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After Judge Refuses To Remove 15-Year-Old's DNA From Rogue City Database, Legal Aid Reaffirms Need For City To Enact Sweeping DNA-Related Reforms

(New York, NY) - The Legal Aid Society called for immediate action from Mayor Bill de Blasio and the City Council to shut down the City's rogue DNA index operated by the Office of the Chief Medical Examiner (OCME), after a Brooklyn Family Court judge [ruled](#) that the current law does not provide protection for a 15-year-old's genetic profile.

Logan C., 15-years-old, had his DNA secretly taken by the New York City Police Department (NYPD) after a weapons-related arrest. Although he had not been convicted of any crime, and neither he nor his parent consented to DNA testing, police officers deceptively collected his DNA by giving him a water bottle. That water bottle was sent to the OCME for inclusion in its unregulated DNA index, which contains more than [33,800 profiles](#) from New Yorkers who had not been convicted of a crime.

After Logan C.'s case ended with a non-criminal, juvenile adjudication, Adam Starritt, an attorney in The Legal Aid Society's Juvenile Rights Practice, filed a motion in Family Court to have that DNA profile removed from the City index. Starritt argued that OCME must remove the profile because State law does not authorize keeping DNA from children in an unregulated DNA index — especially DNA that was collected surreptitiously and without a warrant. The NYPD, and the City's own law department, opposed the motion, arguing that a perceived loophole in State law allows the City to not only operate a DNA index, but also to do so under its own self-generated rules to house minors genetic material.

The Family Court judge, Alan Beckoff, agreed that Logan's DNA was taken through NYPD "subterfuge," or trickery. He also acknowledged that, if Logan's case were pending in adult court, instead of Family Court, he would be entitled to expungement after his case resolved without a criminal conviction. But, the judge ruled, because of technicalities on Family Court law, there was no way for him to force the NYPD or OCME to remove the profile. The judge noted that a bill pending in Albany would resolve this problem by eliminating local rogue DNA indexes and empowering Family Court to protect juvenile DNA, but that law has not yet passed.

This past February, the New York City Council [held](#) a [hearing](#) into issues of OCME and NYPD's DNA

collection and storage. During that hearing, police officers claimed that the OCME DNA index contained 32,000 profiles and that at least 1,600 were from juveniles. They also admitted that at least half of those samples came from people whose DNA was taken surreptitiously and without consent or court order. Top cops [promised](#) to take steps to reduce the number of people in the index and to focus in particular on removing children’s profiles. But, in a discovery disclosure made several months later, in May, the Legal Aid Society learned that, instead of reducing the number of profiles in the DNA index, the number increased by almost 2,000—to [33,825](#). Neither the OCME nor the NYPD regularly report the number of people in the DNA index, or any demographic information about them, despite calls to do so.

“Judge Beckoff’s decision illustrates the absurdity and unfairness in the City’s DNA collection and storage practices, and the need for the City Council to act now,” said **Terri Rosenblatt, Supervising Attorney of The Legal Aid Society’s DNA Unit**. “The court’s ruling says that, unless the legislature acts, 15 year-olds like Logan C., have less protection from rogue DNA collection and storage than even adults with criminal convictions. This ruling, if left unchecked by legislators, will only increase the NYPD’s appetite for genetic stop-and-frisk, which disproportionately impacts young Black and Latinx New Yorkers.”

Background

Last summer, reporting in the New York Times [revealed](#) that OCME’s unregulated DNA database had swelled to its DNA index to 82,473 samples, almost a 19,000 increase since July of 2017. Of that 31,400 came from people who were arrested, or merely questioned. A year after that reporting, the DNA index [grew](#) to more than 87,000, with 33,825 of those samples from individuals who were merely arrested or questioned. According to the NYPD, at least [half](#) of those individuals do not know their DNA is in the index because it was taken surreptitiously after being left on water bottles or cigarettes provided during police encounters.

This database includes samples provided by the New York City Police Department (NYPD) and extracted from crime scenes and voluntary swabs. It also, however, includes samples from people who have not been charged with or convicted of crimes. Many of these samples were [surreptitiously](#) obtained in precinct interrogation rooms from cells left on a water bottles or cigarettes, and DNA samples obtained during the 2015 Howard Beach [DNA dragnet](#). State law prohibits DNA indexing of children and people who have not been convicted of a crime. OCME’s local DNA index is not authorized by any laws or regulations. Instead, the City operates it because it claims that the State DNA laws are vague enough to permit it. A [bill](#) pending in Albany (S6009/A7878) (Hoylman/Wright) would clarify the law to make clear that local governments cannot run their own shadow DNA indexes that contain innocent people and children.

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