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Law expands access to military DNA

Samples, once solely used for identifying dead, now can be used in crime investigations

By **Tranette Ledford**
SPECIAL TO THE TIMES

The military's database of DNA samples from all service members, created to positively identify wartime casualties, has been opened up to law-enforcement agencies for crime investigations.

The new law, a single paragraph in the 2003 Defense Authorization Act signed by President Bush Dec. 2, overrides Pentagon policy that the DNA samples be used almost solely to identify troops killed in combat.

Now, local and state law-enforcement officials investigating felonies and sexual offenses can go to federal judges and those in the military to seek permission to gain access to the military DNA database.

Privacy-rights advocates say that the amendment was rushed into law and fear it will erode troops' legal protections.

The legislation was drafted in response to the rape of a Fort Hood soldier in January. Its sponsor, Rep. John Culberson, R-Texas, said he was contacted by the victim's family after police arrested Spc. Christopher M. Reyes on homicide charges days after the March 31 slaying of a Fort Hood soldier's husband, and the wounding of another soldier's spouse in a separate shooting.

Testimony in earlier legal proceedings shows investigators linked Reyes to the rape case by evidence that included the victim's description of her attacker's tattoo. But while police recovered genetic samples during the rape investigation, they were barred by DoD policy from access to Reyes' DNA data, stored with samples from all service members in the Armed Forces Repository of Specimen Samples for the Identification of Remains in Gaithersburg, Md.

Reyes is scheduled to be court-martialed Jan. 13 at Fort Hood on charges of murder and rape.

"The Fort Hood horror story

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highlighted the need for uniformity and consistency in interpretation and enforcement of the Army's procedures in providing access to DNA samples," Culberson said in a Dec. 5 telephone interview.

"If law enforcement had been able to identify a suspect immediately after the rape, it is highly unlikely that this criminal would have been able to hurt anyone else," he said, referring to the murder and attempted murder that Reyes is accused of, which followed the rape by three months. Prosecutors are using DNA from Reyes obtained after he was arrested.

Culberson met with Pentagon health and legal officials before introducing his bill in April, after which it sped through the legislative process.

"It may have moved faster than other bills because it was attached to the Defense Authorization Act, which had a high priority as a result of Sept. 11," said Michael Shore, Culberson's spokesman. "It also moved quickly because no member of Congress contacted us regarding concern or opposition, and there was no debate about it on the floor."

But military advocates say the speed with which the bill moved from draft to law allowed no time for the public to debate the issue of privacy.

"My concern is not so much that the bill passed, but that it passed without debate or public scrutiny," said Augusta, Ga., attorney William Cassara, co-founder of Citizens Against Military Injustice and a retired member of the Army Judge Advocate General's Corps.

"Our legal system is set up to weigh more heavily on the rights of individuals to maintain their privacy," Cassara said. "Imagine



KEVIN J. DWYER/KILLEEN DAILY HERALD

Spc. Christopher Michael Reyes, accused of murder, attempted murder, burglary, rape and sodomy, is led into the courtroom at Fort Hood, Texas, June 10. Legislation giving law enforcement agencies access to the military's database of DNA samples was drafted in response to the Reyes case.

the outcry if residents of Augusta were told they must all go downtown and submit their DNA and that it could be used by police in future criminal cases. The public wouldn't allow it.

"But when it's military members who are required to submit their DNA, suddenly their privacy is up for grabs for anyone to use in an investigation," he said. "That's private information, submitted for the sole purpose of identifying them if they are killed serving their country."

Cassara, whose law practice is devoted to military legal issues, said the use of DNA in criminal cases is overrated, since most crimes can be solved through good police work.

Pentagon spokesman Jim Turn-

er defended the military's policy and the new law as "a proper balance between the very significant privacy interests of military members and the department's obligation to comply with proper federal court orders. This new bill is basically a codification of a longstanding policy."

Chris Kelly, spokesman for the Armed Forces Institute of Pathology, which oversees the military DNA repository, said institute members briefed Culberson's staff about how the DNA could be used under Pentagon guidelines.

Since June 1992, all service members have been required to provide a DNA specimen sample. To date, the repository contains 3.8 million samples.

Prior to Culberson's provision



COURTESY OF JOHN CULBERSON

Rep. John Culberson, R-Texas, drafted an amendment to the 2003 Defense Authorization Act that requires the military to give law enforcement agencies access to the Defense Department DNA database when investigating sexual offenses or felonies.

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REP. JOHN CULBERSON
R-TEXAS

becoming law, there were restrictive instances in which the repository could be petitioned for release of DNA samples for purposes other than identification of remains. But since the institute was created, it never has complied with any request, Kelly said.

"We did receive requests, but none ever reached the point of a court order," said Kelly. "As far as the new bill, it does not detract from the mission of the repository. We identify our dead. That's why we were created." 0

Tranette Ledford is a freelance writer based in San Antonio.