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LEGISLATIVE PRIORITIES

# 2010

NEW YORK STATE LAW ENFORCEMENT COUNCIL **LEGISLATIVE PRIORITIES 2010**



## PREFACE

The New York State Law Enforcement Council was formed in 1982 as a legislative advocate for New York's law enforcement community. The Council's members represent the leading law enforcement professionals throughout the state, including the Attorney General of the State of New York, the District Attorneys Association of the State of New York, the New York State Association of Chiefs of Police, the New York State Sheriffs' Association, the New York City Criminal Justice Coordinator, and the Citizens Crime Commission of New York City. Since its inception, the Council has been an active voice and participant in improving the quality of justice and in the continuing effort to provide for a safer New York.

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## 1. *EXPAND THE STATE DNA IDENTIFICATION INDEX*

In June 1996, a young piano teacher was brutally attacked in Central Park. The offender, who was unknown to investigators, subsequently assaulted and robbed three other women, one of whom died of her injuries. The police collected crime scene DNA from each of the four attacks, but were unable to link that evidence with any existing offender DNA profiles. Eventually, a fingerprint lifted from one of the later crime scenes helped authorities to identify and arrest 22-year-old John Royster. Royster's only prior arrest was jumping a subway turnstile -- a crime for which he was required to submit a fingerprint, but not a DNA profile.

If Royster's DNA profile had been entered into the state's DNA Identification Index at the time of his misdemeanor arrest, the authorities would have matched it with the crime scene DNA much earlier. With a positive match, the police could have identified the assailant after the first attack, preventing the subsequent attacks and the death of one woman.

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 if they are convicted of a crime. The state-run database matches crime scene evidence to suspects. Limiting DNA samples to certain categories of crimes and mandating that samples be incorporated in the database only after conviction prevents the DNA database from being used to its full potential. The New York State Law Enforcement Council supports expansion of New York's DNA Identification Index to include profiles from all suspects 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 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 database of unsolved crime scene evidence. By taking DNA on arrest, law enforcement could identify arrestees who have committed unsolved crimes. And, by accurately matching a suspect to crime scene evidence, DNA decreases the likelihood of 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 database upon acquittal or dropped charges. Similar procedures for expunging profiles from the Index already exist for convicted offenders who later have their convictions overturned.[1]

### 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 a person's DNA.

The pieces of DNA that are analyzed for the database 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 or her traits. Scientists creating 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 database 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 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 related criminal case. Any tampering with a DNA sample or non-law enforcement use of the Index is prohibited by law and punishable by up to four years in prison.[2]

## BENEFITS OF DNA DATABASE EXPANSION

### Taking DNA Upon 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 database. This would provide law enforcement with an invaluable investigative lead in cases that might not have been solved otherwise.

Linking a defendant to an unsolved crime would give judges crucial information to help them decide 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.

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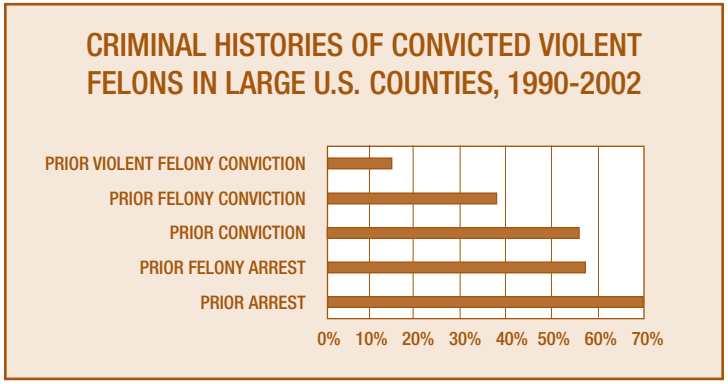
***Arrested Man, Perpetrator in Past Rape Case, Murders Woman While Out on Bail***

In November 2006, Glen Shoop was arrested in Onondaga County for raping his estranged wife. A DNA sample was taken from Shoop pursuant to both a court order and a consent agreement by the defendant. Police detectives noticed similarities to an unsolved East Syracuse rape case from 2000, so they compared his profile to the DNA from the cold case file. The profiles matched. However, prosecutors knew that the only permissible use of Shoop's DNA under both the court order and the voluntary consent agreement was to confirm his identity in the 2006 rape. They made a decision to wait for his conviction in the 2006 case, at which time they could officially compare his convicted offender sample to the 2000 case. As a result of proof problems, Shoop eventually pleaded guilty to a lesser charge of unlawfully imprisoning his wife in the 2006 case. Shoop was free on bail and failed to appear for sentencing. After jumping bail, Shoop sexually assaulted and killed a 65-year-old woman. Shoop was captured soon afterward, but this tragic murder could have been prevented if arrestees were included in New York's database in 2006. Shoop's DNA would have revealed him to be the rapist in a six-

year-old case and he would not have been free on bail to commit a homicide.

*- People v. Shoop, Onondaga County*

Studies of criminal histories show that violent felons tend to have a history of prior arrests. An estimated 70 percent of people convicted of violent felonies in large counties have been previously arrested.[3] Collecting DNA on arrest will ensure that criminals are in the system at the outset of their criminal careers.



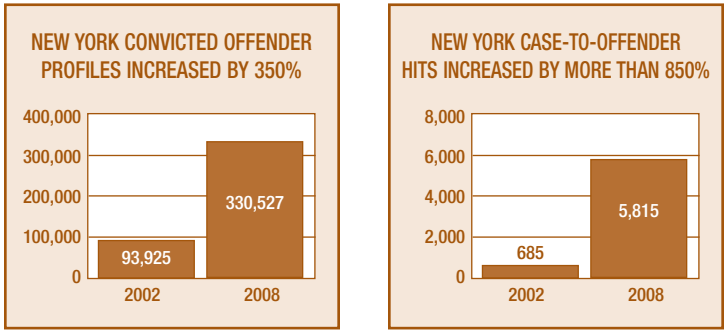

**Seventy percent of people convicted of a violent felony in the 75 most populous U.S. counties had a prior arrest. Only 38 percent had a prior felony conviction and just 15 percent had a prior violent felony conviction.**

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

### Past Expansions Have Reaped Significant Crime-Solving Benefits

The history of New York's DNA database indicates that expansion will lead to the earlier apprehension of criminals and the prevention of future crimes. Between 2002 and 2008, the number of samples in the database increased by 350 percent. At the same time, the number of case-to-offender hits through the database increased by more than 850 percent.[4]

**Increase in Case Hits Outstripped Growth of Convicted Offender Database from 2002 to 2008**




*Source: N.Y. Div. of Crim. Just. Serv., "2008 Crimestat Report" (May 2008), available at http://criminaljustice.state.ny.us/pio/annualreport/2008crimestatreport.pdf.*

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. All told, the DNA databank was responsible for 1,341 convictions through December 2008.[5] Fifty-one percent of all hits since the Index's inception occurred during the last two years,[6] which speaks to the effectiveness of the 2006 expansions. The

results of New York's limited experience in collecting DNA upon conviction of low-level offenses confirm 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.

***1997 Rapist Remains Free for Six Years Despite 13 Convictions and Multiple Arrests***

In June 1997, a 29-year-old woman coming home from a night out was approached from behind, forced into her building, and raped by Kevin White. Police were unable to identify him at the time through fingerprints or photographs. In 2003, White committed his second known rape, breaking into the victim's apartment, robbing her, and violently sexually assaulting her. Fortunately, this victim was able to identify her attacker and White was finally apprehended. Although White was a multiple rapist, his primary criminal activity was selling marijuana. Between 1999, when the DNA database went into effect, and 2003, White was convicted nine times of the misdemeanor of selling marijuana, as well as several other miscellaneous misdemeanors. He was arrested twice for felonies and was arrested but released on three other occasions. As White repeatedly passed through the criminal justice system without giving a DNA sample, New York missed multiple opportunities to identify him as a rapist and to prevent the 2003 sexual assault.

*- People v. White, New York County*



**Expanding the DNA Database 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 far less time than in the past. By taking DNA at arrest investigators would be one step closer to their search for the truth, be it that the suspect is innocent or guilty.

DNA on 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, DNA would only confirm their guilt. But in the few cases in which DNA evidence would exonerate them, had DNA been taken on arrest they never would have been convicted in the first place. Innocent people should not have to endure prison only to be later cleared 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**

The science of DNA analysis is becoming less expensive. The evolving science of DNA has dramatically lessened 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."[7]

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 ON ARREST

Twenty-one states have already amended their laws to mandate the collection of DNA from some arrestees.[8] Virginia, which began collecting DNA from people arrested for violent felonies in 2003 has made 523 case-to-arrestee hits to date.[9]

In January 2009 new federal regulations took effect that directs all federal agencies to collect DNA upon arrest.[10] 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."[11] The first legal challenge to this DNA expansion has strongly supported the authority to collect DNA on arrest. "[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."[12]

## SUMMARY

DNA on arrest for all crimes simultaneously clears innocent suspects early in an investigation, holds accountable people 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 database.

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

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1. N.Y. Exec. Law § 995-c(9)(a).

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

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

4. N.Y. Div. of Crim. Just. Serv., "DNA Databank and Collections: 2008 Crimestat Report" (June 10, 2009), available at http://criminaljustice.state.ny.us/pio/annualreport/2008crimestatreport.pdf.

5. N.Y. Div. of Crim. Just. Serv., "2008 Crimestat Report" (May 2009), available at http://criminaljustice.state.ny.us/pio/annualreport/2008crimestatreport.pdf.

6. Ibid.

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

8. 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 Dakota Cent. Code § 31-13-03; 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; Virginia Code Ann. § 19.2-310.2:1.

9. Virginia Department of Forensic Science, "DNA Databank Statistics" (May 31, 2009), available at www.dfs.virginia.gov/statistics/index.cfm.

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

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

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