

# CALIFORNIA FORENSIC DNA DATABASES

## IMPACTS ON COMMUNITIES OF COLOR

Los Angeles and Oakland CA | April 2009

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Convened by Generations Ahead. Co-sponsored by ACLU Northern California; Californians for Justice; Ella Baker Center for Human Rights; Families to Amend California's Three-Strikes; Labor Movement Strategy Center; National Network for Immigrant and Refugee Rights; South Asian Network; Muslim Advocates; and Youth Justice Coalition.

## ABOUT GENERATIONS AHEAD

Generations Ahead brings diverse communities together to expand the public debate and promote policies on genetic technologies that protect human rights and affirm our shared humanity.

By looking at the benefits and risks of these technologies for different communities we promote policies that ensure full respect and human rights for all people. We work to increase the public awareness of the many social implications of genetics and build the capacity of organizations and leaders to develop more informed positions. By facilitating critical conversations between multiple stakeholders we have increased the number of perspectives and voices involved in the national discussions on human genetic technologies.

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## INTRODUCTION

There is a growing consensus amongst policy makers that racial profiling, the “war on drugs,” and faulty forensic science techniques have all contributed to a broken criminal justice system. Yet, amidst this growing tide for reform, racial disparities are accelerating faster than ever through the quiet and vast expansion of forensic DNA databases. Twenty-one states collect and store DNA samples from individuals upon arrest and law enforcement practices now include investigating the family members of individuals with a profile in the database.

In an era when genetic technologies are making significant advances that will affect all of us, how do we ensure that their use within the criminal justice system will reach its greatest potential for justice and do no harm?

To include the voices of those individuals historically marginalized in the debates involving forensic DNA databases, Generations Ahead convened a group of 22 social justice leaders from northern and southern California for two workshops in April 2009. In attendance

were groups representing immigrant rights, civil rights, prisoner rights, youth justice, academics, and Arab, Muslim and Middle Eastern communities.

Two key trends are exacerbating racial disparities in the criminal justice system and are determining who is being included in DNA databases: 1) states moving towards the

collection of DNA from non-violent offenders in addition to those convicted of violent crimes and 2) the growing number of states mandating the collection of DNA from people merely arrested. As arrestees are being added to the federal database of nearly seven million, it is

growing by tens of millions of profiles annually. By several estimates, African Americans are 12% of the U.S. population and 14% of monthly drug users, yet they represent 37% of those arrested on drug charges and 59% of those convicted on drug charges.

This report documents two workshops—the first in Los Angeles, the second in Oakland.

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## NEED FOR THE CONVENING

In 2004, California voters passed Proposition 69, expanding law enforcement's right to collect DNA samples (and store genetic information in California's DNA and Forensic Identification Database) from:

- Adults and juveniles convicted of any felony offense
- Adults and juveniles convicted of any sex offense or arson offense, or an attempt to commit such an offense (felonies as well as misdemeanors)
- Adults arrested for, or charged with, murder or voluntary manslaughter (or the attempt to commit such offenses)

Additionally, starting in 2009:

- Adults arrested for, or charged with, any felony offense

California has joined 20 other states in their expansion to collect the DNA of adults arrested for, or charged with, any felony offense. This is taking place despite widely documented studies highlighting disproportionate arrest rates. Communities of color are arrested and imprisoned at rates that greatly exceed their proportion of the U.S. population.

We are just now beginning to see the impact on communities of color from the expansion of these databases. Though the United States purposely does not collect race data on individuals in DNA databases, we can

look to the United Kingdom for their numbers. The U.K. leads the world in DNA collection, and U.S. law enforcement frequently cites the UK's expansion of databases when advancing legislation here in the U.S. According to Genewatch UK, a not-for-profit group that monitors developments in genetic technologies from a public interest, human rights, environmental protection and animal welfare perspective: "Approximately 27% of the entire black population, 42% of the male black population,

**77% of young black men** and 9% of all Asians have records in the UK National DNA Database, **compared with just 6% of the white population.**"

What do these disparities tell us about the impact of expanding DNA databases in a criminal justice system that is broken?

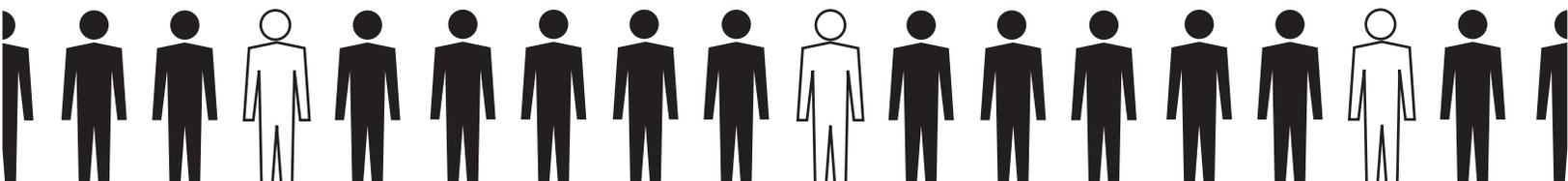
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Nobody would argue that people who are convicted should not be brought to justice, however, we need to ensure that DNA databases are used in ways that are fair, accurate and effective. Expanding DNA databases without first addressing existing problems in the criminal justice system is exacerbating existing racial disparities in ways that will be difficult to reverse.

What lessons regarding fairness, accuracy and effectiveness should we be taking from the criminal justice system as we look to expand DNA databases?



## BRIEFING

To introduce people to forensic DNA databases and to look for intersections of the issues with their current work, Generations Ahead presented an overview of genetic technologies. We discussed various topics, including the DNA forensic process, levels of forensic DNA databases, federal legislation, state legislation, California Proposition 69, expanding uses of DNA databases and, most importantly, why community organizations should care.

Most of the issues involving genetic technologies represent a new generation of social justice issues. Organizations are often unsure about the implications to their constituents since the term “genetic technologies” is rarely looked at through a social justice lens.

The four-hour workshops started with interactive discussions about current methods being used by local, state and federal governments to collect DNA, and how this impacts communities of color. During each workshop, the afternoon was spent discussing various case studies.

Some common themes that emerged early in these discussions included:

- People expressed a growing sense of vulnerability and a concern about the expansion of police power directly related to the collection and retention of DNA.

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There is growing concern that so little is known about the collection of DNA—about how it is being used and whose DNA is being added.

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- There is an underlying fear that corporations will begin tapping DNA databases and using information from them as a job qualifier.

- There is growing concern that so little is known about the collection of DNA—about how it is being used and whose DNA is being added.

- No matter how one looks at its utility, most people feel that DNA collection is humiliating, invasive and a violation of their human rights.

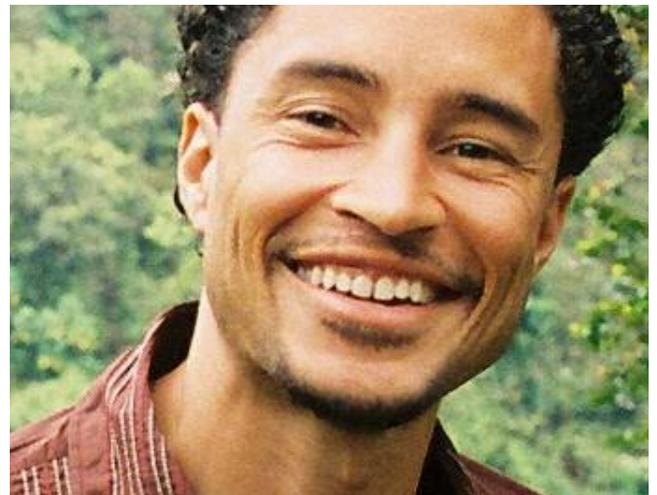
- DNA collection increases the psychological control that law enforcement has on communities of color.

## PART 1: IMPACT OF FORENSIC DNA ON SPECIFIC COMMUNITIES

To identify the different ways in which genetic technologies raise concerns in different communities, participants were asked to self-divide into constituency-specific affinity groups to identify the perspectives of each group and discuss real-life case studies of these technologies. They divided into groups related to immigrant rights, juvenile justice, prisoner rights and public policy.

### JUVENILE JUSTICE

This group, in both the southern and northern California workshops, included a range of people,



from high school students representing Youth Justice Coalition in Los Angeles to an organizer from Californians For Justice in Oakland. The discussions centered on the disproportionate number of young Blacks and Latinos in prison due to racial profiling by police, especially for violations of drug laws. They saw youth as “uniquely vulnerable in this system overall” and felt that “DNA databases would only exacerbate the existing bias and their vulnerability.”

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A youth group in the Bay Area pointed to the expansion of “tracking and surveillance” through a variety of databases: school databases, gang databases and now DNA databases.

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They identified the following concerns:

- A youth group from Los Angeles stated that they have been seeing an increase in arrests for minor offenses (lateness, truancy, skateboarding) in what they see as attempts to retrieve DNA samples. One young girl stated, “They are collecting the DNA of boys, not girls. They just want the boys.”
- A youth group in the Bay Area pointed to the expansion of “tracking and surveillance” through a variety of databases: school databases, gang databases and now DNA databases. Although crime has gone down, there is a growing trend towards youth criminalization and youth doing jail time.
- The youth groups in Los Angeles stated, “We are easier to target because of the power dynamics. Young people are less apt to know their rights, making it easy to give in to officers.” The group discussed the steady erosion of privacy rights for juveniles.

## IMMIGRANT RIGHTS

Immigrant rights groups were specifically concerned about two aspects of DNA databases: the latest legislation that now includes the collection of

DNA from non-U.S. citizens detained in the U.S. and the civil liberties violations of Arab, south

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There are a growing number of immigrants being arrested or held in detention. Their DNA will most likely be collected and stored.

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Asian, Muslim and Middle Eastern populations, post 9/11.

They identified the following concerns:

- DNA collection is a violation of their right to due process from arrest to detention. They saw DNA collection as another layer of profiling that targets immigrant communities without probable cause.
- Increased interaction with law enforcement subjects immigrant families to an increase in searches and arrests for being undocumented. DNA collection and storage is yet another cause for worry.
- There are a growing number of immigrants being arrested or held in detention. Their DNA will most likely be collected and stored.
- “Partial matches” of DNA are something that will lead law enforcement to a person’s home or to the home of a family member.
- DNA is yet another way of bringing unwanted attention from law enforcement.
- They expressed “no clear benefits of forensic DNA databases” beyond proving someone’s innocence. These groups saw the collection of DNA as a loss of community privacy and safety and an increase in policing and criminalization of certain communities.

## PRISONER RIGHTS

Communities who are criminalized regularly are becoming desensitized to techniques used by law enforcement. This was discussed in both the Los Angeles and Bay Area workshops. These prisoner rights groups described the importance of reversing this trend, given

that DNA collection could affect future life outcomes. One formerly incarcerated individual from the Bay Area, who now advocates for prisoner's rights, described feeling stigmatized and humiliated when his DNA was collected. He stated, "I will never be able to leave the system with my DNA permanently in a database."

As a whole, the groups saw DNA collection as a serious violation of human rights that places individuals in the criminal justice system and increases the probability of their name being brought up in future investigations.

People felt strongly about the need for automatic expungement – meaning that no DNA should be retained after time served or when proven innocent. They also agreed that any possible uses of one's DNA should require informed consent.

## PUBLIC POLICY

The policy groups discussed the ways in which laws have not kept up with the newly developing technology and expressed concerns regarding the lack of transparency in the entire system. There were many questions involving who controls the database and the

motivation behind it. They also questioned automatic expungement if it cannot be verified or guaranteed.

The groups voiced concern regarding the prevailing perception of infallibility of DNA technology, which, they believe, needs to be changed. They agreed that

errors do occur more frequently than people realize and that lab errors are increasing as databases expand. They raised concern that the general public sees DNA as the "gold standard" and assumes that if the DNA evidence points to

someone, then that person must certainly be guilty.

This group discussed the intersections of health and law enforcement. They expressed concern that people might start avoiding doctor's visits out of fear that their DNA might be used to incriminate them in the future.

According to one academic from Santa Clara University, Doug Ball, "people know when the police stop your car, but they don't know when their DNA is being run. Law enforcement should let people know when their DNA is being run. DNA doesn't leave a trail in the same way other police activity does."

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"I will never be able to leave  
the system with my DNA  
permanently in a database."

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## PART 2: COMMON THEMES

The groups were eager to discuss common themes after having discussed unique concerns.

- The groups agreed that the collection and retention of DNA are blatant civil and human rights violations. They saw law enforcement as creating mass suspect pools of innocent people who conveniently become suspects in future criminal investigations. They agreed that this undermines the presumption of innocence. They view the petition to have one's DNA expunged as a violation of human rights. The permanent retention of DNA samples is a disturbing violation of civil liberties. People expressed feeling vulnerable with their DNA in a DNA database. They were concerned that their DNA could be used for controversial methods of genetic research without their consent or awareness.

- The groups wanted stronger transparency and oversight. A growing number of problems are beginning to appear throughout the country. Many of the problems involve cross-contamination or mislabeling of DNA samples. The Houston Police Department closed their DNA laboratory after a television exposé revealed serious

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The groups expressed the critical need to raise public awareness and change public perceptions about appropriate and just uses of DNA databases.

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deficiencies in procedures. The Illinois State Police cancelled a contract with Bode Technology Group, one of the largest independent DNA labs in the country, expressing “outrage” over the poor quality of work. The creation of independent oversight boards could keep these issues transparent.

- It was clear to everyone that the expansion of DNA databases will have a disproportionate impact on communities of color. Communities with few resources are being subjected to heavy policing and high arrest rates, resulting in their disproportionate representation in DNA databases. Furthermore, through the expansion of practices such as familial searching, family

members—regardless of involvement or likeliness of culpability—are identified and scrutinized, based solely on their possible genetic relationship to an unknown suspect.

- The groups expressed the critical need to raise public awareness and change public perceptions about appropriate and just uses of DNA databases.

## NEXT STEPS

In closing, the groups were asked if they would be interested in participating in a statewide session to develop a strategy for both the northern and southern California groups. Several organizations indicated interest: Ella Baker Center for Human Rights, Legal Services for Prisoners with Children, California Coalition for Women and Prisoners, All of Us or None of Us, National Network for Immigrant Rights, South Asian Network and ACLU Northern California.

The groups were also asked how they might get involved. Some groups voiced the need for educational tools, creating “know your genetic rights” training for youth,

hosting public events and town hall meetings and disseminating information through various media, e.g. radio and the internet.

Some groups voiced the need for more information on DNA technology and its reach, so that they could develop useful tools for their communities and community members. To demystify DNA technology, some groups suggested explaining DNA databases as a human process. Most groups want to ensure that the messaging for DNA database expansion occurs from the inside out and that the voices of underserved people are heard.



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