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Congress may join push on evidence

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Members of Congress, including two women's caucus leaders, pledged to support stronger federal safeguards for DNA evidence, saying biological specimens that can help crack unsolved cases and free the wrongfully convicted shouldn't be dumped by local authorities.

"The whole justice system depends on evidence being as thoroughly preserved as possible," said Rep. Mark Udall, D-Colo., who wants to explore closing a "loophole" in the 2004 Justice for All Act that exempts states from a mandate to preserve biological evidence in felony cases. State felony cases outnumber those in the federal system by a ratio of 15-to-1.

At the state level, heads of the Colorado public defender office and the Colorado Trial Lawyers Association threw their support behind a state preservation law with teeth being pursued by state Rep. Cheri Jahn, D-Wheat Ridge, saying DNA should be held indefinitely.

"Gumshoes and file cabinets need to catch up with the technology," said John Sadwith, executive director of the trial lawyers group. "If we can preserve our Constitution for more than 200 years, we should be able to preserve the rights it gives us for a person's lifetime."

Reactions came in the wake of The Denver Post's series "Trashing the Truth," detailing how DNA evidence such as rape kits has been routinely tossed by police and prosecutors across the country since the dawning of genetic fingerprinting 20 years ago, paralyzing innocence bids and undermining investigations into an estimated thousands of cases.

"I was horrified by the revelation," said U.S. Rep. Carolyn Maloney, D-N.Y., former chairwoman of the caucus who has championed efforts to reduce rape-evidence testing backlogs. "Rape victims have to endure enough trauma and hardship - they shouldn't have to deal with this. ... It's a travesty of justice."

Rep. Louise Slaughter, another New York Democrat and former caucus chairwoman, said, "Rest assured we're going to tackle this issue." Slaughter, chairwoman of the House Rules Committee, said DNA's proven track record in exonerating the innocent is reason enough to take steps to preserve DNA. "We're finding so often that the wrong person is convicted," Slaughter said.

Udall wonders whether a "one-size-fits-all" federal law is warranted - or simply more federal funding to help states and local law enforcers keep DNA from the most violent crimes.

Republican U.S. Sen. Wayne Allard also is considering supporting stronger federal safeguards, according to a statement released Friday.

"DNA is arguably the most significant advancement in criminal justice since the fingerprint," he said. "... Federal laws will continue to evolve to ensure that DNA evidence is utilized to its fullest potential in the pursuit of justice."

Prosecutors and police nationwide have cited costly storage space, along with providing victims of crimes with finality, as reasons to toss it.

Gov. Bill Ritter, former Denver district attorney, has stayed silent on the issue despite requests for comment as lawmakers have called for reforms in recent days.

Don Quick, president of the Colorado District Attorneys' Council, a prosecutors' lobbying group, criticized The Post's series, saying that problems it detailed across the country don't necessarily translate to big problems existing in Colorado.

Before the state moves toward a preservation statute, Quick said, more research into Colorado's evidence handling is needed - including what it does right.

"Across Colorado every day, DNA evidence is introduced," Quick said. "Every day, judges review that and admit that evidence, and justice is served by the introduction of that evidence. It's important for the public to know that labs here follow procedures."

He also emphasized that Colorado, unlike dozens of other states, has never been shown to have wrongly convicted a prisoner.

Quick, the Adams County district attorney, has been appointed special prosecutor to handle the state's most expensive innocence bid, by Tim Masters. Masters was convicted of first-degree murder in 1999 in a case based largely on his violent drawings, without physical evidence tying him to the crime.

Jahn, the Wheat Ridge Democrat, counters that the cases of Masters and Clarence Moses - El, both featured in The Post series, may help explain why a wrongful conviction hasn't been shown in Colorado: The destruction or loss of biological evidence in their cases has blocked efforts to prove their innocence.

"In some cases, we will never know, and that's what's truly concerning to me - I can't believe that's the attitude out there," Jahn said, referring to Quick's comment. "Everyone should have that opportunity to have their evidence tested - that's equal justice. What are we afraid of finding out? That we were wrong and they didn't go after the real perpetrator?"

Colorado law does not create a duty to preserve evidence, leaving it to the discretion of each local jurisdiction to pitch evidence as it sees fit.

State Public Defender Doug Wilson said that statutory approach undermines the rights of victims and the wrongfully convicted. He wants it wiped off the books.

He also hopes lawmakers can pursue centralized warehousing of evidence run independently of police and prosecutors, reducing any potential conflicts of interest. Such an approach has been under review in North Carolina.

House Speaker Andrew Romanoff, D-Denver, said, "We need to figure out first what's broken and how to fix it."

State Rep. Morgan Carroll, D-Aurora, said she wants to develop best practices on evidence handling and implement them uniformly across Colorado.

"Evidence destroyed or lost is justice denied," she said.

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- In the absence of governmental statistics on evidence destruction and loss nationwide, The Denver Post tallied cases from public documents, estimates of law enforcement officials, and data from DNA grant correspondence between states and the federal government. Also figuring into our totals is information from lawyers handling innocence claims and other legal actions across the country.