

## THE WISCONSIN JOHN DOE WARRANT

### **Norm Gahn**

*Milwaukee County District Attorney's Office, Milwaukee, WI*

During 1997, the Wisconsin State Crime Laboratory began developing the convicted offender index and case index for the DNA databank. Procedures were generally in place to outsource the convicted offender samples. Wishing to optimize this index, the crime lab collaborated with the Sensitive Crimes Division of the Milwaukee Police Department to identify unsolved sexual assault cases for entry into the case index. It was recognized that not all unsolved sexual assault cases could be analyzed by the State Crime Lab for entry into the case index. This was especially true since the Milwaukee Police Department intended to review all unsolved sexual assault cases from 1992, a timeframe reflecting the statute of limitations in Wisconsin. The Sensitive Crimes Division of the Milwaukee Police Department spent most of 1997 reviewing all unsolved sexual assault cases from 1992 through 1994. The police department set up certain criteria for case submission to the crime lab. Basically, they concentrated on stranger assaults, especially those that seemed to be serial in nature. They also ensured that evidence from all the cases, as well as the reports, was available. They also ensured that the victim was available and willing to prosecute. The police department eventually identified about 53 unsolved sexual assault cases that they felt were viable and should be analyzed for entry into the case index. These selected cases were submitted to the crime laboratory in early 1998. The crime lab worked these cases and entered any foreign profiles obtained from them into the case index. Between June of 1998 and December of 1998, the State Crime Lab had 8 "cold hits" against the convicted offender index and 13 "hits" against the case index from these selected cases.

Generally speaking, the statute of limitations for sexual assault in Wisconsin is 6 years. Most of the "cold hits" were made well within the expiration of the statute of limitations. On one occasion, however, the hit came a few days before the statute of limitations expired which resulted in a criminal complaint being issued a mere 8 hours before the expiration of the statute. For most of the cases, though, the statute of limitations ran on the foreign profiles that were in the case index. This was a particularly frustrating situation since, oftentimes, many of the cases were remembered quite vividly due to the brutality involved.

In the summer of 1999, detectives from the Sensitive Crimes Division of the Milwaukee Police Department attended a national conference and expressed their frustration over sexual assault cases that had foreign profiles, but that the statute of limitations had run out. It was suggested at this meeting that the issuance of criminal complaints and warrants for arrest based upon genetic profiles might be a viable way of preserving jurisdiction. Although a very intriguing idea, it was recognized that statutes of limitations serve a very important and meaningful function in the criminal justice system. Basically, they protect an individual's ability to defend against criminal charges because over time memories fade, evidence is misplaced, and witnesses are harder to locate. Furthermore, statutes of limitations encourage the police to move on to more current cases. However, it was believed that the issuance of criminal complaints and warrants for arrest in sexual assault cases based upon a genetic code would be a narrow exception to statutes of limitations. The arrest warrant requirements for Wisconsin mandated that the warrant must state the name of the person to be arrested. The warrant requirements further stated that if the name of the person to be arrested was not known, then the warrant could "designate the person to be

arrested by any description by which the person to be arrested can be identified with reasonable certainty.” Wis. Stats. Sec. 968.04. There was little doubt in anyone’s mind that a person’s genetic code identified that person with reasonable certainty. Based upon the statutory language, the Sensitive Crimes Division of the Milwaukee Police Department identified 3 separate sexual assault cases in which the foreign profiles from evidence obtained at the Sexual Assault Treatment Center all matched each other. Although they did not know the name of the assailant of the 3 victims, they knew that the matching foreign profiles identified this assailant with reasonable certainty. As such, a criminal complaint and warrant for the arrest of this individual was issued in September of 1999. The caption of the criminal complaint and warrant read State of Wisconsin v. John Doe, unknown male with matching deoxyribonucleic acid (DNA) profile at genetic locations D1S7, D2S44, D5S110, D10S28 and D17S79. Although litigation of this procedure will have to wait for the identification of this profile by name, in all likelihood through a “cold hit” in a databank, it is hoped that this procedure will preserve jurisdiction of the case beyond the statute of limitations.

As a result of the issuance of the John Doe DNA warrants in Wisconsin, legislation has been introduced in Wisconsin to lift the statute of limitations where there is a cold hit out of the DNA databank. Ten states have already introduced legislation, or have passed legislation, extending the statute of limitations in such cases. Those states are California, Colorado, Connecticut, Delaware, Michigan, Minnesota, New Jersey, New York, Washington and Wisconsin.