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After City Announces Limited Changes to DNA Index Policy, Legal Aid Calls for Permanent and Meaningful Regulation

(NEW YORK, NY) – Terri Rosenblatt, Supervising Attorney of the DNA Unit at The Legal Aid Society, issued the following statement in response to the New York City Office of Chief Medical Examiner (OCME) change in DNA indexing [policy](#) to refuse to test samples taken of people by the New York City Police Department in situations where evidence was not recovered linking them to a crime:

“The OCME’s policy change recognizes the need to curb the NYPD’s voracious appetite for illegally-collected DNA. Unfortunately, it does not go nearly far enough to cure the damage the police have already done. It still leaves countless children and people who have not been convicted of a crime stuck in an unlawful, unregulated, and non-transparent rogue DNA index. By not applying retroactively, it also creates an absurd situation where people whose DNA the lab now acknowledges was wrongfully uploaded are still stuck in genetic prison. The Legislature needs to act now to make the OCME’s partial policy into one that actually ends genetic stop-and-frisk and restores New Yorkers’ community trust.”

Background

This change, which, according to OCME’s public website, went into effect in early September, bars the lab from testing DNA taken by the New York City Police Department (NYPD) solely for inclusion in the City’s rogue DNA index.

The change, which was purely voluntary on the part of the OCME, and could be reversed at any time, leaves out many of the almost 34,000 people whose DNA is currently warehoused by the City. At a recent City Council hearing, police officials [testified](#) that at least 25% of the people in the City index have never been convicted of a crime. They also [testified](#) that at least 5% of the DNA was taken from juveniles. Previous reports indicated that at least [360 Black men](#) also had their DNA taken and entered into the rogue DNA index as part of a DNA dragnet surrounding the Katrina Vetrano investigation in Howard Beach. The OCME’s policy does not provide for any removal of these individuals because it is not retroactive.

The OCME's policy also does not end their overall maintenance of a rogue DNA index comprised of people whose DNA was entered upon arrest in violation of State law. Children whose DNA was taken by police surreptitiously through cigarettes, sodas, or food will still be entered into the rogue index in cases where there is also evidence related to an alleged offense. And this policy would not prevent the police from continuing to conduct wide-ranging dragnets where hundreds of people have their DNA taken, even if they are not otherwise identified as suspects in a crime.

Last summer, reporting in the New York Times revealed that OCME's unregulated DNA database had swelled 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 (the remainder of the profiles are mostly from crime scene evidence and missing persons). 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 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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