

LEGISLATIVE PRIORITIES

New York State Law Enforcement Council

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NEW YORK STATE LAW ENFORCEMENT COUNCIL

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*New York State Sheriffs'
Association*

*Citizens Crime Commission
of New York City*



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 New York State District Attorneys Association, 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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EXPAND THE STATE DNA IDENTIFICATION INDEX

Eight years after the state DNA database made its first “hit” linking a convicted robber to a twenty-one-year-old unsolved murder in Westchester County, DNA is more crucial to law enforcement than ever. The utility of DNA is no longer limited to rapes and murders involving extensive physical contact by the perpetrator; developments in forensic science now allow investigators to recover DNA material from many other types of crimes, including burglaries and other property crimes. Forensic DNA has proven invaluable for unearthing suspects where no perpetrator has been identified, as well as for confirming eyewitness or fingerprint identifications. An essential tool for apprehending criminal offenders early in their careers, DNA has helped reduce New York’s crime rate over the past decade.

However, under New York State law only certain convicted offenders are required to provide a DNA sample to the DNA Identification Index, the state-run data bank of known persons which helps law enforcement match crime scene evidence to suspects. Persons are currently required to give their DNA only upon conviction for any felony or some misdemeanors. Unfortunately, this means the Index is still not being used to its full potential, in spite of several expansions since its creation in 1999. The New York State Law Enforcement Council supports expansion of New York’s DNA data bank to include profiles from persons upon arrest.

DNA PROFILES ARE ANALOGOUS TO FINGERPRINTS

DNA, like Fingerprints, Should Be Taken at Arrest

New York has yet to fully realize the potential suggested by the frequently-used analogy of DNA as “the fingerprint of the twenty-first century.” As with fingerprints, crimes are solved when DNA recovered at a crime scene is matched 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. It is only reasonable that law enforcement should be able to collect DNA at arrest and compare it against the database of unsolved crime scene evidence immediately. Over 200,000 people currently pass through the criminal justice system each year without providing a DNA sample for the data bank.¹ By taking DNA on arrest, law enforcement could immediately identify the arrestees who have committed prior unsolved crimes while reducing 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 developed from arrestees could also be removed from the database if the person was acquitted or the charges were dropped. Similar procedures for expunging profiles from the data bank already exist for convicted offenders who later have their convictions overturned.²

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

Where individuals’ 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 simply uniquely occurring sets of numbers derived from a few segments of each person’s DNA. The pieces of a person’s DNA that are analyzed when government laboratories produce a standardized profile for the data bank 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. (See below for a more detailed description of the science behind DNA fingerprinting.)

What is DNA?

DNA, deoxyribonucleic acid, is found in every cell of every person. DNA consists of a chain of four different chemical compounds (adenine, guanine, cytosine, and thymine) which appear in pairs known as base pairs. The order and composition of a person’s base pairs determines his or her physical traits. Scientists have determined which segments of DNA are responsible for certain physical traits, such as eye color or being prone to some genetic diseases. However, there are many segments of DNA whose function has not been determined, and scientists believe that many of these segments are “turned off,” or inactive. These segments, which contribute nothing to a person’s physical traits, are sometimes known as “junk” DNA.

¹ E-mail from Kimberly Schiavone, Forensic Serv. Program Manager, Div. of Crim. Just. Serv., to author (Mar. 6, 2008, 12:10:51 EST) (on file with LEC).

² N.Y. EXEC. LAW § 995-c(9)(a).

What is in a DNA Profile?

Scientists using DNA to establish the identity of an offender catalogue only a tiny percentage of a person's base pairs. Only 200 base pairs of junk DNA, or less than one-millionth of the total human genome, are analyzed in the creation of a DNA profile. Only this information, which is not useful for identifying any type of mental or physical trait, tendency or disease, is stored in the DNA data bank. The pieces of DNA used to create a profile were specifically picked for their tendency to be unique among individuals and because they do not determine any known personal traits.

A DNA Databank Profile Contains No Information About a Person's Physical Traits

Locus Alleles	D3S158 11,12	vWA 11,13	FGA 24,26	D8S1179 12,14	D21S11 28,30
Locus Alleles	D18S51 15,16	D5S818 13	D13S317 11,13	D7S820 9,11	D16S539 11
Locus Alleles	TH01 8	TPOX 9,11	CSF1PO 11,12		

The information recorded in a DNA profile is only useful for comparing DNA samples to one another. It cannot be used to tell physical traits of a person or to identify any genetic diseases carried by a person.

Individual privacy is also 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 for law enforcement officials investigating a related criminal case.

There have been no known instances of unauthorized disclosure of DNA information from *any* local, state, or national database. Any tampering with the DNA sample or non-law enforcement use of the data bank is prohibited by law. Were such tampering or unauthorized use ever to occur, the offender could be sentenced to up to four years in prison.³

BENEFITS OF DNA DATA BANK EXPANSION

Taking DNA Upon Arrest Will Prevent New Crimes and Solve Old Ones More Quickly

If New York took DNA from suspects at arrest and compared it to unsolved crimes in the database, the perpetrators of old crimes could be identified as soon as they were arrested for a new offense. This would provide law enforcement with an investigative leap forward of months, even years.

Linking a defendant to an old unsolved crime would also 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 gives DNA at arrest and is subsequently identified as the perpetrator in a DNA “cold case.”

Arrested Man, Unidentified as Perpetrator in Past Rape Case, Murders Woman While Out on Bail:

In November 2006, twenty-six-year-old 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 also noticed similarities to an unsolved East Syracuse rape case from 2000, so they compared his profile to the DNA from the cold

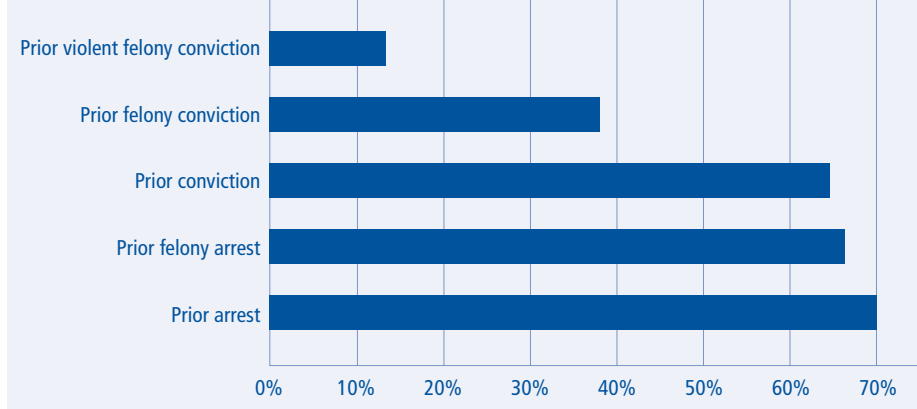
³ N.Y. EXEC. LAW § 995-f; N.Y. PENAL LAW § 70.00(2)(e).

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. Mindful of the specifics of the court order and consent agreement, prosecutors were concerned about the lawfulness of the comparison that had been performed. 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 that November 2006 case. Shoop had been free on bail on that November arrest and failed to appear for sentencing. After jumping bail, Shoop sexually assaulted and killed a sixty-five-year-old woman. Shoop was captured soon afterward, but this tragic murder could have been prevented if arrestees had been 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 repeated prior arrests. An estimated 70% of persons convicted for violent felonies have previously been arrested.⁴ Collecting DNA on arrest will ensure that criminals are in the system at the outset of their criminal careers so that those who choose to commit new crimes will be identified quickly and with greater certainty.

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BRIAN A. REAVES, U.S. DEP’T OF JUST., VIOLENT FELONS IN LARGE URBAN COUNTIES I (2006), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/vfluc.pdf>.

Criminal Histories of Convicted Violent Felons in Large U.S. Counties (1990–2002)



Seventy percent of persons convicted of a violent felony in the seventy-five most populous U.S. counties had a prior arrest. Only 38% had a prior felony conviction and just 15% had a prior violent felony conviction.

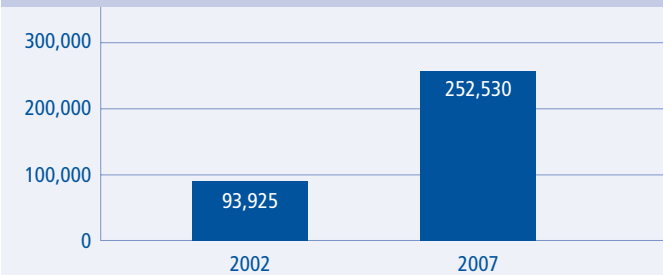
Source: Brian A. Reaves, U.S. Dep’t Of Just., Violent Felons In Large Urban Counties I (2006), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/vfluc.pdf>.

Past Expansions Have Reaped Significant Crime-Solving Benefits

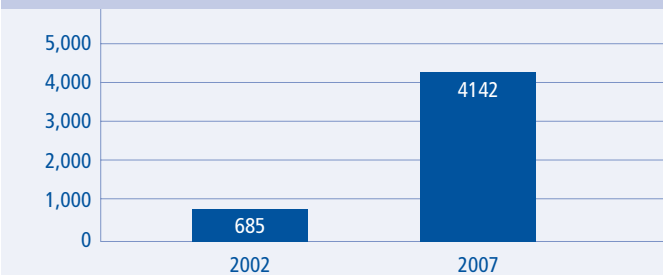
The history of New York’s DNA data bank proves that DNA expansion will lead to the earlier apprehension of criminals and the prevention of future crimes. Between 2002 and 2007, the number of samples in the data bank increased by 169%. At the same time, the number of case-to-offender hits through the data bank increased by over 500%.

Increase in Case Hits Outstripped Growth of Convicted Offender Database (2002–2007)

New York Convicted Offender Profiles Increased by 169%



New York Case-to-Offender Hits Increased by over 500%



Source: Div. Of Crim. Just. Serv., Crimestat Rep. 3, New York State Criminal Justice 2006 Crimestat Report 22 (2007), available at <http://criminaljustice.state.ny.us/pio/annualreport/2006crimestatreport2-9-07.pdf>; E-mail from Kimberly Schiavone, Forensic Serv. Program Manager, Div. of Crim. Just. Serv., to author (Mar. 6, 2008, 12:10:51 EST) (on file with LEC).

In 2006, New York added all remaining felonies and eighteen 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; rather, they included such crimes as bribery of a public servant, possession of a forged

instrument, and falsification of business records. Yet DNA profiles added from this expansion have already hit against over 450 serious, previously unsolved crimes in the DNA data bank, including assaults, burglaries, sexual assaults, and homicides. The eighteen misdemeanors alone accounted for over 170 hits in a year and a half. The results of New York’s limited experience in collecting DNA from “low-level” offenders 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.

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1997 Rapist Remains Free for Six Years in Spite of Thirteen Convictions and Multiple Arrests: In June 1997, a twenty-nine-year-old woman coming home from a night out was approached from behind, forced into her building, and raped on the floor of her vestibule 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 data bank went into effect, and 2003, White was convicted nine times of the misdemeanor of selling marijuana, as well as several other miscellaneous misdemeanors on separate occasions. He had also been arrested twice for felonies and had been 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*

DNA Analysis Will Save Investigative Resources, Exonerate the Innocent, and Safeguard Against Wrongful Conviction

In addition to solving crimes, the use of DNA in criminal investigations protects innocent persons. The more samples contained in the data bank, the more likely it is that innocent suspects will avoid arrest and conviction. As DNA testing has become faster, a person mistakenly accused can be exonerated in weeks, rather than in the months and years required in the past. The speedy implication or elimination of potential suspects also helps police to focus their investigative efforts more judiciously. As DNA comes to be utilized in a wider variety of cases, the cost of running down futile leads will be significantly reduced.

DNA Analysis Has Become More Efficient and Less Expensive

Forensic DNA analysis is a sound investment for New York. The science of DNA analysis is becoming markedly less expensive. The exorbitant costs associated with this science are a thing of the past; including capital and personnel costs, it now costs less than \$30 to process a sample. The evolving science of DNA has also dramatically lowered the amount of time needed to process a single profile.

Other Jurisdictions Have Already Benefited from Taking DNA on Arrest

At least eleven states have already amended their laws to mandate the collection of DNA from arrestees.⁵ The experiences of other jurisdictions are telling. Virginia, which began collecting DNA from persons arrested for violent felonies in 2003, has made nearly 400 case-to-arrestee hits to date.⁶ Across the Atlantic Ocean, the United Kingdom, which has been collecting DNA from arrestees for years and now boasts the largest DNA data bank in the world, matches over 49,000 crime scenes to known persons every year.⁷ In contrast, New York's database has produced just upwards of 4100 case-to-offender matches in nine years of operation.

While New York's numbers on DNA are impressive when compared to many other states, the experience in the UK suggests the unfulfilled potential in collecting DNA upon arrest. The UK has on average more than 4000 hits per month, while New York — with a population one-third the size of the UK's — currently gets a couple hundred hits in an average month.⁸

5 ALASKA STAT. § 44.41.035; ARIZ. REV. STAT. § 13-610; CAL. PENAL CODE §§ 296, 297; KAN. STAT. ANN. § 21-2511; LA. REV. STAT. ANN. §§ 15:609, 15:614; MINN. STAT. ANN. § 299C.105; N.M. STAT. ANN. § 29-3-10; N.D. CENT. CODE § 31-13-03; TENN. CODE ANN. § 40-35-321; TEX. GOV'T CODE §§ 41L.1471, 41L.151; VA. CODE ANN. § 19.2-310.2:1.

6 Virginia Department of Forensic Science DNA Databank Statistics, <http://www.dfs.virginia.gov/statistics/index.cfm> (last visited Mar. 14, 2008).

7 NAT'L DNA DATABASE STRATEGY BD. (U.K.), NATIONAL DNA DATABASE ANNUAL REPORT 2005-2006, at 35 (2006), available at <http://www.homeoffice.gov.uk/documents/dna-report2005-06.pdf>.

8 Schiavone, *supra* note 1.