

INQUIRY INTO THE USE OF VICTIMS' DNA

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The Standing Committee on Law and Justice,
Inquiry into the Use of Victims' DNA

SUBMISSION FROM THE HOMICIDE VICTIMS' SUPPORT GROUP (AUST) INC.

Comment has been sought from the Director, Standing Committee on Law and Justice into the use of Victims' DNA'.

The Terms of Reference have particular reference to:-

- The adequacy of current policies, procedures and practices to protect DNA material belonging to victims.
- Whether further restrictions on the use of such DNA material would be appropriate or desirable through legislation.
- Any other related matter.

History

Briefly the Homicide Victims' Support Group (Aust.) Inc., (HVSG (Aust.) Inc.) has in excess of 2500 families of homicide victims. The HVSG (Aust) Inc. offers support, counselling and advocacy to these family members who have had someone murdered over the years and in some cases stretching back 50 odd years. We are a non-government organisation funded by NSW Health and have been operating since 1993.

Since 2000 as a result of a Working Partnership between the Attorney General, NSW Police and the HVSG all murders occurring within NSW or having a NSW connection are reported to the HVSG (Aust) Inc. by Police by way of compulsory notification, and notifications are also received from other agencies, eg the Coroner's Office, the DPP, the media, funeral directors and other non-government organisations. Numerically this has been statistically in excess of 100 notifications per year and systems are in place to capture every such offence on a daily basis. The HVSG (Aust) Inc. is therefore truly representative of homicide victims families in this area as the lead agency.

The response from the HVSG (Aust) Inc. is provided in the context of the Terms of Reference impacting on the crimes of murder and manslaughter, which of course are at the highest end of the criminal spectrum.

Current Policy

As the HVSG (Aust) Inc. understands the current policing policy, DNA samples are taken voluntarily from victims who identify themselves at a specific crime scene and provide samples for elimination purposes. These samples are taken purely to differentiate the victim from samples belonging to an offender and are not used for general purposes to be downloaded on the DNA database to be compared with samples taken from other crime scenes.

Samples from crime scenes that are not identified as belonging to a victim are then downloaded onto the DNA database to be used for comparison to identify a potential offender and also linkages with any other unsolved crime scenes. In many cases identifying a victim from a crime scene occurs voluntarily or is obvious from the circumstances, eg, a domestic murder with a limited number of persons involved. There is no difficulty with this process.

Current policy ensures that DNA samples belonging to 'victims' are compared with other unidentified samples from a crime scene prior to the latter being downloaded onto the database.

It is also understood there is a process in place to request samples from victims (voluntarily) where it is believed that a victim's DNA has been obtained. This comparison is made before the unidentified samples are downloaded and provides a point of filtration to protect victim's samples being unnecessarily downloaded.

This process works well in that where DNA samples are required from a suspect there are procedures available for a Court order to obtain those samples. Victims then are requested to supply samples for testing and elimination purposes. The results of that process are not used further.

Change to policy

In the event legislation was suggested to protect DNA samples from all victims from being used it is the stance of the HVSG (Aust) Inc., this would be counterproductive and in effect would allow many perpetrators to go free, which in turn would have an adverse impact on victims overall. Many crimes would also remain unsolved.

In many cases such as pub brawls where multiple persons are involved it is often difficult to initially establish the identity of all potential victims some of whom are reluctant to come forward and declare they are victims. Another example would be a patron attending a brothel that is subject to an armed hold up resulting in the death of another person and the patron is reluctant to be identified as a victim. A participant in a drug deal that goes wrong where a person is killed with other participants leaving the scene and never coming forward is just another of numerous examples where DNA is collected that may belong to a so-called victim that is not initially identified.

This class of person would then have the capacity to declare they themselves have been a victim when in fact they are often part of the offence. There are numerous examples where armed hold ups have been an 'inside job' where an involved person has claimed the status of a victim and then it is discovered that person is an 'offender.' It is these cases that cause concern.

It is the view of the HVSG (Aust) Inc. that persons who have committed either murder or manslaughter or being involved should not be able to hide behind the fact they may say they have been a victim to escape detection for other serious offences if they have initially declined to declare themselves as a victim. That protection has been waived by their non-disclosure and the public interest demands they be treated as any other person at a crime scene in respect of any DNA samples that have been collected. These persons are often involved in other unsolved crimes that remain undetected.

The HVSG (Aust) Inc. would argue that a person who did not initially declare themselves as a victim and has discarded their DNA voluntarily at the crime scene should be subject to normal processes. The HVSG (Aust) Inc. does not support perpetrators avoiding detection in these circumstances. The above examples indicate it would be highly improbable a working definition could be devised to define who true victims are and provide technical loopholes for offenders to avoid prosecution for very serious crimes.

The process would also involve significant legal challenges under the Crimes (Forensic Procedures) Act 2000 to evidence being admissible by these persons to the detriment of victims overall.

Further restriction on the use of DNA from victims.

It is the view of the HVSG (Aust) Inc. that the current policies and legislation are adequate and provides appropriate protection so that DNA samples obtained from victims is not misused.

Suggestion

However it is also the view of the HVSG (Aust) Inc. that consideration be given that when such samples are obtained from genuine victims at crime scenes that such persons be asked if they wished to volunteer and give consent so that their samples are then downloaded onto the main database and treated the same as the general community.

This submission is not made lightly on the basis that many of our families are often dysfunctional, are involved in criminal activities and often run between the classification of victim/offender. It may well be this could act as a deterrent, solve cases that would never be solved and if used with informed consent would be a great benefit to the community at large. It is also recognised this aspect would be controversial.

This aspect could come with a caveat that DNA obtained in this manner could only be used in the most serious of crimes such as murder, manslaughter or the serious classifications of sexual assault.

Safeguards are already in place within the Crime Forensic Procedures Act 2000 for a Court to determine whether evidence obtained is admissible or not.

Summary

- With one exception the HVSG submits the current policies and legislation are adequate.
- Consideration be given to putting all victims' DNA on the main database but only with informed and written consent and for offences of highest end of the criminal spectrum.

The HVSG (Aust) Inc. would like to be given the opportunity in putting before the committee oral evidence if it is deemed appropriate, further highlighting some of the issues in our submission.

If there is anything further I could contribute to on behalf of the The HVSG (Aust) Inc., please do not hesitate to contact me.

Yours faithfully,

Martha Jabour
Executive Director
Homicide Victims' Support Group (Aust) Inc.