



**NEW YORK
CITY BAR**

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**REPORT ON LEGISLATION
BY THE COMMITTEE ON CRIMINAL ADVOCACY**

**A.8547
S.5560**

**M. of A. Paulin
Sen. Saland**

AN ACT to amend the Executive Law and the Penal Law, in relation to the collection of DNA samples from designated offenders.

THIS BILL IS APPROVED

This report is respectfully submitted by the Committee on Criminal Advocacy (the “Committee”) of the New York City Bar Association (the “Association”).

Based upon its review of the proposed Act, the so-called “All Crimes DNA Act,” the Committee supports the passage of this legislation. The Executive Law and the Penal Law should be amended to require the collection of a DNA sample from every person convicted of a felony or misdemeanor as defined under the Penal Law.

The Committee is mindful of the serious and substantive concerns relating to the potential impact of this legislation upon important civil liberties. These concerns, which are shared throughout the Association, center upon the loss of privacy this legislation will entail for persons convicted of less serious, “low-level” crimes. The Committee shares the concern about the loss of privacy this legislation entails for the general state of civil liberties.

The decision to support the passage and enactment of the All Crimes DNA Act was made in full consideration of these concerns and in the belief that they are clearly outweighed by the benefits of the proposed law.

First, the Committee notes that the ever-increasing and effective use of DNA is a tool for the exoneration of the wrongly convicted. As importantly, DNA can eliminate suspicion of persons mistakenly identified as suspects in criminal investigations. Thus, while the use of DNA is perceived as a threat to personal liberty by some who would oppose this proposed Act, the Committee hails the exculpatory uses of DNA as a promotion of the liberty that is the bedrock of our society. In that vein, the Association has historically supported legislative and executive efforts to shed light on those who have been wrongly convicted, and the use of DNA is an important part of that effort. The Association has supported, for instance, codifying claims of actual innocence and providing individuals with a meaningful way to pursue post-conviction relief and claims of unjust convictions. While we recognize that this bill only concerns DNA

collection, we are hopeful that the legislature will ultimately enact comprehensive reform to fully address and remedy wrongful convictions in this state.

The Committee, of course, is also mindful of the impressive record the use of DNA has demonstrated as a tool by which law enforcement identifies and inculpatates individuals responsible for criminal activity. Indeed, in 2006, New York recognized the importance of DNA in law enforcement by adding all felonies, some attempted felonies, and 18 specified misdemeanors to the list of qualifying offenses for the DNA Index. Prior to the 2006 expansion, the “qualifying crimes” for which a convicted person was required to provide a DNA sample were largely limited to crimes that were classified as violent and/or sexual in nature. It is important to note that many of the crimes added to the list in 2006 included such non-violent, non-sexual in nature crimes as bribery of a public official, possession of a forged instrument, and falsification of business records. In the three years since the 2006 expansion, matches of DNA gathered in connection with investigation of crimes with samples taken from persons convicted of the expanded list of qualifying crimes contributed to 1,595 convictions.

The Committee further notes that, since 2007, there have been 845 matches of DNA gathered in criminal investigations with DNA samples taken from persons convicted of the misdemeanor petit larceny, which was added in the 2006 expansion. Those offenders have been linked to 41 murders, 202 sexual assaults, 101 robberies, and 360 burglaries. The expansion of the required DNA sampling to so-called “Minor” crimes has proven to be an effective tool in investigating and solving the most serious crimes.

The Committee is informed that this expansion of DNA testing is quite feasible, as the laboratories currently used have the capacity to handle this expansion in real time.

With such a well-established record of effectiveness, it is understandable that DNA has overwhelming bipartisan support of the members of the New York State Legislature (the most recent expansion of the DNA Databank in 2006 passed the State Senate by a vote of 56-2 and the Assembly by a vote of 132-6).

For both the exoneration of the innocent as well as the effective and efficient enforcement of the criminal law, the Committee supports the passage of the proposed legislation.

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