

DNA LEGISLATION HURTS THOSE IT SHOULD HELP

To the Editor:

The Governor's proposal to expand the number of people required to give DNA samples seeks to entice support by allowing greater use of the DNA databank to people who are wrongly accused. These provisions which support "fairness" for the unjustly convicted should be enacted on their own merits. Instead, the governor is using them to garner support for a bill that not only casts too wide a net but also limits access to the courts for those who seek to challenge the validity of their convictions. When viewed in its entirety the governor's bill takes away many more rights than it bestows.

The Governor's bill would require any person convicted of any crime in New York to give a DNA sample. In addition, it would require any young person adjudicated a youthful offender to give a DNA sample. The very purpose of a youthful offender adjudication is undermined by further criminalizing the nature of such cases. Adding to the indirect tax on people of limited means, the bill authorizes the enactment of local laws that would require the payment of up to \$50.00 to probation departments for the taking of DNA samples from people who are not on probation. The bill authorizes the use of "reasonable" force to take DNA samples from the unwilling. Although the bill professes to provide further protection for people who are unjustly accused or convicted by giving them access to the DNA databank, it limits their access to the courts by providing that a motion pursuant to CPL §440.10 must be denied if previously made and denied, except as to newly discovered evidence.

A time limit for such a collateral challenge is set at one year after the conclusion of direct review further limiting a wrongfully convicted persons access to the court except in the case of newly discovered evidence, but even in such case there is a requirement that the defendant make a showing of "due diligence." It is deeply troubling that, on the one hand the Governor is able to see the merit of extending into perpetuity the statute of limitations where DNA evidence exists, but at the same time sets extraordinarily short time limits for those who may have been falsely convicted and have not had access to DNA analysis in order to demonstrate their innocence.

The Governor's bill seeks to appease and gain support from the advocates who have labored in the trenches for years representing the innocent who have been unjustly convicted. Any provision that helps to exonerate and compensate the unjustly convicted should be applauded but setting unreasonable limits on access to the technology which will set free those whom the system has failed is unwise, unfair and unconscionable. The time has come for the Governor to propose a stand alone bill that recognizes the human errors that riddle our criminal justice system without requiring all New Yorkers to surrender other of their liberty interests.

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