



CITIZENS CRIME COMMISSION
OF NEW YORK CITY

Testimony of

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2012-2013 Executive Budget Proposal: Topic "Public Protection"

Presented to:

Senate Committees on Codes; Crime Victims, Crime, and Corrections; and Finance
&
Assembly Committees on Codes; Corrections; and Ways and Means

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Good afternoon, Chairmen Saland, Nozzolio, DeFrancisco, Lentol, Aubry, and Farrell, and members of the Senate and Assembly. The Citizens Crime Commission of New York City welcomes the opportunity to testify at this joint hearing that you have convened to address public protection.

About the Crime Commission

For over 30 years the Crime Commission has been a leader in converting ideas that address crime and protect the economic and social viability of New York into action. A non-partisan non-profit organization working to make criminal justice and public safety policies and practices more effective, the Crime Commission addresses gaps in the criminal justice system by combining expertise in research, advocacy, education, and innovation on a broad range of issues from juvenile justice, to gun policy, to counter-terrorism, to crime prevention strategies. We strive to accomplish its mission by:

- Developing innovative programs that reduce crime;
- Conducting research on criminal justice and public safety issues;
- Educating the public on criminal justice and public safety policies and practices; and
- Supporting criminal justice and public safety reform efforts.

The Crime Commission Supports Expansion of the DNA Databank to All Crimes

The Crime Commission is appearing today to express our support of the Governor's proposal to expand the statewide DNA Databank to include all crimes upon conviction.

We all know DNA is a very powerful tool. DNA helps exonerate the innocent, holds violent offenders accountable, prevents future crimes, provides justice for survivors, and helps solve crimes—especially cold cases that have been unresolved for decades.

DNA evidence has helped to exonerate individuals who were wrongfully convicted—27 to date in New York State—and has cleared and excluded suspects, often in the earliest stages of a criminal investigation.

The power of this tool has led all 50 states to pass legislation authorizing the collection of DNA profiles from certain subjects for submission to the national system. These databanks hold DNA samples from selected offenders and samples collected at crime scenes. The DNA profiles can be searched on a local, state or national level to match crime scene samples to a known offender.

In 1994, the Legislature took the first step in protecting New Yorkers by passing legislation to create the DNA Databank. Because there is no debate that DNA is an incredibly powerful tool; the Legislature has revised existing law three times by expanding the categories of convicted offenders requiring submission of a DNA sample.

Since 2006, the Citizens Crime Commission of New York City with other advocates and officials have urged Albany to improve policing and public safety by expanding the DNA Databank to include all those convicted of a crime.

But New York still fails to collect DNA from more than half of all convicted criminals. New York's current DNA Databank law requires 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 for 36 specified misdemeanor offenses (including reckless endangerment, petit larceny, stalking, unlawful imprisonment, criminal trespass, sexual abuse, and endangering the welfare of a child), to provide a DNA sample for the State DNA Databank.

There are hundreds of crimes not covered. Some of the crimes excluded are:

- unauthorized use of a motor vehicle,
- possession of stolen property,
- theft of services; and
- misdemeanor drug offenses.

What does expansion of DNA collection seek to do?

We know that criminals don't specialize. The premise for the collection of offender DNA is based on evidence that violent criminals commit both multiple crimes and non-violent crimes. Expanding the collection of DNA to all convicted criminals, not just those convicted of a limited number of offenses, leads to new crimes being prevented because we know criminals commit multiple offenses before being caught.

For instance, of the offenders linked to homicides and sexual assault cases in the Databank 34% were required to submit a DNA sample for a drug, burglary, or a petit larceny conviction.

In the 5½ years since we began taking DNA from those convicted of petit larceny those DNA samples have helped solve 965 crimes, including 51 murders, 222 sexual assaults, 117 robberies, and 407 burglaries.

Offenders matched to crimes through the DNA Databank on average had *three* prior non-qualifying convictions before they were convicted of an offense that required a sample be taken.

By helping to solve crimes and determine the innocence of the accused, forensic DNA information has increasingly become a major resource for law enforcement and criminal justice officials.

The use of DNA is crime fighting at its best.

Once the Legislature understood this concept in 2006, it began to expand the list. And now it's time to finish the job by expanding to all crimes upon conviction.

What will the Governor's proposal do?

- The Governor's proposal would add about 180 Penal Law misdemeanors and approximately 200-250 felonies in other state laws, including the Vehicle and Traffic; Tax and Finance; and Agriculture and Markets Law, to name a few.
- It details which agency would be responsible for collection of samples: Probation Departments if the offender is sentenced to Probation or the Sheriff's Office if the sentence does not include either Probation or term of imprisonment.
 - It does not prohibit any other agency – such as the courts, parole or police – from taking samples if they are notified by DCJS that an offender owes a sample as a result of a DNA-eligible conviction.
- The law would take effect Oct. 1, 2012; it is *not* retroactive to offenders under sentence.

Can NY handle this increase in DNA collection?

Yes. The DNA Databank is current in its processing of DNA samples, there is no backlog.

The State Police Lab can handle processing 10,000 samples a month. The Governor's proposal will bring the monthly total to less than 7,000 a month. DCJS could implement this change immediately.

Conclusion

It is now time to maximize the benefits of this important public safety tool by expanding DNA collection to all crimes upon conviction.

Broadly, we have learned three very powerful things in the more than sixteen years since New York State began collecting DNA:

First, its ability to both convict and exonerate is unsurpassed;

Second, the important expansion that took place in 2006 when we began to expand the list to include misdemeanors has unequivocally shown that violent criminals frequently also commit non-violent crimes; and

Third, New York State is very capable of handling every expansion that has taken place and protecting the results.

In those sixteen years, there has not been a single reported misuse of the DNA Databank. No specimen has been leaked to the private sector, no profile has been shared with anyone not authorized to have it, and no personal information has been developed beyond identity. In short, the well-intentioned warnings that have accompanied the collection of DNA simply have not come to pass; and this is good news.

Because we deny ourselves to maximize the use of DNA, criminals who would otherwise be incarcerated are free to commit additional crimes assaulting, injuring and even killing. We must not delude ourselves into thinking this is not happening. We have the ability to stop much of this if we can muster the will to fully use it.

Nearly 40,000 unsolved past crimes wait being linked to a matching DNA sample that may very well yield the identity of the perpetrator.

Each expansion has improved public safety and enhanced justice. It's time to finish the job.

This measure is long overdue.