



### F32 Brazilian DNA Database on Trial

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After attending this presentation, attendees will better understand the acceptance of the DNA database by the Brazilian Supreme Court.

This presentation will impact the forensic science community by discussing how an international justice system understands what the limits are for using one of the most important forensic tools.

After establishing a DNA database network using the Federal Bureau of Investigation's (FBI's) Combined DNA Index System (CODIS), Brazil passed a bill in 2012 to collect DNA from those convicted of heinous crimes as well as from suspects, under the conditions of a court order; however, four years after the law took effect the mandatory DNA collection of convicted offenders is still not a common procedure. As an example, the last DNA database report pointed out that less than 1,000 individuals are present in the Brazilian DNA national database. In a country where violent offenses are relatively frequent and known for its large prison population, this data corresponds to less than 1.5% of convicted offenders that should be in the database. One of the main reasons for this extreme delay is the resistance from some policy makers and lawyers who think the DNA collection from convicted offenders, without their consent, is unconstitutional.

Despite these difficulties, the network, composed by 19 DNA laboratories (18 states plus the federal police) linked to the Ministry of Justice, has been growing in number, especially from crime scene samples, and has currently helped more than 200 investigations, including an innocence case.

Recently, a new fact emerged that can help change and leverage the law and, consequently, the database: the Supreme Court has received the Petition n° 937 837 in which the Public Defender of Minas Gerais State questions the constitutionality of offenders' DNA collections. The Supreme Court considered that the constitutional issue has legal and social relevance, manifesting in recognition of the existence of general repercussions of the matter. The decision was unanimous. With the recognition of the general repercussion, the substantive decision of the Supreme Court in the appeal will have a binding effect and will be applied to all similar cases in the Brazilian Judiciary.

As the issue is very new to the Supreme Court, a group of forensic scientists has been called to assist the judges with the technical and scientific fundamentals as *amicus curiae*. Presently, the group is writing a brief to be used and included in the judgment.

The effort should also help the epidemic of sexual assault in Brazil. A recent survey by the government calculated nearly 500,000 sexual assault cases occurring per year in addition to isolated collective rapes cases, such as the one reported in Rio this year prior to Olympic Games.

In a country with more than 50% of prisoners awaiting judgment, the correct use of the DNA database can be extremely positive to avoid testimony-only-based arrests and the absence of physical evidence in trials.

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### DNA Database, Brazil, Supreme Court