

MEMORANDUM OF SUPPORT

Ban Rogue DNA Bill Senate Bill 1347 (Hoylman)

The Immigrant Defense Project submits this statement in support of S1347 (Hoylman), which would limit New York State to a singular, computerized DNA database; expunge records stored in existing municipal DNA databases; and ban the current and future use and maintenance of municipal DNA databases.

This bill is specifically needed to clarify New York State Executive Law §995-c that allows for the creation of a computerized DNA database at the state level but fails to eliminate DNA collection and storage at the municipal and local levels.¹ More broadly, this bill is necessary to safeguard New Yorkers' genetic privacy.

Unregulated state and municipal DNA databases are dangerous and pose serious privacy and human rights violations because, "DNA can be used to track individuals or their relatives, so a DNA database could be misused by governments or anyone who can infiltrate the system."² Therefore, S1347 would protect the genetic privacy of all New Yorkers—and especially those targeted by discriminatory policing including Black and brown youth, immigrants, and gender non-conforming people—by limiting governmental access to DNA databases to the state level.

This bill would curtail reckless and harmful DNA collection that is happening across the State, and, most egregiously, in New York City. NYC's "rogue" DNA database, maintained by the New York Police Department (NYPD) and the Office of the Chief Medical Examiner (OCME) currently contains 33,600 DNA samples. In order to collect these samples, NYPD may use deceit or collect a sample without a person's knowledge.³ Additionally, little is known about how the samples in the growing database are used by NYPD and shared with other agencies such as ICE.⁴ In certain cases, the database has even led directly to wrongful arrests.⁵ NYC's rogue DNA database is highly unregulated and threatens the privacy of residents' genetic information.

As an organization that focuses on the collusion between local law enforcement and Immigration and Customs Enforcement (ICE), we are particularly concerned about the potential for expanded data sharing of DNA between local police and the US Department of Homeland Security (DHS). DHS and its agencies, including ICE and Customs and Border Protection, have been expanding DNA collection from

¹ SB1347, 2021-2022, Reg. Sess., (NYS 2021), <https://legislation.nysenate.gov/pdf/bills/2021/S1347>.

² "DNA Databases and Human Rights," *Forensic Genetics Policy Initiative*, undated, <http://dnapolicyinitiative.org/resources/dna-databases-and-human-rights/>

³ Many reports reveal that NYPD plants vessels during questioning, like water bottles, snacks, and cigarettes, that are later sampled for a suspect's DNA, often without their knowledge; see Edgar Sandoval, "N.Y.P.D. to Remove DNA Profiles of Non-Criminals From Database," *New York Times*, February 20, 2020, <https://www.nytimes.com/2020/02/20/nyregion/dna-nypd-database.html>

⁴ David Bland, "NYC's DNA Database Swells, even as some samples are removed," *Queens Daily Eagle*, January 14, 2021. <https://queenseagle.com/all/nycs-dna-database-swells-even-as-some-samples-are-removed>.

⁵ Aaron Morrison, "NEW YORK CITY AGENCY HAS UNDERREPORTED LAB ERRORS IN DNA DATABASE IT OVERSEES," *The Appeal*, February 24, 2020, <https://theappeal.org/new-york-city-dna-database-lab-errors/>.

migrants and people in ICE detention. DHS is also currently upgrading its biometric database, HART (Homeland Advanced Recognition Technology), into a massive cloud-based platform hosted by Amazon Web Services to include DNA, facial recognition, iris scans, and other biometrics. This database will be interoperable with biometric databases, which, in turn, enables data sharing between local, state, federal, and foreign agencies.⁶

DNA samples stored in NYC's "rogue" database disproportionately represent black and brown people due to the systemic racism underpinning the criminal legal system and the racist DNA collection methods used by NYPD. For example, NYPD may conduct "knock-and-spit" searches where officers go door to door and ask for DNA samples from residents of a neighborhood as part of an investigation. Oftentimes the places targeted for these dragnet DNA seizures are over-policed Black and brown communities.⁷ Thus, S1347 is an important step towards limiting aggressive, invasive, and racist policing tactics.

Without the additional regulations offered under S1347, youth will continue to remain vulnerable to DNA collections that permanently give them criminal status.⁸ Under current NYS law,⁹ even if a sample of DNA is expunged at the state level, the DNA samples are able to remain in local databases, which happens often in NYC. In one case, NYPD extracted the DNA of a child by enticing him with a soda and kept his DNA in their database. In the case of the 12-year-old child, his DNA was removed, but this case shows how a minor's DNA could remain in NYPD's DNA database permanently,¹⁰ regardless of their criminal record.¹¹ This practice enables the permanent criminalization of people whose DNA is collected by the state, and reveals that NYS prioritizes DNA collection over individual privacy. S1347 is a needed step to ensure a cleared criminal record is synonymous with a clear DNA record.

Ultimately, New York has looser regulations on DNA collection than almost any other state, which greatly compromises the genetic privacy of its residents. In turn, the most populous city in the United States is able to collect DNA from residents with few restrictions and little oversight. The lack of regulations on DNA collection and storage are exacerbated by the racist methods of DNA collection and

⁶ U.S. Department of Homeland Security, "Privacy Impact Assessment for the Homeland Advanced Recognition Technology System (HART) Increment 1 PIA," *DHS/OBIM*, February 24, 2020, https://www.dhs.gov/sites/default/files/publications/privacy-pia-obim004-hartincrement1-february2020_0.pdf

⁷ Alison Lewis, "The NYPD's new DNA dragnet: The department is collecting and storing genetic information, with virtually no rules to curb their use," *Daily News*, February 8, 2019, <https://www.nydailynews.com/opinion/ny-oped-the-nypds-new-dna-dragnet-20190206-story.html>

⁸ George Joseph, "How Juveniles Get Caught up in the NYPD's Vast DNA Dragnet," *Gothamist*, January 10, 2019, <https://gothamist.com/news/how-juveniles-get-caught-up-in-the-nypds-vast-dna-dragnet>.

⁹ A03543, Amd. 995-c, 2018-2019, Reg. Session, NYS (2018), https://nyassembly.gov/leg/?default_fld=&bn=A03543&term=2017&Summary=Y&Actions=Y&Text=Y&Votes=Y

¹⁰ Jan Ransom and Ashley Southall, "N.Y.P.D. Detectives Gave a Boy, 12, a Soda. He Landed in a DNA Database," *The New York Times*, August 15, 2019, <https://www.nytimes.com/2019/08/15/nyregion/nypd-dna-database.html>

¹¹ "REPORT ON LEGISLATION BY THE CRIMINAL COURTS COMMITTEE, THE CRIMINAL JUSTICE OPERATIONS COMMITTEE AND THE MASS INCARCERATION TASK FORCE," New York City Bar, February 25, 2020, https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/curbing-unregulate-d-local-dna-indexing#_ftn30

the racist foundation of the State's criminal legal system, and thus, S1347 offers a means of eliminating NYC's unethical DNA database, which has, on multiple occasions, been exposed as operating illegally.¹²

The Immigrant Defense Project supports S1347 because it offers a standard of genetic privacy that will shield the most vulnerable people in NYS, like minors and immigrants, from exploitation by local police departments. It also limits the possibility for expanded surveillance powers and harmful discriminatory practices of police and ICE. IDP implores the legislature to take legislative action on this matter immediately.

¹² Rachel Rippetoe, "New York Lawmakers Want Limits on Collection of Kids' DNA," *The Imprint*, December 3, 2020, <https://imprintnews.org/justice/new-york-lawmakers-want-limits-collection-kids-dna/49893>