

“DNA Collection Upon Arrest”

Expansion of the New York State DNA Database



State Senator Jeffrey D. Klein
October 2009

Overview

Many violent crimes are committed by repeat offenders. Most states require DNA collection upon felony conviction, but a review of criminal history records shows that offenders typically have numerous felony arrests before a conviction is ever secured. DNA is a high-tech equivalent of a fingerprint file and a powerful tool that helps convict the guilty, exonerate the innocent¹ and bring justice to victims. By passing legislation that enables law enforcement to collect DNA from certain felony arrestees, New York can apprehend criminals sooner and before they commit further crimes. This means more lives will be saved and the innocent will be protected. America's Most Wanted Host John Walsh has called DNA collection upon arrest "the most powerful tool known to crime fighters today." As several studies in other states have shown, waiting to collect DNA upon conviction can cost lives.

Senator Jeff Klein's "DNA Upon Arrest" bill ("DNA Arrest bill") would mandate the collection of DNA in New York from all people arrested and charged with the following penal law sections, or an attempt thereof, where such attempt is a felony: sections 120.05, 120.06, 120.07, 120.10, 120.11, 120.12, relating to assault; sections 120.55 and 120.60, relating to stalking, section 120.70, relating to luring a child, sections 125.15 through 125.27 relating to homicide; sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.53, 130.65, 130.67, 130.70, 130.75, 130.80, 130.95 and 130.96, relating to sex offenses; sections 135.10, 135.20, 135.25 and 135.35, relating to kidnapping, sections 140.17, 140.20, 140.25 and 140.30, relating to burglary, section 155.30, 155.35, 155.40 and 155.42, relating to grand larceny, sections 160.05, 160.10 and 160.15, relating to robbery, sections 150.05, 150.10, 150.15 and 150.20, relating to arson, section 230.34, relating to sex trafficking, sections 235.21 and 235.22, relating to dissemination of indecent material to minors, sections 255.25, 255.26 and 255.27 relating to incest, section 250.50, relating to unlawful surveillance, sections 263.05, 263.10, 263.11, 263.15, 263.16, and 263.30, relating to sexual performance by a child; or sections 265.02, 265.03, 265.04, 265.08, 265.09, 265.11, 265.12, 265.13, 265.14 and 265.16, relating to firearms and other dangerous weapons.

Collecting DNA samples from these arrestees² would provide an important expansion to the state's DNA registry.

Current New York Law

DNA collection upon arrest is not currently permissible in New York. Now, only forty-six percent of Penal Law convicts in New York State are required to submit a DNA sample for inclusion in the state's database, including those convicted of **any** felony and 18 specified misdemeanors (including petit larceny).³ Youthful Offenders do not qualify,

¹ Nationally, DNA has helped exonerate nearly 200 wrongfully convicted people.

² According to the NYS Department of Criminal Justice Services (hereinafter "DCJS"), in 2008, arrests for these enumerated crimes represented 10.7 percent of all arrests in New York State.

³ DCJS statistic.

as youthful offender adjudications are not considered convictions. Juvenile Offenders do qualify.

The database, known as the Databank, began limited operations in 1996, when individuals convicted of homicide and certain sex-related crimes were required to submit a DNA sample. The Databank was expanded in 1999 and again in 2004, but still only required samples from 14 percent of convictions in the State until 2006 when a new law was passed in New York requiring the collection of DNA from all felony convicts.

From 1996 to the end of 2007, the program had put a name to 4,142 crime scene DNA samples. Nearly a third of those hits came in 2007, the first year after the new law went into effect collecting DNA from all felony convicts.

Last Significant Expansion of DNA Database

The last major DNA legislation to expand the DNA database was the June 2006⁴ law that was passed under the Governor Pataki administration. As established in 2006, section 995 (7) of the Executive Law requires persons convicted of any felony defined in the Penal Law, or an attempt thereof where the attempt is a felony, as well as persons convicted of specified misdemeanor offenses, to provide a DNA specimen for the Databank. The following is a list of the specified misdemeanors requiring DNA collection in New York upon conviction. Highlighted in italics are the offenses that were added in the 2006 legislation.

- *120.00 - assault in the 3rd degree*
- *110.00/120.12 - attempted aggravated assault upon a person less than 11 years old*
- *110.00/120.13 - attempted menacing in the 1st degree*
- *120.14 - menacing in the 2nd degree*
- *120.15 - menacing in the 3rd degree*
- *120.20 - reckless endangerment in the 2nd degree*
- *120.45 - stalking in the 4th degree*
- *120.50 - stalking in the 3rd degree*
- *110.00/120.55 - attempted stalking in the 2nd degree*
- 130.20 - sexual misconduct
- 110.00/130.20 - attempted sexual misconduct
- 110.00/130.25 - attempted rape in the 3rd degree
- 110.00/130.40 - attempted criminal sexual act in the 3rd degree

⁴ The law, which went into effect on June 23, 2006, amended section 995(7) of the Executive Law to require anyone convicted of and sentenced for any penal law felony or an attempt to commit a penal law felony, where such attempt is itself a felony offense, as well as to 18 new specified misdemeanor offenses (including petit larceny), to provide a DNA sample for the State DNA Databank. The legislation applies to offenders convicted and sentenced for one of the newly designated offenses committed on or after June 23, and also to offenders who committed their offense prior to June 23, but who did not complete their sentence imposed thereon before June 23.

- *130.52 - forcible touching (prior to this law, a person convicted of forcible touching was required to submit a DNA sample only if the victim was less than 18 OR the person was previously convicted of a sex offense or sexually violent offense, or 130.52 or 130.55, or an attempt thereof)*
- *110.00/130.52 - attempted forcible touching (where victim is less than 18 OR offender has previously been convicted of a sex offense or sexually violent offense, or 130.52 or 130.55, or an attempt thereof)*
- *110.00/130.53 - attempted persistent sexual abuse*
- *130.55 - sexual abuse in the 3rd degree (prior to this law, a person convicted of sexual abuse in the 3rd degree was required to submit a DNA sample only if the victim was less than 18 OR the person was previously convicted of a sex offense or sexually violent offense, or 130.52 or 130.55, or an attempt thereof)*
- *110.00/130.55 - attempted sexual abuse in the 3rd degree (where victim is less than 18 OR offender has previously been convicted of a sex offense or sexually violent offense, or 130.52 or 130.55, or an attempt thereof)*
- *130.60 - sexual abuse in the 2nd degree*
- *110.00/130.60 - attempted sexual abuse in the 2nd degree*
- *110.00/130.65-a - attempted aggravated sexual abuse in the 4th degree*
- *135.05 - unlawful imprisonment in the 2nd degree (prior to this law, a person convicted of unlawful imprisonment in the 2nd degree was required to submit a DNA sample only if the victim was less than 17 and the person was not the parent of the victim)*
- *110.00/135.05 - attempted unlawful imprisonment 2nd degree (where victim is less than 18 AND offender is not parent)*
- *110.00/135.10 - attempted unlawful imprisonment in the 1st (prior to this law, a person convicted of attempted unlawful imprisonment in the 1st degree was required to submit a DNA sample only if the victim was less than 17 and the person was not the parent of the victim)*
- *140.15 - criminal trespass in the second degree*
- *140.35 - possession of burglar's tools*
- *155.25 - petit larceny*
- *260.10 - endangering the welfare of a child*
- *260.25 - endangering the welfare of an incompetent or physically disabled person*
- *230.04 - patronizing a prostitute in the 3rd degree (where the person patronized is in fact less than seventeen years of age)*
- *110.00/230.04 - attempted patronizing a prostitute in the 3rd degree*
- *110.00/230.05 - attempted patronizing a prostitute in the 2nd degree*
- *110.00/255.25 - attempted incest*
- *110.00/263.11 - attempted possessing an obscene sexual performance by a child*
- *110.00/263.16 - attempted possessing a sexual performance by a child*

Senator Klein's Proposed Legislation

Senator Klein has introduced a bill to amend Executive Law Section 995 to require DNA to be collected upon arrest for the alleged commission or attempted

commission of certain felonies. Prior to the 2006 law requiring DNA upon conviction of all felonies, the law limited collection of DNA to conviction for certain felonies (“pre-2006 felony DNA crimes”). Senator Klein’s legislation would require mandatory DNA submissions by a “felony arrestee”, which is defined as someone who is arrested for limited and specific felony crimes. The list was extracted from the list of pre-2006 felony DNA crimes based on their likelihood to create hits against the DNA database. For example, felony burglary crimes were chosen because 30 percent of the hits to the DNA Databank have been linked to burglary crime scenes (see chart “Hits Against Databank” on page 8) and it has been estimated that each burglar in the top 10 percent of burglars commits more than 232 burglaries per year.⁵ A full list of the arrests eligible for DNA collection under Senator Klein’s bill can be found in the chart “2008 Arrests Eligible for DNA Collection under Senator Klein Proposal,” which starts on page 8.

The DNA would be taken at the same time the arrestee is fingerprinted.

There are already procedural safeguards incorporated in current law which would be applicable to the proposed legislation. For one, should a person not be convicted, they could request the purging of their DNA sample from the database. This bill takes this a step further and simplifies the process in which a person would get their DNA purged from the database. Rather than requiring a court order to purge DNA, the prosecutor would have to consent to purging when prosecutorial appellate avenues are exhausted. Further, notice would have to be provided to the arrestee at the time of DNA collection of the right to purge DNA from the database should the arrest not result in conviction. There are existing criminal and financial penalties in place in the current law for those who maintain collected DNA samples where those samples are improperly used.

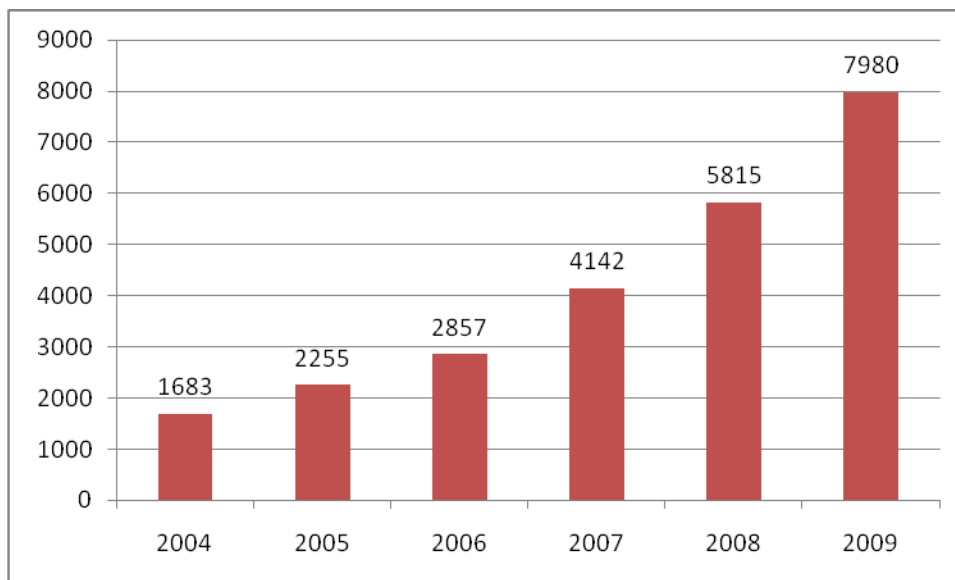
New York DNA Statistics

A DNA Databank hit is a result of a match between DNA profiles developed from crime scene evidence (“forensic samples”) and a DNA offender profile stored in the DNA Databank. Law enforcement agencies are notified of these hits⁶, which often serve as investigative leads. The law enforcement agency then determines the significance of the evidence in the context of other investigative information when considering criminal charges.

⁵ Chaiken, J.M. and M.R. Chaiken, *Varieties of Criminal Behavior*, Washington, DC: US Dept. of Justice, National Institute of Justice, 1982 (NCJ 87680); 44.

⁶ A hit does not mean the offender committed the crime he or she is linked to. DNA hits are simply investigative leads and tie the offender to the crime scene rather than conclusively inculcating the offender to the crime.

DNA Databank Hits in New York through August 2009 (Cumulative)



Since the Databank's inception, there have been a total of 7,980 hits. In 2008, there were 1,673 hits on the DNA Databank, a 30 percent increase from the 1,285 hits during 2007. Fifty-one percent of all hits since Databank inception occurred during the last two years, subsequent to the passage of legislation that expanded the database to include all felony convictions and some misdemeanors. Obtaining DNA upon arrest for certain felonies would undoubtedly result in more hits, thereby solving more crimes and preventing future ones.

As of August 2009, the DNA Databank in New York contained DNA samples collected from 330,411 convicted offenders (hereinafter "offender profiles"). There are 28,858 forensic samples in the database, which are DNA samples taken from crime scenes in New York (hereinafter "forensic samples"). Sometimes more than one forensic sample is taken from any one crime scene. Of the offender profiles collected in New York, 7,980 of those have matched forensic samples, providing important investigative leads in solving those crimes. The database also tracks when the same DNA is found at two or more crime scenes. This is referred to as a "case to case hit". In New York, there are 222 DNA collections that match DNA collected from another crime scene, indicating a potential serial criminal. New York's offender profiles have also matched forensic

samples in the national DNA database on 1,384 occasions. The chart below breaks down these numbers more clearly, and shows that 8,275 investigations have been aided through the collection of DNA upon conviction. DNA upon arrest would most certainly result in further aid to investigations.

DNA New York Databank Statistics (last updated 8/5/2009)

Total Number of DNA Profiles in New York	330,411
Forensic Samples (crime scene) in State DNA Index System (SDIS)	28,858
Total Number of Offender and Forensic Matches in New York	7,980
Number of Forensic Case to Case Hits (State)	222
Number of National Hits: (Offender and Forensic) ⁷	1,384
Investigations Aided*	8,275

While precise projections of how many hits might occur or crimes might be solved if DNA were collected upon arrest, there is no disputing that collecting DNA upon arrest would increase the total number of DNA profiles in New York and the likelihood of a match to a crime scene. The chart below gives some indication of how collecting DNA upon arrest may impact the size of the database and the number of hits or crimes that may be solved. The chart shows how many arrests occurred⁸ in 2008 throughout the state for the crimes that Senator Klein's bill would include as crimes that require DNA collection upon arrest. Arrests for crimes proposed in the bill constituted 50,000, or 8.5 percent, of all arrests in New York in 2008. While that is seemingly a small percentage of all arrests, 90 percent of all hits in New York's Databank between 1996 and 2008 were

⁷ The system used for performing the search for suspects is the FBI Laboratory's Combined DNA Index System (CODIS), which generates investigative leads in cases where biological evidence is recovered from the crime scene. The system links offenders with crime scene evidence, and provides investigative leads by comparing and linking together crime scenes throughout the country which can lead authorities to repeat offenders. Matches made among profiles in the Forensic Index (all local dna index systems maintain a forensic index which is comprised of DNA profiles from crime scene evidence submitted by agencies they serve) can link crime scenes together; possibly identifying serial offenders. Based upon a match, police from multiple jurisdictions can coordinate their respective investigations and share the leads they developed independently. Matches made between the Forensic and Offender Indexes provide investigators with the identity of a suspected perpetrator(s). Since names and other personally identifiable information are not stored at NDIS, qualified DNA analysts in the laboratories sharing matching profiles contact each other to confirm the candidate match.

*The term "Investigations Aided" includes case to case matches as well as forensic to offender matches. Since its implementation in 1998, CODIS has assisted in more than 62,000 investigations and has actually linked nearly 50,000 offenders with crime scene evidence.

⁸ According to DCJS, as of September 3, 2009, the total number of arrests in New York State in 2008 resulted in: 54.3 percent conviction, 22.6 percent dismissal, .1 percent acquittal, and 16.6 percent open, with no reported disposition. The remaining 6.5 percent had other outcomes.

matched to DNA evidence recovered from the scenes of these types of crimes, as the chart on page 10 shows.

**CRIMES (and attempts thereof) ELIGIBLE FOR DNA COLLECTION
UPON ARREST UNDER SENATOR KLEIN PROPOSAL⁹
(CHART SHOWS NUMBER OF ARRESTS IN 2008 PER CRIME)**

PL TOP ARREST CHARGE	Number of Arrests	% of Enumerated Arrests	% of All Arrests
PL 120.05 ASSAULT-2ND DEGREE	14,714	23.8%	2.5%
PL 120.06 GANG ASSAULT-2ND	870	1.4%	0.2%
PL 120.07 GANG ASSAULT-1ST	368	0.6%	0.1%
PL 120.10 ASSAULT-1ST	1,750	2.8%	0.3%
PL 120.11 ASLT POLICE OFFR DEADLY WEAPON	77	0.1%	0.0%
PL 120.12 ASLT ON PERSON < 11 YEARS OLD	22	0.0%	0.0%
PL 120.55 STALKING-2ND	24	0.0%	0.0%
PL 120.60 STALKING-1ST	15	0.0%	0.0%
PL 125.15 MANSLAUGHTER-2ND	61	0.1%	0.0%
PL 125.20 MANSLAUGHTER -1ST	40	0.1%	0.0%
PL 125.22 AGGRAV MANSLAUGHTER-1ST	2	0.0%	0.0%
PL 125.25 MURDER-2ND	949	1.5%	0.2%
PL 125.26 AGGRAVATED MURDER	3	0.0%	0.0%
PL 125.27 MURDER-1ST	59	0.1%	0.0%
PL 130.25 RAPE-3RD	546	0.9%	0.1%
PL 130.30 RAPE-2ND	459	0.7%	0.1%
PL 130.35 RAPE-1ST	1,048	1.7%	0.2%
PL 130.40 CRIMINAL SEXUAL ACT-3RD	149	0.2%	0.0%
PL 130.45 CRIMINAL SEXUAL ACT-2ND	149	0.2%	0.0%
PL 130.50 CRIMINAL SEXUAL ACT-1ST	366	0.6%	0.1%
PL 130.53 PERSISTENT SEXUAL ABUSE	18	0.0%	0.0%
PL 130.65 SEXUAL ABUSE-1ST	723	1.2%	0.1%
PL 130.67 AGGRAVATED SEXUAL ABUSE-2ND	27	0.0%	0.0%
PL 130.70 AGGRAVATED SEXUAL ABUSE-1ST	21	0.0%	0.0%
PL 135.10 UNLAWFUL IMPRISONMENT-1ST	206	0.3%	0.0%

⁹ This chart has not been updated to include the crimes most recently added to the definition of “felony arrestee” in the B version amendment in February 2010 of S6213B. Those additional crimes now included in the bill are 130.75, 130.80, 130.95 and 130.96, relating to sex offenses; 135.35, relating to kidnapping and labor trafficking; 155.35, 155.40 and 155.42, relating to grand larceny; 235.21, relating to dissemination of indecent material (although there is some question as to whether this crime is charged anymore due to a court ruling deeming it unconstitutional), and 165.02, 165.03, 265.04, 265.08, 265.09, 265.11, 265.12, 265.13, 265.14 and 265.16, relating to firearms and other dangerous weapons.

PL 135.20 KIDNAPPING-2ND	96	0.2%	0.0%
PL 135.25 KIDNAPPING-1ST	36	0.1%	0.0%
PL 140.17 CRIMINAL TRESPASS-1ST	107	0.2%	0.0%
PL 140.20 BURGLARY-3RD	5,504	8.9%	1.0%
PL 140.25 BURGLARY-2ND	5,772	9.3%	1.0%
PL 140.30 BURGLARY-1ST	653	1.1%	0.1%
PL 150.05 ARSON-4TH:RECKLESSLY DAMAGE	53	0.1%	0.0%
PL 150.10 ARSON-3RD:INTENTIONALLY DAMAGE	253	0.4%	0.0%
PL 150.15 ARSON-2ND:INTENT PERSON PRESNT	165	0.3%	0.0%
PL 150.20 ARSON-1ST:CAUSE INJ-FOR PROFIT	30	0.0%	0.0%
PL 155.30 GRAND LARCENY-4TH	11,028	17.8%	1.9%
PL 160.05 ROBBERY-3RD	2,902	4.7%	0.5%
PL 160.10 ROBBERY-2ND	7,464	12.1%	1.3%
PL 160.15 ROBBERY-1ST	4,893	7.9%	0.8%
PL 230.34 SEX TRAFFICKING	10	0.0%	0.0%
PL 235.22 DISSEM INDECENT MATERIAL TO MINOR-1ST	56	0.1%	0.0%
PL 250.50 UNLAWFUL SURVEILLANCE-1ST	1	0.0%	0.0%
PL 255.25 INCEST-3RD	12	0.0%	0.0%
PL 255.26 INCEST-2ND	1	0.0%	0.0%
PL 255.27 INCEST-1ST	1	0.0%	0.0%
PL 263.05 USE CHILD <17- SEX PERFORMANCE	15	0.0%	0.0%
PL 263.10 PROM OBSCENE SEX PERF-CHILD<17	22	0.0%	0.0%
PL 263.11 POSS OBS SEX PERFORM BY CHILD	38	0.1%	0.0%
PL 263.15 PROM SEX PERFORMANCE-CHILD <17	53	0.1%	0.0%
PL 263.16 POSS SEXUAL PERFORM BY CHILD	77	0.1%	0.0%
Total	61,908	100.0%	10.7%

Note: Includes arrests for completed and attempted offenses.

Source: DCJS, Computerized Criminal History system (as of 9/09).

**Hits Against the New York DNA Databank through
2008 by Type of Crime Scene (Cumulative)**

Type of Crime Scene Offender's DNA Profile Linked To:	Hits	Percent of Hits
Sexual Assault	2,565	44%*
Burglary	1,766	30%
Homicide	538	9%
Robbery	498	8%
Other	498	9%
Total	5,815	100%

***Of the 5,815 hits generated since inception, 44 percent were against physical evidence collected in connection with homicide investigations, 30 percent were in connection with burglary investigations, etc..**

As of August 31st 2009 and since the inception of the DNA Databank, 1,515 convictions have resulted from the total number of hits, according to DCJS. This represents approximately 21% of the total hits against the DNA Databank, as there have been approximately 7390 hits through the middle of August 2009 (See chart on page 6). And, there are approximately 500 additional cases/hits in which an arrest has been made, but a final case disposition has not yet been reached.

Further accentuating the importance of a law in this state that collects DNA upon a carefully chosen portion of arrests is the fact that while New York represents about 10 percent of all of the unsolved crime scenes in the United States, its database contains only about 4.5 percent of all DNA profiles in the United States. Because New York has such a high percentage of unsolved crimes, collecting DNA upon arrest and, thus, increasing New York's database, is crucial to solving these crimes.

The following chart breaks down the cited figures more clearly.

How New York Currently Measures Up to National DNA Databank Statistics

<i>Statistical Information</i>	<i>Nationally¹⁰</i>	<i>New York¹¹</i>	<i>Percentage that New York Represents</i>
<i>Total number of Offender DNA Profiles as of July 2009</i>	7,261,604	330,411	<i>New York's offender profiles represent 4.55 percent of all DNA profiles in the United States</i>
<i>Total number of forensic profiles, or DNA samples from crimes scenes where crime is not solved</i>	277,215	28,858	<i>New York's unsolved crimes constitute 10.4 percent of all unsolved crimes in the United States</i>

Additionally, requiring arrestees of certain crimes to submit a DNA sample assures that criminals' DNA profiles are in the Databank at the outset of their criminal careers, so that those who choose to commit more crimes will be identified more readily and with greater certainty, limiting future criminal activity and recidivism.

According to studies by DCJS, on average, offenders linked to crimes on the DNA Databank had approximately 11 prior arrests and five prior convictions. In addition, criminals don't specialize in the types of crimes they commit; 83 percent of offenders linked to sexual assault cases were in the state's DNA Databank for a crime other than a sex-related offense. This is illustrated in the chart on the next page, which shows what crime a convict committed when DNA was taken pursuant to current law, along with what type of crime scene the DNA sample was linked to.

¹⁰ These figures were updated in July 2009 by the Federal Bureau of Investigation.

¹¹ These figures were updated as of August 2009 by NYS Division of Criminal Justice Services.

New York State Division of Criminal Justice Services
Office of Forensic Services
2006 DNA Expansion - Qualifying Offense by Hit Type
From June 23, 2006, through August 2009

2006 Qualifying Conviction	Case Type																Totals
	Arson	Assault	Aggravated Harass.	Burglary	Criminal Mischief 1st, 3rd	Criminal Poss. Weapon	Homicide	Larceny	Motor Vehicle Theft	Other	Reckless Endanger- ment	Robbery	Sexual Assault	Shots Fired	Trespass	Vandalism	
Arson	0	0	0	1	0	0	1	0	0	0	0	0	1	0	0	0	3
Assault 2nd, 3rd	1	5	0	40	2	0	13	3	2	0	1	14	84	0	0	0	165
Auto Stripping 1st	0	0	0	4	0	0	0	0	0	0	0	1	1	0	0	0	6
Bribery of Public Servant	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Conspiracy 1st, 4th	0	0	0	1	0	0	2	0	0	0	0	3	1	0	0	0	7
Criminal Contempt	0	0	0	1	0	0	0	0	0	0	0	1	2	0	0	0	4
Criminal Poss./Sale Various - Drugs	2	10	0	45	4	9	36	8	2	2	4	16	114	1	0	1	254
Criminal Mischief 1st, 3rd	0	0	0	8	1	0	0	3	0	0	0	0	2	0	0	0	14
Criminal Trespass 1st	0	4	1	31	0	0	11	7	0	0	0	6	41	1	0	0	102
Criminal Possession of Weapon	1	1	0	0	0	1	0	0	0	0	0	0	1	0	0	0	4
Endangering Welfare of Child	1	0	0	7	0	0	0	0	0	0	0	1	17	0	0	0	26
Falsifying Business Records 1st	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Falsifying Report Forgery	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
	0	0	1	4	0	0	1	1	0	0	0	1	2	0	0	0	10
Grand Larceny 2nd,	0	2	0	20	1	0	6	3	0	0	0	5	21	0	0	0	58

3rd, 4 th																	
Hazing	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Insurance Fraud 3rd	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	1
Menacing	0	2	0	5	1	0	3	4	3	0	0	2	13	0	0	0	33
Petit Larceny	0	10	1	180	3	1	16	31	1	3	0	28	91	0	1	0	366
Possession Forged Instrument 2nd	0	1	0	5	0	0	1	0	0	0	0	1	6	0	0	0	14
Possession of Forgery Device	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Possession of Burglar Tools	0	0	0	3	0	0	1	2	0	0	0	1	2	0	0	0	9
Possession of Stolen Property 1st, 2nd	0	0	0	17	1	0	0	7	1	0	0	4	16	0	0	0	46
Reckless Endangerment 2nd	0	0	0	6	0	0	0	1	0	1	0	0	10	0	0	0	18
Stalking 4th/Cause Fear	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1
Tampering w/ Physical Evidence	0	0	0	2	0	0	0	0	0	0	0	0	1	0	0	0	3
Unauthorized Use of Vehicle	0	0	0	2	0	0	0	0	0	0	0	0	2	0	0	0	4
Totals	5	36	3	382	13	11	93	70	9	6	5	84	432	2	1	1	1,153

Other States Laws

Twenty-one states have already passed “DNA Upon Arrest” legislation. They are:

Texas – post indictment only in certain sex crimes

Virginia – violent felonies including attempts

Minnesota – specified serious crimes upon judicial finding of probable cause

California – expansion to all felony arrestees in 2009

New Mexico – specified violent felonies

Alaska – violent felonies

Arizona – many serious felonies

Kansas – all felonies

Tennessee – violent felonies upon the finding of probable cause

South Dakota – felonies punishable by five years or more in prison

North Dakota – all felonies

Maryland - violent crimes, burglary and breaking and entering of motor vehicle

Michigan – violent felonies

South Carolina – felonies punishable by five years or more in prison

Additionally, Vermont, Arkansas, Florida, Colorado, Missouri, Illinois, and Louisiana have also passed DNA Upon Arrest laws.



Source: National Conference of State Legislatures, 2009

Similar DNA upon arrest bills are also pending in several other states including Colorado, Ohio, Pennsylvania, and North Carolina.

DNA Upon Arrest- Sample Cases

*Chicago Case Study*¹²

In 2005, the City of Chicago demonstrated the prevalence of repeat crime and the importance of arrestee testing. By taking a closer look at the criminal history of eight convicted felons, the Chicago Study uncovered startling results - 60 violent crimes could have been prevented if only DNA had been collected for a prior felony arrest. They included 22 murders whose victims ranged from 24-44 years of age and 30 rapes of young girls and women between ages of 15 and 65. Below is a sampling of the criminal history of the felons studied:

Brandon Harris was convicted of five aggravated criminal sexual assaults and one aggravated kidnapping/attempted rape. If the state had required him to give a DNA sample during his felony arrest on August 25, 2000, a DNA match could have been obtained with the DNA evidence recovered from his first rape. Four rapes and one attempted rape/armed robbery/aggravated kidnapping could have been prevented. Harris was convicted of 5 aggravated criminal sexual assaults and 1 attempted aggravated criminal sexual assault.

- 12/1999 first rape, DNA recovered from scene
- 8/2000 – 10/2000, Arrest for sexual assault
- 11/2000, one woman raped, one woman kidnapped
- 12/2000, arrest for robbery; while home confined another rape occurs
- 2/2000, one woman raped, one girl raped
- 5/2001, girl raped

Mario Villa was charged with four rapes, linked by DNA to two other rapes and was a main suspect in an additional rape and two attempted rapes. If the state had required him to give a DNA sample during his felony arrest on February 6, 1999, a DNA match could have been obtained with the DNA evidence recovered from his first rape. Eight rapes or attempted rapes could have been prevented. If Villa's DNA had been taken in February 1999 after he was arrested for burglary (felony), the subsequent six rapes and attempted rapes would not have happened.

- 2/1999, arrest for burglary
- 7/1999, first rape, DNA evidence recovered from scene
- 5/2002 – 3/2003, two women raped
- 6/2003, woman attacked, attempted rape
- 8/2003, woman raped

¹² DNAResource.com

- 10/2003, woman attacked, attempted rape
- 10/2003-2/2004, three women raped
- 3/2004, arrested and charged with four sexual assaults

Bernard Middleton was charged with one murder and three aggravated criminal sexual assaults. If the state had required him to give a DNA sample during either of his felony arrests in 1987 and 1993, a DNA match could have been obtained with the DNA evidence recovered from his first rape. One murder and two rapes could have been prevented. If Middleton's DNA had been taken on Jan 17, 1987 after he was arrested for aggravated battery or on May 6, 1993 after he was arrested for felony theft, the subsequent murder and two rapes would have been prevented. In May 2003, Middleton was charged with murder and 3 rapes.

- 1/1987, arrest for felony battery (assault)
- 5/1993, arrest for felony theft
- 9/1995, woman raped, dna evidence recovered from scene
- 10/1995, woman murdered
- 5/1997, arrest for felony theft
- 7/1997, woman raped
- 9/1997, arrest for felony theft
- 10/1998, woman raped
- 11/2001, arrest for drug possession
- 8/2002, arrest for felony theft

Maryland

A Maryland study of DNA collection revealed that had DNA profiles of just three offenders been entered into CODIS at the time of their arrests from earlier criminal activity, 20 violent crimes by these three individuals could have been prevented.

New Mexico

“Katie’s Law”¹³ was implemented in New Mexico at 12:01 a.m. on January 1, 2007. A little over an hour later, an arrestee was swabbed and his DNA matched DNA found at the scene of a homicide.

¹³ Named for Katie Sepich, a vivacious 22-year-old graduate student at New Mexico State University. In August 2003 she was brutally attacked just outside her home. She was raped, strangled, her body set on fire, and abandoned at an old dump site. No suspects emerged, but skin and blood were found under her fingernails, leaving the attacker’s DNA sample. In December of 2006 the DNA under Katie’s fingernails was matched to a man recently included on the New Mexico DNA database. Gabriel Avilla had been arrested in November 2003, less than three months after Katie was killed, on aggravated burglary charges for breaking into the home of two women after watching them through a window. He was convicted in March 2004, but was released on bond before sentencing and promptly disappeared. Authorities recaptured him in August 2005 and incarcerated him. His DNA was finally taken (in connection with the burglary conviction), and a positive match was made to Katie’s case in December

In another instance, on Halloween 2005, an 11 year old girl, Victoria Sandoval, was raped and murdered in her home in Albuquerque, New Mexico. In the spring of 2008, Israel Diaz was arrested for an unrelated burglary and under “Katie’s Law”, his cheek was swabbed for DNA. His DNA matched the DNA that was found on Sandoval’s body after her rape and murder.

Since January 1, 2007, New Mexico (with a population of a little over one million) has had 33 matches from arrestees to unsolved crimes, including three homicides, four rapes and one kidnapping.

New York

Carol Nelson was sexually assaulted and murdered by Glen Shoop in July 2007 in Onondaga County, New York. If police were able to take Shoop’s DNA when he was arrested for raping his own estranged wife before Carol’s murder, they would have run it through the database and connected him to a rape at a Laundromat in 2000. Shoop would not have been free to murder Carol.

Other Cases

Debbie Smith of Williamsburg, Va. was raped in 1989 and her attacker was free for six years until his DNA from another crime was linked to her rape.

A man was convicted in May 2006 of raping a Manhattan woman because he committed a burglary in Florida and the DNA went to the national database and then matched with the DNA of this rape.

Governor George Pataki was joined in 2006 by Michael Canavan, whose daughter was raped in Manhattan in 2000. DNA links the assailant to a rape in the Bronx in 2001, but police do not know who it belongs to.

Federal Law and DNA Collection

A Federal Court recently upheld the constitutionality of mandatory DNA collection. Acting U.S. Attorney Lawrence G. Brown in *United States v. Pool*, 09-015-EJG-GGH, rejected a challenge to the constitutionality of DNA sampling and cataloguing of arrestees in federal cases as recently modified by DNA Fingerprint Act, enacted in 2006, which authorizes the US Attorney General to extend the collection of DNA samples for law enforcement purposes to those who are “arrested, facing charges, or convicted” of federal offenses. Prior to the enactment of the legislation, DNA collection by law enforcement in federal cases was permitted only for those convicted of crimes.

2006. If New Mexico had required a DNA sample for Avilla’s felony arrest in November of 2003, Katie’s murder would have been solved three years sooner, saving thousands of dollars in investigation costs and saving her friends and family years of unnecessary limbo as they sought closure.

The federal legislation requires a finding of probable cause before the DNA sample is taken upon arrest. Most states with DNA upon arrest legislation do not require a finding of probable cause.

The Court held in *United States v. Pool* that after a judicial or grand jury determination of probable cause has been made for felony criminal charges against a defendant, no fourth amendment (unreasonable search and seizure) or other constitutional violation is caused by a requirement that the defendant undergo a mouth swab or blood test for the purposes of DNA analysis to be used for criminal law enforcement identification purposes. A person arrested upon probable cause has a “diminished expectation of privacy in his own identity,” the Court ruled. The DNA fingerprinting as a law enforcement tool is merely a “technological progression” from photographs and traditional fingerprints, which are a “part of the routine booking process upon arrest.”

The issue of whether DNA collection upon arrest is constitutional has not yet made it to the United States Supreme Court, although advocates expect it should do within the next year or two.

Rights Remain Intact

While often challenged on Constitutional grounds, courts throughout the country have overwhelmingly upheld DNA database statutes. These decisions and the supporting rationale have been clear that the processes, procedures, and benefits of collecting DNA from those arrested for serious crimes is as constitutionally sound as the collection of fingerprints.¹⁴

The Fourth Amendment to the United States Constitution protects individuals from searches and seizures which are “unreasonable.” For years, the Courts, including the Supreme Court, have found that, when a suspect is arrested with probable cause, his identification becomes a matter of legitimate state interest. The rationale behind the decision is the fact that the identification of suspects is “relevant not only to solving the crime for which the suspect is arrested, but also for maintaining a permanent record to solve other past and future crimes.” (*Jones v. Murray*, 962 F.2d 302, 306 (4th Cir. 1992); *Johnson v. Commonwealth*, 259 Va. 654, 672, 529 S.E.2d 769, 779 (2000).) This becomes particularly clear when we consider the universal nature of “booking” procedures that are followed for every suspect arrested for a felony, whether or not the proof of a particular suspect’s crime will involve fingerprint evidence or an eyewitness identification for which mug shots could be used.

Taking of DNA samples at arrest, as they do fingerprinting at arrest, has been upheld by numerous courts in a variety of states:

- The Second Circuit held “[t]he collection and maintenance of DNA information, while effected through relatively more intrusive procedures such as blood draws or buccal cheek swabs, in our view plays the same role as fingerprinting.” *Nicholas v. Goord*, 430 F.3d 652, 671 (2d Cir. 2005), cert. denied, ___ U.S. ___, 127 S.Ct. 384 (2006).

¹⁴ DNAsaves.org

- The Third Circuit held “[t]he governmental justification for [DNA] identification relies on no argument different in kind from that traditionally advanced for taking fingerprints and photographs, but with additional force because of the potentially greater precision of DNA sampling and matching methods.” United States v. Sczubelek, 402 F.3d 175, 185-86 (3d Cir. 2005), cert. denied, ___ U.S. ___, 126 S Ct. 2930 (2006).
- The Ninth Circuit held “[t]hat the gathering of DNA information requires the drawing of blood rather than inking and rolling a person’s fingertips does not elevate the intrusion upon the plaintiffs’ Fourth Amendment interests to a level beyond minimal.” Rise v. State, 59 F.3d 1556, 1560 (9th Cir. 1995).
- The State of Maryland held “The purpose [of the DNA profile] is akin to that of a fingerprint.” (State v. Raines, 857 A.2d 19, 33 (Md. 2004).
- New Jersey held, “We harbor no doubt that the taking of a buccal cheek swab is a very minor physical intrusion upon the person . . . [T]hat intrusion is no more intrusive than the fingerprint procedure and the taking of one’s photograph that a person must already undergo as part of the normal arrest process.” State v. O’Hagen, 914 A.2d 267, 280 (N.J. 2007)
- Oregon held, “Because using a swab to take a DNA sample from the mucous membrane of an arrestee’s cheek is akin to the fingerprinting of a person in custody, we conclude that the seizure of defendant’s DNA did not constitute an unreasonable seizure under the constitution.” State v. Brown, 157 P.3d 301, 303 (Or. Ct. App. 2007)
- The Virginia State Supreme Court held “the taking of Anderson's DNA sample upon arrest in Stafford County pursuant to Code § 19.2-310.2:1 is analogous to the taking of a suspect's fingerprints upon arrest and was not an unlawful search under the Fourth Amendment.

Fiscal Concerns

While the cost to collect the DNA of a larger population may on its face seem greater, collecting DNA from arrestees may actually reduce costs for the state in the long term. This is because law enforcement will likely identify criminals earlier and create more efficient investigation practices. Solving crimes sooner reduces costs associated with misdirected investigations. With a DNA match, law enforcement can quickly narrow in on the right suspect, saving time and expense associated with traditional investigations.

Additionally, the cost of DNA analysis must be weighed against the spared losses from crime incurred by the public.

Conclusion

The conclusion of the preceding statistics and information is that as the DNA database in New York grows, more hits result, leading to the solving and preventing of more crimes and overall greater public safety in New York and elsewhere. Requiring the collection of DNA upon arrest for the crimes specified in this bill is the way to responsibly increase the DNA Databank and solve some of the hundreds of thousands of crimes with crime scene forensic profiles that go unsolved every day.