

Panel: Expand use of DNA

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Report says tests
can avoid convicting
innocent people

By CAROL DEMARE
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ALBANY — A statewide task force examining the causes of wrongful convictions and ways to prevent them has recommended improving eyewitness identifications and expanding the state's DNA databank.

The panel, which issued its first report this week, has a list of other issues to tackle, such as videotaping suspects' statements and interrogations by police and further discussion on DNA evidence.

Chief Judge Jonathan Lippman created the New York State Justice Task Force in May 2009 with a mission to "eradicate the systemic and individual harms caused by wrongful convictions" and recommend reforms to "safeguard against ... such convictions in the future."

The group is co-chaired by Westchester County District Attorney Janet DiFiore and Court of Appeals Associate Judge Theodore Jones Jr. Their report stated the 21-member task force "strived to reach consensus wherever possible and did so on most of the recommendations."

In his State of the Judiciary address on Tuesday, Lippman said, "Nothing is more damaging to the pursuit of justice than the conviction of an innocent person." Since DNA was first used over 20 years ago, 266 DNA exonerations have been documented nationwide — 27 of them in New York.

"Every wrongful conviction is a double injustice that punishes the innocent and allows the guilty to go free, and an ugly stain on the reputation of the courts, chipping away at our legitimacy in the public eye," the chief judge said.

The panel has documented a total of 53 exonerations in New York. The other 26, based on traditional, non-DNA evidence, date back decades. All the cases are being re-

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viewed. No details were provided.

For some time, expansion of the state DNA databank has been a political hot button among state lawmakers and those in the criminal justice field. Many legislators have resisted expanding the databank.

Lippman said under current law, DNA samples are collected from those convicted of a felony or one of 35 misdemeanor offenses, which covers less than half the Penal Law convictions in New York.

The task force found that collecting samples from persons convicted of all misdemeanors as well as non-Penal Law felonies, such as felonies under the Vehicle & Traffic Law or the Agriculture & Markets Law, "would represent a major step" in preventing and remedying wrongful convictions by directing criminal investigations toward actual perpetrators and increasing the opportunity for wrongfully convicted individuals to prove their innocence through databank hits that implicate others."

The report called mistaken eyewitness identification the leading contributor to wrongful convictions, and made it the task force's first priority.

The Identifications Subcommittee studied reforms for months and brought its findings to the full task force that voted to recommend the Criminal Procedure Law be amended to allow photo identifications to be admissible at trial, citing technical advances that make them fair and reliable.

The task force also suggested revising jury instructions — and offered possible wording — in cases where cross-racial identification is an issue.

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