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Memo in Support of S6009/A7818:

A bill in support of protecting New Yorker's genetic privacy

The Center for Family Representation (CFR) strongly supports the passage of S6009/A7818, which clarifies that the State Legislature did not intend for municipalities to create their own secret DNA indexes and clarifies the intention of Executive Law §995-c.

CFR is the New York City county-wide public defense provider for parents who are respondents in Family Court Act (FCA) Article 10 proceedings in Queens and New York counties. CFR also represents many of our family court clients in criminal court proceedings. Our organization also represents young peoples in juvenile delinquency and criminal proceedings in Queens and New York counties. CFR employs an interdisciplinary model of representation, marrying in court litigation to out of court advocacy: every client is assigned an attorney and a social work staff member beginning at intake, which is generally the first day a client appears before a judge and CFR is assigned.

New York City's current DNA identification index contains more than 32,000 people with no oversight. Through CFR's family, criminal, and juvenile defense work, we have seen the danger and impact that unchecked policing has on our client's lives. New York City's secret DNA bank contains information for people that have never been convicted of a crime, including children as young as twelve years-old.

In New York City, after the police take a DNA sample from an individual, the sample is then sent to the Office of the Chief Medical Examiner (OCME). There, the sample, without notice to that person, is permanently stored in an unregulated index, regardless of whether the individual was prosecuted or convicted of a crime. Once indexed, the DNA stored at OCME is continuously used in genetic line-ups to compare with evidence in unrelated, suspected crimes. The furtive police practices of collecting people's from coffee cups, straws, cigarettes, or other personal trash, result in wrongful arrests, prosecutions, and convictions of innocent New Yorkers.

Furthermore, because New York City's local OCME DNA bank is not authorized by the Legislature, there is no route for our clients to have their DNA expunged from the index. The inability to expunge one's most personal information from this rogue database captures how systemic injustices perpetually face our clients. Many of our clients have their cases dismissed and sealed, are adjudicated youthful offenders or juvenile delinquents, or are never even charged with a crime, yet they remain in OCME's database with no process to clear their names.

S6009/A7818 clarifies that only the State, not localities, will be able to permanently store DNA profiles under Executive Law §995-c. Further, S6009/A7818 provides clear procedures for individuals to seek expungement of DNA samples that should no longer be maintained by the government. S6009/A7818 does not impact OCME's ability to compare DNA samples of criminal evidence to stored DNA profiles and allows OCME to legally contribute to State and National DNA indexes.

DNA evidence has proven to be fallible. A person's DNA can be present at a crime scene for innocent reasons, but due to the rogue DNA indexes, these individuals can unknowingly be sucked into a case because their DNA happens to be in an unregulated, local database, despite never being convicted of a crime. Innocent individuals are then wrongfully arrested, prosecuted, and convicted. The Center for Family Representation strongly supports the passage of S6009/A7818 to protect the genetic privacy of vulnerable New Yorkers.