1. *EXPAND THE STATE DNA IDENTIFICATION INDEX*

In January 2000, a 78-year-old woman was brutally raped in Albany, New York. Later that year, the offender, who remained unknown to investigators, stabbed a 50-year-old woman to death. In 2004, the same perpetrator murdered a 68-year-old man by beating him with a steel bar and then shooting him in the head.[1] The police collected crime scene DNA from each of the three attacks, but were unable to link that evidence with any existing offender DNA profiles. The perpetrator of these heinous crimes, Raymon McGill, was not identified until 2005, when he was required to submit a DNA sample upon conviction for attempted robbery.[2]

The 2000 rape was not McGill's first conviction. In 1999, he was convicted of Petit Larceny, a misdemeanor crime, which did not require DNA submission.[3] Had McGill submitted DNA in connection to his Petit Larceny conviction, he would have been swiftly brought to justice after his rape offense, and the lives of his two subsequent murder victims could have been saved.

Under New York State law, all felons and some misdemeanants are required to provide a DNA sample to the DNA Identification Index upon conviction. Nobody is required to provide a sample on arrest, and many misdemeanants never need to provide a sample, even after they are convicted of a crime. Limiting DNA samples to certain categories of crimes and mandating that samples be incorporated in the databank only after conviction limits the utility of the DNA databank. The New York State Law Enforcement Council supports expansion of New York's DNA Identification Index to include profiles for all crimes upon arrest.

DNA PROFILES ARE ANALOGOUS TO FINGERPRINTS

DNA Should Be Taken At Arrest

DNA is the modern-day fingerprint; crimes are solved by matching DNA recovered at a crime scene to DNA taken from a known individual. However, while fingerprints are taken immediately upon a suspect's arrest, DNA cannot be collected by the state until after conviction or upon a warrant. In the case of a warrant, the DNA collected often cannot be entered into the Index.

It is logical that DNA be added to the information collected by law enforcement at arrest so that DNA, like fingerprints, can be compared against the databank of unsolved crime scene evidence. By taking DNA at arrest, law enforcement can identify arrestees who have committed unsolved crimes. Moreover, by accurately matching a suspect to crime scene evidence, DNA at arrest decreases the likelihood of misguided investigations and, ultimately, wrongful convictions.

Just as suspects are entitled under New York law to have their fingerprints destroyed or returned to them if they are not subsequently convicted, DNA profiles of arrestees could also be removed from the databank upon acquittal or dropped charges. Similar procedures for expunging profiles from the Index already exist for convicted offenders who later have their convictions overturned.[4]

DNA Profiles Are Used Solely for Identification and Contain No Additional Information

Where an individual's privacy is concerned, the DNA information used by law enforcement is no more invasive than a fingerprint, by design and by law. The DNA profiles contained within the DNA Identification Index are uniquely occurring sets of numbers derived from a few segments of each person's DNA.

The pieces of DNA that are analyzed for the databank were specifically chosen because they are "junk DNA." That means they cannot be used to predict anything about a person's health, appearance, or behavior.

What Is DNA?

DNA, deoxyribonucleic acid, is found in every cell of every person. A single person's DNA contains approximately 3,000,000,000 base pairs. The order and composition of a person's base pairs determines his traits. Scientists create a DNA profile catalogue less than one-millionth of the total human genome, or 200 base pairs. The pieces of DNA used in the DNA databank were specifically picked for their tendency to be unique among individuals and because they do not determine any known physical or mental traits. They are called "junk DNA."

Individual privacy is protected by existing rules dictating that DNA samples collected by law enforcement may only be used to identify and prosecute criminals. The records kept in the DNA Identification Index are never used for other purposes, nor are they shared with other government agencies or companies, except law enforcement officials investigating a criminal case. Any tampering with the DNA sample or non-law enforcement use of the Index is prohibited by law and punishable by up to four years in prison.[5]

BENEFITS OF DNA DATABANK EXPANSION

Taking DNA At Arrest Will Prevent New Crimes and Solve Old Ones

Taking DNA from suspects at arrest allows law enforcement to match perpetrators to unsolved crimes in the databank. This would provide law enforcement with an invaluable investigative lead in cases that might not have been solved otherwise.

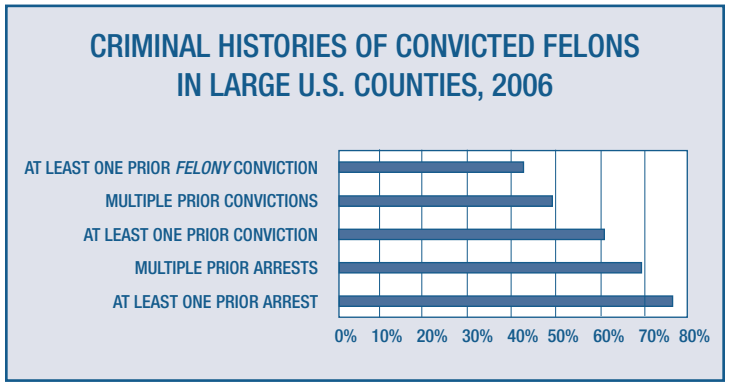
A 2004 Rapist Remains Unidentified for Six Years Despite Multiple Convictions and Arrests

In October 2010, DNA identified Curtis Tucker as the perpetrator in a horrific cold case – a 2004 Attempted Murder and Attempted Rape of a 14-year-old girl in her Harlem apartment building. Tucker choked his young victim to unconsciousness several times and violently seized her money and student MetroCard. The victim fought back, falling with her assailant down three flights of stairs. At the bottom of the stairs, he attempted to rape her. Finally, Tucker ran away, leaving her with permanent injuries to her face.

Tucker was subsequently convicted of two misdemeanor crimes, Criminal Possession of a Weapon in the Fourth Degree and Criminal Contempt in the Second Degree, neither of which currently require DNA submission. More recently, he was convicted of felony burglary for robbing and assaulting a 74-year-old man who was afflicted with Parkinson's disease. Adding all crimes at arrest to the DNA databank would have solved the 2004 Attempted Rape and potentially prevented the 2010 burglary of an elderly man.
People v. Curtis Tucker, New York County

Linking a defendant to an unsolved crime would give judges crucial information when deciding whether to release a defendant on bail. A judge might very well save lives by denying bail to a defendant who is identified as the perpetrator in a DNA cold case.

Studies of criminal histories show that violent felons tend to have a history of prior arrests. Seventy-seven percent of people convicted of violent felonies in large counties have been previously arrested.[6] Collecting DNA on arrest will ensure that criminals are in the system at the outset of their criminal careers.



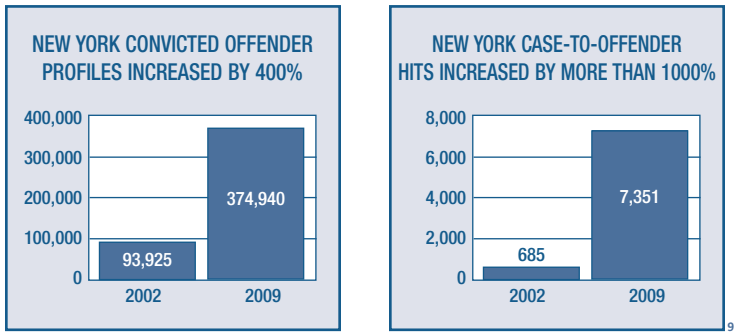
Seventy-seven percent of people convicted of a violent felony in the 75 most populous U.S. counties had a prior arrest. Only 43 percent had a prior felony conviction.[7]

Past Expansions Have Reaped Significant Crime-Solving Benefits

The history of New York's DNA databank indicates that expansion will lead to the earlier apprehension of criminals, many of whom would have continued to commit crimes were they not caught. Between 2002 and 2009, the number of samples in the databank increased by 400 percent. At the same time, the number of case-to-offender hits through the databank increased by more than 1000 percent.[8]

A case-to-offender "hit" is when a DNA sample that has been entered into the databank matches DNA found at a crime scene.

Increase in Case Hits Outstripped Growth of Convicted Offender Databank from 2002 to 2009



[9]

In 2006, New York added all remaining felonies and 18 misdemeanors to the list of qualifying offenses for the DNA Index. The results of this expansion illustrate the value of taking DNA from people associated with low-level and non-violent offenses. Of the new qualifying offenses, very few were violent or sexual in nature; they included such crimes as Bribery of a Public Servant, Possession of a Forged Instrument, and Falsification of Business Records. For instance, samples collected from persons convicted of Petit Larceny have matched to DNA offender profiles in *40 murder cases* and *194 sexual assaults*.[10]

Convicted Larcenist Identified in Two Cold-Case Rapes, Including the Rape of a 12-Year-Old Girl

In 1996, Richard Thomas approached a couple as they were seated in their car and ordered them out of the vehicle at gunpoint. Thomas then robbed the male victim before locking him in the car's trunk. Thomas subsequently raped and robbed the female victim in a nearby lot before also locking her in the trunk. Law enforcement

was unable to identify Thomas. Nearly a decade later, in February 2004, Thomas attacked a 12-year-old girl as she walked to her school bus. He raped the young girl and stole her lunch money. Again, Thomas evaded identification. However, in 2006, Thomas was convicted of Grand Larceny, which required DNA submission under the 2006 expansion. Once entered into the system, his DNA matched the DNA collected in the rape kits from the 1996 and 2004 attacks. His victim in the 1996 rape had lobbied the state legislature to expand the DNA databank, unaware that 10 years later, her own case would be solved by this expansion.

- People v. Thomas, Queens County

All told, as of December 2009 the DNA databank was responsible for 1,595 convictions.[11] Sixty percent of all hits since the databank's inception occurred during the three years immediately following the expansion, which speaks to the effectiveness of the 2006 expansions.[12] The results of New York's limited experience in collecting DNA upon the conviction of low-level offenses confirms that there is no way to predict which small-time offenders are limiting the scope of their criminal activity and which are interspersing their low-level misdemeanors with violent offenses.

Expanding the DNA Databank Will Safeguard Against Wrongful Convictions and Exonerate the Innocent

In addition to solving crimes, the use of DNA in criminal investigations protects innocent people. If an innocent person is mistakenly identified as the perpetrator, DNA on arrest will help rule out that person's involvement in the crime from the outset. As DNA testing becomes faster, a person mistakenly accused can be exonerated in weeks, rather than in the months and years it previously required.

Taking DNA at arrest will bring investigators closer to their search for the truth, be it that the suspect is innocent or guilty.

DNA at arrest for all crimes will also help exonerate the innocent. Increasing numbers of convicted criminals are requesting DNA analysis to prove their innocence. In the vast majority of these cases, guilt has been proven beyond a reasonable doubt and DNA would only confirm an individual's guilt. But in the few cases in which DNA evidence would exonerate them, had DNA been taken on arrest they likely never would have been convicted in the first place. Innocent people should not have to endure prison only to be cleared later by DNA because the ability to test their culpability existed but could not be used. Logic dictates that we should use this technology as early as possible, at arrest, so as to avoid the necessity of post-conviction DNA testing altogether.

DNA Analysis Saves Time and Money

DNA analysis is becoming less expensive. The evolving science of DNA dramatically lessens the amount of time needed to process a profile. Moreover, using DNA profiles reduces the amount of time and resources required to conduct an investigation. A 2008 Department of Justice study on the use of DNA in property crimes found that not only does it identify and lead to the prosecution of twice as many suspects, it is also "more cost-effective in the long run to law enforcement."[13]

The speedy implication or elimination of potential suspects also helps police to focus their investigative efforts and resources more judiciously. As DNA is utilized in a wider variety of cases, the cost of running down futile leads will be significantly reduced. Every day spent focusing on an innocent suspect is a day that could have been spent tracking down the actual criminal.

OTHER JURISDICTIONS HAVE ALREADY BENEFITED FROM TAKING DNA AT ARREST

Twenty-four states have already amended their laws to mandate the collection of DNA from some arrestees.[14] Virginia, which in 2003 began collecting DNA from people arrested for violent felonies, has made 621 case-to-arrestee hits as of September 30, 2010.[15]

In January 2009, new federal regulations took effect that direct all federal agencies to collect DNA upon arrest.[16] The Department of Justice, when proposing these regulations, noted that "[s]olving crimes by [DNA] furthers the fundamental objectives of the criminal justice system, helping to bring the guilty to justice and protect the innocent, who might otherwise be wrongly suspected or accused, through the prompt and certain identification of the actual perpetrators."[17] The first legal challenge to this DNA expansion has strongly supported the authority to collect DNA at arrest:[18] "[T]he court recognized that an individual arrested upon probable cause has a 'diminished expectation of privacy in his own identity,' and that DNA fingerprinting as a law enforcement tool is merely a 'technological progression' from photographs and traditional fingerprints."[19]

SUMMARY

DNA at arrest for all crimes simultaneously clears innocent suspects early in an investigation, holds accountable those who are guilty of a current or previous crime, and prevents future crimes by catching would-be serial criminals before they strike again. At the same time, the process does not step on personal rights or freedoms. The DNA itself contains no physical or genetic characteristics, but merely provides a unique profile for each individual. In the case of an acquittal or dropped charges, suspects would be able to have their samples removed from the databank.

There is no question that expanding entries into the DNA Identification Index to include all crimes at arrest would solve and prevent crimes. DNA at arrest is cost effective, saves lives, and protects the innocent.

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1. "Press Release: Raymon McGill Sentencing," Office of the Albany County District Attorney, *available at* http://www.albanycountyda.com/press_releases/January_2006/press_releases/012006_murder_S_40.html.

2. "DNA samples urged in NY misdemeanor plea bargains," *The Troy Record*, *available at* http://www.troyrecord.com/articles/2010/08/20/news/doc4c6e0f922ec11101086520.txt.

3. Ibid. In 1999, no misdemeanor convictions were eligible for DNA collection.

4. N.Y. Exec. Law § 995-c(9)(a).

5. N.Y. Exec. Law § 995-f; N.Y. Penal Law § 70.00(2)(e).

6. Brian A. Reaves, "Violent Felons in Large Urban Counties" U.S. Dep't of Just., (July 2006), *available at* www.ojp.usdoj.gov/bjs/pub/pdf/vfluc.pdf.

7. Ibid.

8. "DNA Databank and Collections: 2009 Crimestat Report" N.Y. Div. of Crim. Just. Serv., (June 30, 2010), *available at* http://criminaljustice.state.ny.us/pio/annualreport/annualreport.htm.

9. "2009 Crimestat Report," N.Y. Div. of Crim. Just. Serv., (June 2010), *available at* http://criminaljustice.state.ny.us/pio/annualreport/annualreport.htm.

10. "2006 Expansion Qualifying Offense by Hit Type" N.Y. Div. of Crim. Just. Serv. (January 10, 2011).

11. "2009 Crimestat Report" (June 2010), N.Y. Div. of Crim. Just. Serv., *available at* http://criminaljustice.state.ny.us/crimnet/ojsa/stats.htm.

12. Ibid.

13. "Justice Department Evaluation Finds DNA Technology Increases Chances of Arrest" U.S. Dep't of Just., (June 16, 2008), *available at* www.ojp.usdoj.gov/newsroom/pressreleases/2008/nij08020.htm.

14. Alabama Code 1975 § 36-18-25; Alaska Stat. § 44.41.035; Ariz. Rev. Stat. § 13-610; Ark. Code Ann. § 12-12-1006; Cal. Penal Code §§ 296, 297; Col. Rev. Stat. § 16-23-103; Florida Stat. § 47-943.325; Kan. Stat. Ann. § 21-2511; Louisiana Rev. Stat. Ann. §§ 15:609, 15:614; Maryland Public Safety Art. 2-501; Mich. Penal Code § 750.520m; Minn. Stat. Ann. § 299C.105; Missouri Rev. Stat. § 650.055; New Mexico Stat. Ann. § 29-3-10; North Carolina General Stat. § 15A-502a; North Dakota Cent. Code § 31-13-03; Ohio Revised Code § 2901.07(b)(1); South Carolina Code Ann. § 23-3-620; South Dakota Chapter 23-5A-5.2; Tenn. Code Ann. § 40-35-321; Tex. Gov't Code §§ 411.1471; Utah Public Safety Code § 53-10-404; Vermont 20 V.S.A. § 1933; Virginia Code Ann. § 19.2-310.2:1.

15. "DNA Databank Statistics" Virginia Department of Forensic Science, (September 30, 2010) *available at* http://www.dfs.virginia.gov/statistics/index.cfm.

16. These new regulations amended the DNA Fingerprint Act of 2005 and the Adam Walsh Child Protection and Safety Act of 2006.

17. "DNA - Sample Collection Under the DNA Fingerprint Act of 2005 and the Adam Walsh Child Protection and Safety Act of 2006," U.S. Dep't of Just., Federal Register Vol. 73 No. 76 Proposed Rules (Apr. 18, 2008) *available at* www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&o=0900006480511b01.

18. *United States v. Pool*, 2010 U.S. App. LEXIS 19133 (9th Cir. September 14, 2010).

19. "Federal Court In Sacramento Upholds Constitutionality Of Mandatory DNA Collection Of All Individuals Arrested On Federal Felony Charges" U. S. Dep't of Just., (May 7, 2009) *available at* www.justice.gov/usao/cae/press_releases/docs/2009/05-28-09MandatoryDNA.pdf.