing capacity of convicted offender DNA samples. My bill would provide funds to the FBI to (1) upgrade the national DNA computer database to handle the huge projections of samples; and (2) process and upload convicted offender DNA samples into the database.

Fourth - what additional tools are needed to help treat victims of sexual assault? One group that understands the importance of gathering credible DNA evidence are forensic sexual assault nurse examiners, who are sensitive to the trauma of this horrible crime and make sure that patients are not revictimized in the aftermath. Likewise, we have to make absolutely certain that law enforcement officials are well-trained on how to collect and preserve DNA from crime scenes.

The bill would create a new grant program to carry out sexual assault examiner programs and training. It would acquire or improve forensic equipment. And it would train law enforcement personnel in the handling of sexual assault cases and the collection and use of DNA samples for use as forensic evidence.

Fifth - what can be done to ensure that sexual assault offenders who cannot be identified by their victim are nevertheless brought to justice?

Profound injustice is done to rape victims when delayed DNA testing leads to a "cold hit" after the statute of limitations has expired.

For example, Jeri Elster was brutally raped in her California home, and for years the police were unable to solve the crime. Seven years later, DNA from the rape matched a man in jail for an unrelated crime. Yet the rapist was never charged, convicted or sentenced because California's statute of limitations had expired the previous year.

The bill I'm introducing would change current law to authorize federal "John Doe/DNA indictments."

This will permit federal prosecutors to issue an indictment identifying an unknown defendant by his DNA profile within the five year statute of limitations. Once outstanding, the DNA indictment would permit prosecution at anytime once there was a DNA "cold hit" through the national DNA database system.

So let's take a look at all of these issues this morning: faster DNA testing, better treatment for rape victims, more creative uses of sexual assault indictments, and how to make sure that state crime labs are participating in the national DNA database. The technology exists to bring solace to countless victims - and to make our streets safer in the process. Our panel of experts will help explain the proper federal role, and I look forward to their testimony.

Senator Grassley, I turn to you for any opening statement you may have.

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