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September 30, 2026

New York State Commission on Forensic Science & DNA Subcommittee
New York State Division of Criminal Justice Services
Alfred E. Smith State Office Building
80 South Swan St.
Albany, New York 12210

*Re: Public Hearing on Certain Next-Generation Sequencing Technology
and Potential Use in Laboratories Accredited by the
New York State Commission on Forensic Science*

Dear New York State Commission on Forensic Science and DNA Subcommittee:

We thank Chair Rosado and the members of the New York State Commission on Forensic Science (the Commission) and the DNA subcommittee for the opportunity to provide feedback on SNP-based testing methodology. This hearing was prompted by an application from the New York State Police (NYSP) laboratory seeking the Commission's approval of its SNP-based testing methodology. Framed narrowly, that request can appear to be a technical one: whether the laboratory can generate SNP profiles accurately and reliably, with the resulting data used to develop investigative leads. That framing dramatically understates what is actually at stake.

We respectfully urge the Commission not to treat SNP-based testing as a purely technical validation issue. While a public hearing has been ordered, the NYSP's validation summary and data, and the written policies that NYSP proposes have not been provided to the public for review and comment and we are limited to statements made during the CFS meetings. Without these critical materials, the hearing is fundamentally flawed and will not provide an adequate forum for public comment. What's more, technical validation is a necessary part of responsible implementation, but it is only one part. Whether a protocol performs accurately in the laboratory is a distinct question from the role its output will play once it enters the criminal justice system through forensic investigative genetic genealogy (FIGG). SNP testing does not exist in a vacuum. To approve the technique is to authorize only the first step of an investigative pipeline that extends well beyond the laboratory, into consumer genetic databases and the investigative judgments that determine who becomes a suspect, who is prosecuted, and who is convicted. The narrow question of laboratory accuracy and the broad question of governance are not the same, and answering the first does not resolve the second.

New York state has no comprehensive statutory framework governing its use, oversight, and accountability. The forensic use of DNA has always relied on a deliberately constructed framework. When the FBI established the Combined DNA Index System ("CODIS") in the late 1990s, careful deliberations underscored the need to use this technology in a controlled and regulated manner. They also limited the database to STR fragments from non-coding regions of DNA, which were believed to contain no medical or predictive information about the person from whom

the sample was taken.¹ Leaders in the criminal legal system understood the risks associated with establishing CODIS and engaged in deliberative, adversarial, and public processes that established the regulations and protections that apply to our state DNA databank. No comparable process has taken place for SNP-based testing, despite the greater genetic sensitivity and invasiveness of accessing SNP data compared with STR data. When the Commission and the Division of Criminal Justice Services (DCJS) considered permitting familial DNA searching, the state built specific procedural safeguards and eligibility criteria into the policy before implementation. At a bare minimum, New York must do the same for SNP-based investigative methods, which reach deeper into the genome and further outside the DNA databank system, and it must establish an oversight framework that holds FIGG investigations to a consistent standard.

SNP testing also implicates unsettled areas of law around privacy, constitutional and due process rights of the accused. New York's forensic DNA testing and databank system is not applicable to SNP-based testing.² That framework also does not contemplate third-party genetic genealogy database comparisons, or the creation, retention, use, disclosure, and analytic practices that SNP-based methods, like FIGG, entail. The Supreme Court's digital-privacy jurisprudence in *Carpenter v. United States*³ and more recently, in *Chatrue v. United States*,⁴ points to privacy, constitutional, and due process questions that have not yet been contemplated for genetic information.

The stakes extend far beyond the individual whose DNA is tested. Unlike nearly every other category of forensic evidence, genetic information is inherently relational. A fingerprint speaks only to the individual that left its trace. An SNP profile speaks about the person tested and, unavoidably, about that person's parents, children, siblings, cousins, and more distant relatives, none of whom consented to being drawn into a criminal investigation. No other forensic technique carries this extraordinary capacity to draw innocent family members into law enforcement scrutiny. Once a suspect is identified, investigations can narrow, assumptions can harden, and errors can compound. In a criminal justice system where the overwhelming majority of convictions are secured through guilty pleas rather than trials,⁵ a mistaken lead can have life-altering consequences long before a court ever evaluates the evidence.

We further urge the Commission to consider the following questions and to determine which can appropriately be resolved through executive regulation, including at minimum the legally required rulemaking process and an opportunity for both public comment and additional public hearing(s) with full information on the proposed policy, and which require legislation enacted through the democratic process. The following questions should be resolved before, not after, SNP-based testing is deployed, and there must be a clear public record of the determination of each question and the basis for such determination:

¹ JAY D. ARONSON, GENETIC WITNESS: SCIENCE, LAW, AND CONTROVERSY IN THE MAKING OF DNA PROFILING (2007).

² New York Executive Law § 995-c.

³ *Carpenter v. United States*, 585 U.S. 296 (2017).

⁴ *Chatrue v. United States*, 609 U.S. __ (2026).

⁵ NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS & NEW YORK STATE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, THE NEW YORK STATE TRIAL PENALTY: THE CONSTITUTIONAL RIGHT TO TRIAL UNDER ATTACK (2021), https://www.nacdl.org/getattachment/1d691419-3dda-4058-bea0-bf7c88d654ee/new_york_state_trial_penalty_report_final_03262021.pdf.

- Science evolves. If the 10,230 SNPs in the ForenSeq Kintelligence kit are later found to reveal personal health information, among the most sensitive data about ourselves and our families, what will the Commission do to safeguard it?
- Will Commission approval permit any SNP kit, including whole genome sequencing, to be used for FIGG in New York, or only a defined, targeted panel?
- Will SNP-to-SNP comparisons be permitted?
- When may SNP testing and FIGG be used, and what categories of cases justify their use?
- What limits apply to genetic searching?
- How, and for how long, will SNP data be retained?
- How will SNP data be secured against breach or misuse?
- Would an approval permit a laboratory to perform SNP testing on samples or extracts already in its possession from prior cases, or would testing be limited to prospective samples in cases where SNP analysis has been separately authorized for that case?
- What remedies exist for the misuse or unauthorized disclosure of a sensitive SNP profile?
- How will the Commission oversee the SNP-based testing results generated by private laboratories given the current gap in Commission oversight?
- Unaccredited third-party genealogists fall outside both laboratory accreditation and Commission purview. How will their work be governed?

These are among the questions that cannot be left to the internal policy of a laboratory or to the United States Department of Justice Interim Policy⁶, which serves only as guidance and binds no one. Should the Commission ultimately approve SNP-based testing and FIGG for criminal investigations, full transparency and disclosure must follow. Because this work relies on proprietary databases and complex algorithms, that material must be made available to the defense under *Brady v. Maryland*⁷ and *Giglio v. United States*⁸, and the due process guarantees of the Fourth Amendment and Article I § 6 of the New York Constitution. Commission or DNA Subcommittee approval cannot substitute for judicial review: the courts, not this body, must decide questions of scientific admissibility under *Frye* and the constitutional and due process issues that SNP testing and FIGG raise.

In conclusion, a technology with such profound implications for privacy, autonomy, and public trust demands clear statutory rules before, not after, it is deployed across New York's forensic system.

⁶ See United States Department of Justice Interim Policy on Forensic Genetic Genealogical DNA Analysis and Searching, <https://www.justice.gov/olp/page/file/1204386/dl> (last accessed on September 28, 2026).

⁷ *Brady v. Maryland*, 373 U.S. 83 (1963).

⁸ *Giglio v. United States*, 405 U.S. 150 (1972).

Sincerely,

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