

**A RESOLUTION TO BE SUBMITTED BY
LEGISLATORS HOGUES, GRANT, MAZUR, MARINELLI & LOUGHRAN**

RE: Supporting the Expansion of the DNA Databank in New York State

WHEREAS, the County District Attorney's Association and the County Sheriff's Association have announced their support for the Governor's budget proposal with regard to the expansion of the DNA database in New York State; and

WHEREAS, expansion of the DNA database will provide the law enforcement and criminal justice systems another tool to apprehend, prosecute and bring to justice those who commit crimes in New York State; and

WHEREAS, in the alternative, this very same databank can be used to exonerate incarcerated individuals who are actually innocent of the crimes they have been convicted of committing; and

WHEREAS, under current law, DNA samples are required from individuals who have been convicted of a felony offense; and

WHEREAS, for the 2012-13 State Budget, the Governor has proposed, in Uni Bill S6625-B/A9055-B, that DNA samples taken by law enforcement be allowed for individuals that have been convicted of any misdemeanor or felony charge; and

WHEREAS, the Executive Budget includes state funds to offset any increased costs to counties for implementing this change in the collection of DNA samples; and

WHEREAS, it is in the public interest to reduce the number of wrongful convictions in the criminal justice system, to bring the true perpetrators of these crimes to justice and to deter future crimes since criminal elements will now know that law enforcement agencies have a very powerful new tool in their arsenals.

NOW, THEREFORE, BE IT

RESOLVED, that the Erie County Legislature convey its full and unreserved support for the expansion of the DNA database in New York State through passage of Uni Bill S6625-B/A9055-B during the upcoming budget process; and be it further

RESOLVED, that certified copies of this resolution be conveyed to Governor Andrew Cuomo, New York State Assembly Speaker Sheldon Silver, New York State Senate Majority Leader Dean Skelos and all others deemed necessary and proper.

FISCAL IMPACT: None for resolution.

PART A

4 Section 1. Subdivision 7 of section 995 of the
executive law, as

5 amended by chapter 2 of the laws of 2006, paragraph (a) as
separately

6 amended by chapter 320 of the laws of 2006 and paragraph (f)
as amended

7 by chapter 405 of the laws of 2010, is amended to read as
follows:

8 7. "Designated offender" means a person convicted of [and
~~sentenced~~

9 ~~for any one or more of the following provisions of the
penal law (a)~~

10 ~~sections 120.05, 120.10, and 120.11, relating to assault;
sections~~

11 ~~125.15 through 125.27 relating to homicide; sections
130.25, 130.30,~~

12 ~~130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70,
relating to~~

13 ~~sex offenses; sections 205.10, 205.15, 205.17 and 205.19,
relating to~~

14 ~~escape and other offenses, where the offender has been
convicted within~~

15 ~~the previous five years of one of the other felonies
specified in this~~

16 ~~subdivision; or sections 255.25, 255.26 and 255.27, relating to
incest,~~

17 ~~a violent felony offense as defined in subdivision one of
section 70.02~~

18 ~~of the penal law, attempted murder in the first degree, as
defined in~~

19 ~~section 110.00 and section 125.27 of the penal law,
kidnapping in the~~

20 ~~first degree, as defined in section 135.25 of the penal law,
arson in~~

21 ~~the first degree, as defined in section 150.20 of the
penal law,~~

22 ~~burglary in the third degree, as defined in section 140.20 of
the penal~~

23 ~~law, attempted burglary in the third degree, as defined
in section~~

24 ~~110.00 and section 140.20 of the penal law, a felony defined in
article~~

25 ~~four hundred ninety of the penal law relating to
terrorism or any~~

26 ~~attempt to commit an offense defined in such article relating
to terror-~~

27 ~~ism which is a felony; or (b) criminal possession of a
controlled~~

28 ~~substance in the first degree, as defined in section 220.21 of
the penal~~

29 ~~law; criminal possession of a controlled substance in the
second degree,~~

30 ~~as defined in section 220.18 of the penal law; criminal
sale of a~~

31 ~~controlled substance, as defined in article 220 of the penal~~
law; or
32 ~~grand larceny in the fourth degree, as defined in~~
subdivision five of
33 ~~section 155.30 of the penal law; or (c) any misdemeanor~~
or ~~felony~~
34 ~~defined as a sex offense or sexually violent offense pursuant~~
to para-
35 ~~graph (a), (b) or (c) of subdivision two or paragraph (a) of~~
subdivision
36 ~~three of section one hundred sixty eight a of the correction~~
law; or (d)
37 ~~any of the following felonies, or an attempt thereof where such~~
attempt
38 ~~is a felony offense:~~
39 ~~aggravated assault upon a person less than eleven~~
years old, as
40 ~~defined in section 120.12 of the penal law; menacing in~~
the first
41 ~~degree, as defined in section 120.13 of the penal law;~~
reckless endan-
42 ~~germent in the first degree, as defined in section 120.25 of~~
the penal
43 ~~law; stalking in the second degree, as defined in section~~
120.55 of the
44 ~~penal law; criminally negligent homicide, as defined in~~
section 125.10
45 ~~of the penal law; vehicular manslaughter in the second~~
degree, as
46 ~~defined in section 125.12 of the penal law; vehicular~~
manslaughter in
47 ~~the first degree, as defined in section 125.13 of the~~
penal law;
48 ~~persistent sexual abuse, as defined in section 130.53 of the~~
penal law;
49 ~~aggravated sexual abuse in the fourth degree, as defined~~
in section
50 ~~130.65-a of the penal law; female genital mutilation, as~~
defined in
51 ~~section 130.85 of the penal law; facilitating a sex~~
offense with a
52 ~~controlled substance, as defined in section 130.90 of the~~
penal law;
53 ~~unlawful imprisonment in the first degree, as defined in~~
section 135.10
54 ~~of the penal law; custodial interference in the first degree,~~
as defined
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1 ~~in section 135.50 of the penal law; criminal trespass in~~
the first
2 ~~degree, as defined in section 140.17 of the penal law;~~
criminal tamper-
3 ~~ing in the first degree, as defined in section 145.20 of the~~
penal law;

4 ~~tampering with a consumer product in the first degree, as~~
defined in
5 ~~section 145.45 of the penal law; robbery in the third degree as~~
defined
6 ~~in section 160.05 of the penal law; identity theft in the~~
second degree,
7 ~~as defined in section 190.79 of the penal law; identity~~
theft in the
8 ~~first degree, as defined in section 190.80 of the penal law;~~
promoting
9 ~~prison contraband in the first degree, as defined in section~~
205.25 of
10 ~~the penal law; tampering with a witness in the third degree, as~~
defined
11 ~~in section 215.11 of the penal law; tampering with a~~
witness in the
12 ~~second degree, as defined in section 215.12 of the penal law;~~
tampering
13 ~~with a witness in the first degree, as defined in section~~
215.13 of the
14 ~~penal law; criminal contempt in the first degree, as defined in~~
subdivi-
15 ~~sions (b), (c) and (d) of section 215.51 of the penal law;~~
aggravated
16 ~~criminal contempt, as defined in section 215.52 of the penal~~
law; bail
17 ~~jumping in the second degree, as defined in section 215.56 of~~
the penal
18 ~~law; bail jumping in the first degree, as defined in section~~
215.57 of
19 ~~the penal law; patronizing a prostitute in the second degree,~~
as defined
20 ~~in section 230.05 of the penal law; patronizing a prostitute~~
in the
21 ~~first degree, as defined in section 230.06 of the penal law;~~
promoting
22 ~~prostitution in the second degree, as defined in section 230.30~~
of the
23 ~~penal law; promoting prostitution in the first degree, as~~
defined in
24 ~~section 230.32 of the penal law; compelling prostitution, as~~
defined in
25 ~~section 230.33 of the penal law; disseminating indecent~~
materials to
26 ~~minors in the second degree, as defined in section 235.21 of~~
the penal
27 ~~law; disseminating indecent materials to minors in the first~~
degree, as
28 ~~defined in section 235.22 of the penal law; riot in the first~~
degree, as
29 ~~defined in section 240.06 of the penal law; criminal anarchy,~~
as defined
30 ~~in section 240.15 of the penal law; aggravated harassment of an~~
employee
31 ~~by an inmate, as defined in section 240.32 of the penal law;~~
unlawful

32 ~~surveillance in the second degree, as defined in section~~
250.45 ~~of the~~
33 ~~penal law; unlawful surveillance in the first degree, as~~
~~defined in~~
34 ~~section 250.50 of the penal law; endangering the welfare of a~~
~~vulnerable~~
35 ~~elderly person in the second degree, as defined in section~~
260.32 ~~of the~~
36 ~~penal law; endangering the welfare of a vulnerable elderly~~
~~person in the~~
37 ~~first degree, as defined in section 260.34 of the penal law;~~
~~use of a~~
38 ~~child in a sexual performance, as defined in section 263.05 of~~
~~the penal~~
39 ~~law; promoting an obscene sexual performance by a child, as~~
~~defined in~~
40 ~~section 263.10 of the penal law; possessing an obscene sexual~~
~~perform-~~
41 ~~ance by a child, as defined in section 263.11 of the penal law;~~
~~promot-~~
42 ~~ing a sexual performance by a child, as defined in section~~
263.15 ~~of the~~
43 ~~penal law; possessing a sexual performance by a child, as~~
~~defined in~~
44 ~~section 263.16 of the penal law; criminal possession of a~~
~~weapon in the~~
45 ~~third degree, as defined in section 265.02 of the penal law;~~
~~criminal~~
46 ~~sale of a firearm in the third degree, as defined in section~~
265.11 ~~of~~
47 ~~the penal law; criminal sale of a firearm to a minor, as~~
~~defined in~~
48 ~~section 265.16 of the penal law; unlawful wearing of a body~~
~~vest, as~~
49 ~~defined in section 270.20 of the penal law; hate crimes as~~
~~defined in~~
50 ~~section 485.05 of the penal law; and crime of terrorism, as~~
~~defined in~~
51 ~~section 490.25 of the penal law; or (e) a felony defined in~~
~~the penal~~
52 ~~law or an attempt thereof where such attempt is a felony; or~~
~~(f) any of~~
53 ~~the following misdemeanors: assault in the third degree as~~
~~defined in~~
54 ~~section 120.00 of the penal law; attempted aggravated assault~~
~~upon a~~
55 ~~person less than eleven years old, as defined in section~~
110.00 ~~and~~
56 ~~section 120.12 of the penal law; attempted menacing in the~~
~~first degree,~~

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1 ~~as defined in section 110.00 and section 120.13 of the penal~~
~~law; menac-~~

2 ~~ing in the second degree as defined in section 120.14 of the~~
~~penal law;~~

3 ~~menacing in the third degree as defined in section 120.15 of~~
4 ~~the penal~~
5 ~~law; reckless endangerment in the second degree as defined~~
6 ~~in section~~
7 ~~120.20 of the penal law; stalking in the fourth degree as~~
8 ~~defined in~~
9 ~~section 120.45 of the penal law; stalking in the third degree~~
10 ~~as defined~~
11 ~~in section 120.50 of the penal law; attempted stalking in~~
12 ~~the second~~
13 ~~degree, as defined in section 110.00 and section 120.55 of~~
14 ~~the penal~~
15 ~~law; criminal obstruction of breathing or blood circulation~~
16 ~~as defined~~
17 ~~in section 121.11 of the penal law; forcible touching as~~
18 ~~defined in~~
19 ~~section 130.52 of the penal law regardless of the age of~~
20 ~~the victim;~~
21 ~~sexual abuse in the third degree as defined in section 130.55~~
22 ~~of the~~
23 ~~penal law regardless of the age of the victim; unlawful~~
24 ~~imprisonment in~~
25 ~~the second degree as defined in section 135.05 of the penal law~~
26 ~~regard-~~
27 ~~less of the age of the victim; attempted unlawful~~
28 ~~imprisonment in the~~
29 ~~first degree, as defined in section 110.00 and section 135.10~~
30 ~~of the~~
31 ~~penal law regardless of the age of the victim; criminal~~
32 ~~trespass in the~~
33 ~~second degree as defined in section 140.15 of the penal law;~~
34 ~~possession~~
35 ~~of burglar's tools as defined in section 140.35 of the penal~~
36 ~~law; petit~~
37 ~~larceny as defined in section 155.25 of the penal law;~~
38 ~~endangering the~~
39 ~~welfare of a child as defined in section 260.10 of the penal~~
40 ~~law; endan-~~
41 ~~gering the welfare of an incompetent or physically disabled~~
42 ~~person as~~
43 ~~defined in section 260.25 of the penal law] any felony defined~~
44 ~~in any~~
45 ~~chapter of the laws of the state or any misdemeanor defined in~~
46 ~~the penal~~
47 ~~law.~~

26 § 2. Subdivision 3 of section 995-c of the executive law,
as amended
27 by chapter 576 of the laws of 2004, is amended to read as
follows:
28 3. (a) Any designated offender subsequent to conviction and
sentencing
29 for a crime specified in subdivision seven of section nine
hundred nine-
30 ty-five of this article, shall be required to provide a sample
appropri-
31 ate for DNA testing to determine identification characteristics
specific

32 to such person and to be included in a state DNA
identification index
33 pursuant to this article.
34 (b) (i) In the case of a designated offender who is
sentenced to a
35 term of imprisonment, such sample shall be collected by the
public serv-
36 ant to whose custody the designated offender has been
committed.
37 (ii) In the case of a designated offender who is sentenced to
a term
38 of probation, including a sentence of probation imposed in
conjunction
39 with a sentence of imprisonment when a sample has not
already been
40 taken, such sample shall be collected by the probation
department super-
41 vising the designated offender.
42 (iii) In the case of a designated offender whose sentence
does not
43 include either a term of imprisonment or a term of probation,
the court
44 shall order that the designated offender report to an
office of the
45 sheriff of that county, and when the designated offender does
so, such
46 sample shall be collected by the sheriff's office.
47 (iv) Nothing in this paragraph shall prohibit the collection
of a DNA
48 sample from a designated offender by any court official, state
or local
49 correction official or employee, probation officer, parole
officer,
50 police officer, peace officer, or other public servant who
has been
51 notified by the division of criminal justice services that
such desig-
52 nated offender has not provided a DNA sample. Upon notification
by the
53 division of criminal justice services that a designated
offender has not
54 provided a DNA sample, such court official, state or local
correction
55 official or employee, probation officer, parole officer, police
officer,
56 peace officer or other public servant shall collect the DNA
sample.

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1 § 3. This act shall take effect October 1, 2012; provided,
however,
2 that the amendments to subdivision 7 of section 995 of the
executive law
3 made by section one of this act shall apply to conviction of
designated
4 offenses on or after such effective date.