

Biometrics use raises civil liberties concerns

Lacey Shepard - Capital News Service - October 4, 2013

LANSING — A recent U.S. Supreme Court decision on DNA testing has raised concerns among civil liberties advocates about the use of biometrics in police work.

In a Maryland case, a suspect was arrested and had his cheek swabbed to collect a DNA sample. After the sample connected him to a rape case, he was convicted of that crime instead of the unrelated assault charge for which he was arrested.

"They took the guy's DNA sample under the impression that they needed to ID and fingerprint him," said Devin Schindler, a constitutional law professor at Thomas M. Cooley Law School in Grand Rapids. "They tested his DNA sample against the database and found he was a suspect in a rape case."

Michael Rataj, a Detroit attorney, said that invasive situations such as collecting DNA samples may infringe on the Fourth Amendment, which protects people against unreasonable searches of their persons, houses or documents without a warrant.

"Absent a warrant, they shouldn't be able to invade a man's body," Rataj said. "If they force him or compel him to give that sample, and he hasn't been charged with the crime, it's a violation of the Fourth Amendment."

Biometrics refers to processes used to identify people. Procedures in biometrics include fingerprinting, DNA samples and facial recognition. Maryland has a rule that if a suspect is arrested for a serious crime, police will automatically take a DNA sample, Schindler said.

"The justification is that a DNA sample is no different than and no more intrusive than taking a fingerprint," he said.

"The suspect argued that it violated his right of privacy. By a 5-4 vote, the court ruled it's not a violation of the Fourth Amendment for the police to take a DNA swab from your cheek if you've been arrested."

DNA samples are pushing the limits of the Constitution since they provide more information than basic recognition, Schindler said.

"DNA can be a roadmap of my lifestyle since it does get altered by lifestyle — a roadmap to diseases I might have and my future outlook on life," Schindler said. "There's a lot more privacy involved with DNA testing, in my mind. The government is essentially collecting a blueprint of my life, as opposed to fingerprints that are good for one thing — identifying who I am. There's a vast difference between someone's DNA and their fingerprints," he said.

Concern about constitutional infringement is heightened by increasingly advanced biometric technology.



The Michigan State Police has been improving its techniques, such as facial recognition, said Jeremy Slavish, director of the department's Biometrics and Identification Division.

Most of the new technology is simply an improvement on what used to be done manually, he said.

"With respect to how we're using things, I don't think that's an issue. It's all for criminal justice purposes," Slavish said. "The ways we are using technology to conduct these procedures have been done manually in the past.

"For instance, fingerprinting: Fingerprints have been taken for decades, and that was OK with everybody. It starts to scare them when a computer does it, (but that) makes us more efficient."

Slavish said the use of biometrics, combined with more reliance on technology, makes people uncomfortable due to the absence of human interaction.

"Facial recognition is the same thing. Law enforcement has been capturing mug shots since there were cameras," Slavish said. "Nobody seems to have a problem with law enforcement going through a mug-shot book and trying to ID a suspect with photographs."

Slavish said the new technology may make some people uncomfortable but is far more efficient. It allows officers to be deployed in the field and assists them in finding suspects, all while respecting constitutional rights.

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