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DNA Database: Practice, Problems and Solutions

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中文摘要:

DNA鉴定技术在诉讼中发挥着显著的证明作用。我国自建立法庭科学DNA数据库以来,各地数据库之规模、应用逐步扩大,取得一定实践成效。然而,数据库的运作也存在法律困惑:如何完善立法规范,如何平衡强制采样与正当程序的冲突,如何兼顾DNA信息保存与隐私权保护的目标,如何权衡数据库推广与司法资源有限的矛盾。DNA数据库的制度完善须理性选择立法模式,整合各地既有规范。应在《刑事诉讼法》第130条"人身检查"规定的基础上,细化DNA采样程序;综合考虑案件性质、犯罪危害程度和有利于犯罪分子改造等因素明确入库范围:健全信息保密和救济机制,对DNA数据库的用途、信息保存和销毁期限、违法使用DNA信息的制裁措施加以规范:此外,还应强化质量控制与监督机制。

English Summary:

DNA technology has been playing a significant role in judicial identification, since it is applied in criminal proceedings. Since the first DNA database in China was established, rapid progress has been witnessed. Problems coexist with the progress due to the lack of legislation. Compulsory DNA sample collection, DNA tests and storages may cause fears of abuse and the erosion of privacy. The expansion of DNA database is a highly costly business. To solve these problems, the following legal solutions should be paid attention to: first of all, DNA database legal framework all over the countries should be integrated and legislative technique is required in this process. The sample collection process should be stipulated under the personal examination system in criminal procedure. Secondly, the range of information should take the nature of the case, the harmfulness of the crime and the favor of the criminal reformation into account. Thirdly, the application of DNA database, the destruction dead line and the sanction to the abuse of authority should be stipulated to protect privacy. Finally, quality control and supervising were necessary so as to guarantee a sound development of DNA database.

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