

Fourth Amendment Challenges to DNA Databanks in State Courts

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To date, 4th Amendment challenges to state DNA databank laws have been considered by the appellate courts of at least twenty states. These challenges are in addition to those filed in the federal courts. In an earlier memorandum, “The Constitutionality of Forensic DNA Databanks: 4th Amendment Issues,” ASLME project fellow David Winickoff provided an overview of 4th Amendment analysis employed in these federal cases, as well as a description of the cases and their disposition by the federal courts. The table below presents a similar analysis of cases heard in state courts.

The opinions analyzed in the Table cover a significant timeline, encompassing both the pre and post *City of Indianapolis v. Edmond* and *Ferguson v. City of Charleston* era. To date, no 4th Amendment challenge to a DNA databank statute has been successful.

The chart below reports on key state court cases, and will inform readers about a range of issues, from the type of plaintiff challenging the constitutionality of DNA databases to the kind of analytical test used by courts in their decisions.

Table 1: State Cases Challenging the Constitutionality of DNA Databanks

HIGHEST STATE COURT

Case	Pre/Post <i>Edmond</i> or <i>Ferguson</i>	Class of Plaintiff	Statute Challenged	Successful?	Analysis Used	Substantial Discussion?
State v. Raines 2004 Md. LEXIS 451 (Md.) 13 July 2004	Post	Incarcerated felon	Maryland DNA Collection Act, Md. Code Ann., Pub. Safety, § 2-501 to § 2-512	No	Opinion not yet filed.	Opinion not yet filed.
State v. Martinez 78 P.3d 769 (Kan.) 31 Oct. 2003	Post	Burglar on probation	K.S.A. 2001 Supp. 21-2511	No	Once special needs threshold met, balancing test applied.	No.
Smith v. State 744 N.E.2d 437 (Ind.) 27 Mar. 2001	Post	Incarcerated felon	Ind. Code § 10-1-9-20 (1998)	No	Balancing test	Claim invalid because appellant failed to allege original taking of sample violated Fourth Amendment rights.
Johnson v. Commonwealth 259 Va. 654 (Va.) 21 April 2000	Pre	Juvenile sentenced to life imprisonment and death	Code §§ 19.2-310.2 through -310.7	No	Balancing test	No.
Gaines v. State 16 Nev. 359 (Nev.) 13 Mar. 2000	Pre	Incarcerated felon	NRS 176.0913	No	Balancing test	Court declined to distinguish between violent crimes and non-violent burglary for purposes of Fourth Amendment challenge to statute.
Doles v. State 994 P.2d 315 (Wyo.) 22 Dec. 1999	Pre	Incarcerated felon	§ 7-19-401 through 7-19-406 (LEXIS 1999)	No	Balancing test	No.

HIGHEST STATE COURT, continued

Case	Pre/Post <i>Edmond</i> or <i>Ferguson</i>	Class of Plaintiff	Statute Challenged	Successful?	Analysis Used	Substantial Discussion?
Landry v. AG 429 Mass. 336 (Mass.) 13 April 1999	Pre	1 parolee, 2 probationers, 1 citizen, 3 inmates	G.L. c. 22E, §§ 1-15	No	Balancing test	No.
State v. Olivas 122 Wn.2d 73 (Wash.) 12 Aug. 1993	Pre	Convicted criminals	§RCW 43.43.754	No	Special needs	No.

STATE COURTS OF APPEAL

Case	Pre/Post <i>Edmond</i> or <i>Ferguson</i>	Class of Plaintiff	Statute Challenged	Successful?	Analysis Used	Substantial Discussion?
People v. Adams 115 Cal. App. 4 th 243 (Cal. Ct. App.) 27 Jan. 2004	Post	Incarcerated felon	Penal Code section 295 et seq.	No	After rejecting utilization of special needs analysis b/c defendant has reduced expectation of privacy, conducted balancing test	Refused to engage in discussion about future possibility for DNA sampling of all arrestees.
In the Matter of D.L.C., and in the matter of D.L.G., and in the Matter of R.W.W., and in the Matter of C.S.P. 124 S.W. 3d 354 (Tex. Crim. App.) 18 Dec. 2003	Post	Juvenile Probationers	Tex. Fam. Code Ann. § 54.0405(a)(2)(b) (Vernon 2002)	No	Once special needs threshold met, used balancing test	No.
State v. Steele 155 Ohio App. 3d 659 (Ohio Ct. App.) 12 Dec. 2003	Post	Incarcerated felon	R.C. 2901.07	No	Once special needs threshold met, balancing test applied.	No.
In re Robert K., a Minor (The People of the State of Illinois v. Robert K.) 336 Ill. App. 3d 867 (Ill. App. Ct.) 21 Feb. 2003	Post	Probationer	730 ILCS 5/5-4-3(a) (West 2000)	No	Balancing test	Advised looking to legislature if want juvenile court reform, not the courts.
D.B. v. State 861 So. 2d 4 (Ala. Ct. App.) 7 Jan. 2003	Post	Probationer	§36-18-25, Ala. Code 1975	No	Balancing test	Where state statute authorized collection of DNA from felony and misdemeanor convicts, court refused to distinguish misdemeanor conviction from felony conviction for purposes of 4 th amendment analysis.
L.S., A Child, v. State of Florida 805 So. 2d 1004 (Fla. Dist. Ct. App.) 17 Dec. 2001	Post	Juvenile in community control	§943.325, Florida Statutes	No	Balancing test	No.

STATE COURTS OF APPEAL, continued

Case	Pre/Post <i>Edmond</i> or <i>Ferguson</i>	Class of Plaintiff	Statute Challenged	Successful?	Analysis Used	Substantial Discussion?
Kellogg v. Travis 188 Misc. 2d 164 (N.Y. App. Div.) 18 May 2001	Post	Parolee	Executive Law §995-c	No	Once special needs threshold met, balancing test applied.	No.
Cooper v. Gammon 943 S.W.2d 699 (Mo. Ct. App.) 25 Feb. 1997	Pre	Incarcerated felon	§§650.050 to 650.057 RSMo 1994	No	Balancing test	No.
In the Matter of the Appeal in Maricopa County Juvenile Action Nos. JV-512600 and JV-512797 187 Ariz. 419 (Ariz. Ct. App.) 23 July 1996	Pre	Juvenile on probation in a residential treatment center	§13-4438 and 31- 281	No	Balancing test	No.
In re Orozco 129 Ore. App. 148 (Or. Ct. App.) 20 July 1994	Pre	Juvenile in juvenile training school	ORS 137.076	No	Balancing test	Noteworthy concurrence (see discussion re consideration of statute as “narrow in scope”) and dissent (see discussion that distinguishes between fingerprinting and blood extraction).
Smith v. Pa. Dept. of Corrections 829 A.2d 788 (Pa. Commw. Ct.) 5 Aug. 2003	Post	Incarcerated felon	18 Pa. C.S. §3701	No	Balancing test	No.

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State Courts of Appeal:

Case	Class of Plaintiff	Statute Challenged	Successful?	Analysis used	Substantial Discussion?
State v. Cremeans, 160 Ohio App.3d 1, 825 N.E.2d 1124 (4 Mar. 2005)	Convicted felon	R.C. 2901.07	No	Rejects special needs doctrine; chooses totality of circumstances test using inmate's reduced expectation of privacy	Yes
People v. Foster, 354 Ill.App.3d 564, 821 N.E.2d 733 (20 Dec. 2004)	Convicted of unlawful delivery of controlled substance w/in 1000 ft of a church	730 ILCS 5/5-4-3(a-3.5)	No	Balancing test (court says it doesn't need to reach special needs test)	No
People v. Edwards, 353 Ill.App.3d 475, 818 N.E.2d 814 (15 Oct. 2004)	Convicted of armed robbery	730 ILCS 5/5-4-3(a-5)	No	2 balancing tests: (1) privacy against State's interest; (2) privacy against State's special need	No
People v. Peppers, 352 Ill.App.3d 1002, 817 N.E.2d 1152 (30 Sept. 2004)	Convicted felon	730 ILCS 5/5-4-3	No	Does not choose between special needs and balancing test b/c the end result is the same	No
People v. Ramos, 353 Ill.App.3d 133, 817 N.E.2d 1110 (30 Sept. 2004)	Convicted felon	730 ILCS 5/5-4-3(a-3.5)	No	Balancing test	Yes
People v. Shreck, 107 P.3d 1048 (Colo. Ct. App., 23 Sept. 2004)	Convicted sexual offender	§ 17-2-201(5)(g)(I), C.R.S.2003	No	Special need balanced against individual's privacy interest	No
People v. Hall, 352 Ill.App.3d 537, 816 N.E.2d 703 (3 Sept. 2004)	Convicted felon	730 ILCS 5/5-4-3(a-5)	No	Balancing test	Yes

State Courts of Appeal (cont.)

Case	Class of Plaintiff	Statute Challenged	Successful?	Analysis used	Substantial Discussion?
Balding v. State, 812 N.E.2d 169 (Ct. App. Ind., 22 July 2004)	Convicted felon	Ind. Code § 10-13-6-10	No	Special needs	No
State v. Surge, 122 Wash.App.448, 94 P.3d 345 (12 July 2004)	Convicted felons	RCW 43.43.754(1)	No	Special needs	Yes
People v. Garvin, 349 Ill.App.3d 845, 812 N.E.2d 773 (30 June 2004)	Convicted felon	730 ILCS 5/5-4-3(a)	No	Balancing test	No
State v. Steele, 155 Ohio App.3d 659, 802 N.E.2d 1127 (12 Dec. 2003)	Convicted felon	R.C. 2901.07	No	Once special needs threshold met, used balancing test	2 special needs: (1) more accurate criminal justice system; (2) more complete database. Prisoners and probationers have diminished expectations of privacy.