

FAMILIAL SEARCH POLICY

DNA profiles generated from evidence associated with criminal investigations are routinely searched against DNA databanks. In situations when there is not an association (“*match*”) or an indirect association (“*partial match*”) to a sample in the New York State DNA Databank, a procedure known as familial searching can be utilized. Familial searching is a targeted evaluation of the offenders in the New York State DNA Databank which generates a list of candidates based on kinship statistics to indicate potential biologically related individuals. Familial searching is not conducted automatically and can only be performed if certain case and sample requirements are met. This policy describes those conditions and defines the procedures that must be followed.

1) Case Requirements:

- a. The evidence DNA profile must be associated with a:
 - i. Penal Law article 125 felony offense, other than one defined in Penal Law sections 125.40 or 125.45; or
 - ii. Penal Law article 130 offense that is defined as a violent felony offense pursuant to Penal Law section 70.02; or
 - iii. Class A felony offense defined in article 130, 135, 150 or 490 of the Penal Law; or
 - iv. Crime presenting a significant public safety threat;and
- b. The investigating police agency and appropriate district attorney must certify, in the form and manner required by the Division of Criminal Justice Services (Division), that:
 - i. reasonable investigative efforts have been taken in the case; or
 - ii. exigent circumstances exist warranting a familial search.

2) Sample Requirements:

- a. The evidence DNA profile must:
 - i. be a single source, or a deduced profile originating from a mixture; and
 - ii. appear to have a direct connection with the putative perpetrator of the crime; and
 - iii. reside in SDIS; and

- iv. have been searched against DNA profiles of offenders contained in the State DNA Databank.

3) Requesting a Familial DNA Search:

- a. Any request for a familial DNA search must be made jointly by the appropriate investigating agency and the district attorney (hereinafter the requestors) through an application to the Division in the form and manner specified by the Division.
- b. Upon receipt of an application:
 - i. The Division will confirm that the requestors have certified that the case requirements in section (1) (a) have been satisfied; and
 - ii. The State CODIS administrator will confirm that sample requirements in section (2) (a) (i and ii) have been verified by the forensic laboratory that generated the evidence DNA profile; and
 - iii. The State CODIS administrator will confirm that the sample requirements in section (2) (a) (iii and iv) have been met.
- c. The completed application will be provided to the Commissioner of the Division for review. If the Commissioner determines that:
 - i. Any of the case and/or any of the sample requirements are not satisfied, the requestors will be notified in writing that a familial search cannot be performed.
 - ii. Both the case and sample requirements have been satisfied, a Memorandum of Understanding (MOU) detailing the role of each organization must be executed among:
 - 1. the law enforcement agency; and
 - 2. the district attorney; and,
 - 3. Director of New York State Police Crime Laboratory or designee; and
 - 4. the Commissioner of the Division or designee.

4) Conducting a Familial DNA Search:

- a. Upon receipt of an MOU executed by all parties, the New York State Police Crime Laboratory will:
 - i. Utilize validated software which has been approved by the New York State DNA Subcommittee and the Commission on Forensic Science

- to perform a familial search of the State Databank and generate a candidate list; and
- ii. Evaluate the candidate list based on an established threshold value approved by the New York State DNA Subcommittee and the Commission on Forensic Science;
 - iii. Perform Y-STR testing on the candidate sample(s) if the evidence profile is from a male individual and sufficient evidence sample exists for Y-STR testing.
 - iv. If appropriate, ensure additional testing is performed on the candidate sample, provided there is sufficient evidence sample available for testing.

5) Reporting Familial DNA Search Results:

- a. Familial DNA search results will be provided in writing and will include the following statements:
 - i. The information provided is for investigatory law enforcement purposes only;
 - ii. The evidence profile could not have come from the named offender in the Databank,
 - iii. The information provided is not a definitive statement of a familial relationship,
 - iv. The information provided should be treated only as an investigative lead.
- b. The requestors are required to satisfactorily complete, and demonstrate an understanding of, a mandatory, in-person training.¹
 - i. At a minimum, the training will address:
 1. How a familial search is conducted, including the limitations of the method; and
 2. Guidance on how to best evaluate leads from a familial search in order to protect unknown family relationships (donor parents/adoptions, previously unknown relatives); and
 3. The confidentiality requirements associated with the DNA profiles generated (Executive Law §§995-c; 995-d; 995-f); and

¹Training may be provided by video conference at the discretion of the Commissioner of the Division.

4. The requirement to withdraw a request if a suspect is identified through other means before the familial search is completed; and
 5. The requirement to provide follow-up information to the Division regarding case outcome at intervals determined by the Division.
- c. After the requestors have completed and demonstrated an understanding of the training:
- i. If the candidate(s) exceed the established threshold, and are not excluded by additional testing performed, the name(s) of the offender(s) in the Databank will be released.
 - ii. If no candidate(s) on the candidate list exceed the established threshold, no name(s) will be released and the requestors will be notified in writing that no potential relatives were identified through a familial search.
 1. The evidence sample will be re-searched against the Databank at appropriate intervals, but no less than bi-annually, as determined by the State CODIS administrator, in consultation with the Division.
 2. Such searches will continue until the request is withdrawn by the requestors.
- d. Any unauthorized release of a DNA profile or any associated information developed through or provided pursuant to this policy is a violation of State and federal law.

1. Subdivision (q) of Section 6192.1 of 9 NYCRR is amended to read as follows:

(q) The [phrase] phrases **indirect association** and **partial match** [refers] refer to the determination during the CODIS candidate match confirmation process that a forensic DNA profile is similar to a DNA profile in the offender index and a comparison reveals that the offender may be a relative of the source of the forensic index profile. The phrases may be used interchangeably.

2. New subdivisions (ab) (ac) and (ad) are added to Section 6192.1 of 9 NYCRR to read as follows:

(ab) The phrases **familial DNA search** and **familial search** refer to a targeted evaluation of the offenders in the DNA databank against an evidence profile which generates a list of candidates based on kinship statistics.

(ac) The phrase **offender** refers to anyone in the Databank who has been convicted of a crime.

(ad) The phrases **State CODIS administrator** and **State System administrator** refer to an employee of the state CODIS laboratory who is responsible for administration and security of the databank.

3. New subdivisions (h), (i), (j) and (k) are added to Section 6192.3 of 9 NYCRR to read as follows

(h) When there is not a match or a partial match to a sample in the DNA databank a familial search may be performed. To perform a familial search, the following case and sample requirements must be met:

(1) The forensic DNA profile must be associated with:

(i) a Penal Law Article 125 felony offense, other than one defined in Penal Law sections 125.40 or 125.45; or

(ii) a Penal Law Article 130 offense that is defined as a violent felony offense pursuant to Penal Law section 70.02; or

(iii) a class A felony offense defined in Article 130, 135, 150 or 490 of the Penal Law; or

(iv) a crime presenting a significant public safety threat.

(2) The investigating agency and appropriate prosecutor must certify, in the form and manner required by the division, that:

(i) reasonable investigative efforts have been taken in the case; or

(ii) exigent circumstances exist warranting a familial search.

(3) The forensic DNA profile must:

(i) be a single source, or a deduced profile originating from a mixture; and

(ii) appear to have a direct connection with the putative perpetrator of the crime; and

(iii) reside in SDIS; and

(iv) have been searched against DNA profiles in the DNA databank's offender index.

(i) Any request for a familial DNA search must be made jointly by the appropriate investigating agency and the prosecutor (hereinafter "the requestors") through an application to the division in the form and manner specified by the division.

(1) Upon receipt of an application:

(i) The division will confirm that the requestors have certified that the case requirements in paragraph (1) of subdivision (h) of this Part have been satisfied; and

(ii) The state CODIS administrator will confirm that the sample requirements in subparagraphs (i) and (ii) of paragraph (3) of subdivision (h) of this Part have been verified by the forensic laboratory that generated the forensic DNA profile; and

(iii) The state CODIS administrator will confirm that the sample requirements in subparagraphs (iii) and (iv) of paragraph (3) of subdivision (h) of this Part have been met.

(2) The commissioner shall review all completed applications.

(i) If, upon review and evaluation of such application, the commissioner determines that any of the case and/or any of the sample requirements are not satisfied, the division shall notify the requestors, in writing, that a familial search cannot be performed.

(ii) If, upon review and evaluation of such application, the commissioner determines that all of the case and sample requirements have been satisfied, the law enforcement agency, the district attorney, the director of the new york state police crime laboratory or his or her designee, and the commissioner of the division or his or her designee, must execute a memorandum of understanding among themselves detailing the role of each organization.

(j) Upon receipt of the memorandum of understanding described in subparagraph (b) of paragraph (2) of subdivision (i) of this Part, the new york state police crime laboratory will:

(1) use validated software, which has been approved by the DNA subcommittee and the commission, to perform a familial search of the DNA databank and generate a candidate list;

(2) evaluate the candidate list based on an established threshold value approved by the DNA subcommittee and commission;

(3) perform Y-STR testing on the candidate sample(s) if the evidence profile is from a male individual and sufficient evidence sample exists for Y-STR testing; and

(4) if appropriate, ensure additional testing is performed on the candidate sample, provided there is sufficient evidence sample available for testing.

(k) In order for the results of the familial DNA search to be released, the following conditions must be met:

(1) The requestors must satisfactorily complete, and demonstrate an understanding of, a mandatory, in-person or at the discretion of the commissioner, video conference training. At a minimum, the training shall address:

(i) how a familial search is conducted, including the limitations of the method;

(ii) guidance on how to best evaluate leads from a familial search in order to protect unknown family relationships (donor parents/adoptions, previously unknown relatives);

(iii) the confidentiality requirements associated with the DNA profiles generated (see, Executive Law §§995-c; 995-d; 995-f);

(iv) the requirement to withdraw a request if a suspect is identified through other means before the familial search is completed; and

(v) the requirement to provide follow-up information to the division regarding the case at intervals determined by the division.

(2) If the candidate(s) exceed the established threshold, and are not excluded by additional testing performed, the name(s) of the offender(s) in the DNA databank will be released. The familial DNA search results shall be provided in writing and shall include the following statements:

- (i) The information provided is for investigatory law enforcement purposes only;
 - (ii) The evidence profile could not have come from the named offender in the DNA databank;
 - (iii) The information provided is not a definitive statement of a familial relationship;
 - (iv) The information provided should be treated only as an investigative lead.
- (l) If no candidate(s) on the candidate list exceed the established threshold, no name will be released and the requestors will be notified, in writing, that no potential relatives were identified through a familial search. The evidence sample will be re-searched against the DNA databank at appropriate intervals, as determined by the state CODIS administrator, in consultation with the division. Such searches will continue until the request is withdrawn by the requestors.

DNA DATABANK IMPLEMENTATION PLAN (3/15/2017)

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GLOSSARY OF TERMS

- Allele:** One of the possible alternate forms of DNA residing at a particular genetic locus. Different alleles of STR loci are distinguished by having repetitive regions that differ in length.
- Allelic ladder:** An analysis standard consisting of a mixture of PCR-amplified DNA products from a number of commonly occurring alleles at a particular STR locus. STR alleles may be positively identified by comparing their lengths with the lengths of the alleles included in the ladder.
- Biological Specimen:** A submitted sample, typically blood or a buccal scraping, that is the object of DNA analysis for purposes related to forensic identification.
- CODIS:** Combined DNA Index System. The FBI's computerized, searchable registry of forensic DNA profiles, organized hierarchically into local (LDIS), state (SDIS), and national (NDIS) levels.
- CODIS Administrator:** Refers to an employee of the laboratory responsible for the administration and security of the databank.
- CODIS Custodian:** An employee or designee of the New York State Police responsible for, among other duties, maintaining the SDIS, fulfilling technical requirements of CODIS, and proper operation of the computer hardware on which the DNA Databank resides.
- Cold Hit:** A term used to mean the discovery of a linkage between separate crimes and/or crimes and convicted offenders or suspects, established using forensic DNA analysis of casework samples and searching of the DNA Databank, when this linkage was not anticipated through the use of any other investigative information.
- Convicted Offender Index:** The electronic database containing DNA profiles generated from designated offenders as defined in Executive Law §995(7).
- DCJS:** New York State Division of Criminal Justice Services.
- DCJS OFS:** New York State Division of Criminal Justice Services Office of Forensic Services, a unit of DCJS devoted to coordination of forensic services throughout New York State.

DNA Databank: The formal name assigned to the New York State DNA identification index, consisting of DNA profiles of convicted offenders, population samples, subject DNA profiles, DNA profiles of missing persons or relatives of missing persons, and DNA profiles generated from casework samples.

Familial Search: A targeted evaluation of the offenders in the New York State DNA Databank against an evidence profile which generates a list of candidates based on kinship statistics.

FBI: Federal Bureau of Investigation.

FIC: Forensic Investigation Center of the New York State Police.

Hit: A term used to mean the discovery of linkage between separate crimes and/or crimes and convicted offenders or suspects, established using forensic DNA analysis of casework samples and searching of the DNA Databank.

Implementation Plan: This document.

Index Offenses: Those offenses set forth in Executive Law §995(7).

Indirect Association Term referring to the determination during the CODIS candidate match confirmation process that a forensic index DNA profile is similar to a DNA profile in the convicted offender index or subject index and a comparison reveals that the offender or subject may be a relative of the source of the forensic index profile. **Indirect associations are also known as partial matches.**

LDAS: Federal term developed by the FBI standing for Local DNA Analysis System. An LDAS will contain DNA casework profiles generated within a single laboratory, but which have not yet been properly reviewed for compliance with all requirements of CODIS, or have not otherwise been formally included within the LDIS.

LDIS: Federal term developed by the FBI standing for Local DNA Index System. An LDIS will contain DNA casework profiles generated within a single laboratory.

Locus: A gene or other DNA element occupying a specific location on one of the chromosomes of a particular species.

Missing Person Index:	The electronic database containing DNA profiles generated from missing persons or the relatives of individuals reported missing.
Multiplexing:	Simultaneous PCR amplification and analysis of multiple DNA sequences in a single reaction.
NDIS:	Federal term developed by the FBI standing for National DNA Index System, to be comprised of uploaded casework, convicted offender and other authorized DNA records from across the United States.
NYSP:	New York State Police.
Nucleotide:	The basic chemical building block of DNA. Nucleotides in chains make up the length of specific segments of a DNA molecule (for example, the repetitive segment of a particular STR allele may be measured in number and type of nucleotides).
Offender:	Anyone in the databank convicted of a crime.
Partial Match:	See indirect association
PCR:	The polymerase chain reaction. An enzymatic process for making repeated, accurate copies of a specified DNA sequence, enabling large quantities of a specific portion of DNA to be amplified from a small sample.
Population Sample:	A reference file in SDIS provided by the FBI that consists of allele frequency data for the 13 STR core loci. It is used in calculations to estimate the statistical significance of a particular DNA profile in various population subgroups.
Profile:	The list of alleles carried by a particular individual at a specified set of genetic loci.
QA:	Quality assurance.
QC:	Quality control.
SDIS:	Federal term developed by the FBI standing for State DNA Index System, to be comprised of uploaded DNA records from each linked laboratory in New York State, as well as convicted offender DNA records and other authorized DNA records. The Forensic Investigation Center of the New York State Police will be the SDIS for New York State. Using the terms of this implementation plan, the SDIS for New York State is the New York State DNA Databank.

STR: Short Tandem Repeat Locus, containing multiple copies of a simple DNA repeat (forensically useful STR loci usually have a repeating unit 4 nucleotides in length). Also known as a micro satellite.

State CODIS

Administrator: See State System Administrator.

State System

Administrator: Federal term developed by the FBI to designate the person assigned the responsibility to insure compliance of all linked laboratories with CODIS requirements, prior to allowing upload and inclusion of DNA profiles in the SDIS from these laboratories. In New York State, the State System Administrator will be an employee of the New York State Police Forensic Investigation Center. **The State System Administrator is also known as the State CODIS Administrator.**

Subject Index: The electronic database containing DNA profiles generated from subjects convicted of a crime whose DNA specimen was collected: pursuant to a plea agreement; as a condition for participation in a temporary release, CASAT, or shock incarceration program; as a condition of release on parole, post-release supervision, presumptive release, or conditional release on a definite or indeterminate sentence; or as a condition of probation or interim probation supervision.

Warm Hit: A term used to mean the discovery of a linkage between separate crimes and/or crimes and convicted offenders or suspects, established using forensic DNA analysis of casework samples and searching of the DNA Databank, when this linkage was presumptively anticipated through the use of other investigative information.

DNA Databank Implementation Plan Administrative and Programmatic Elements

A. History and Introduction to the DNA Databank

Early Efforts in New York State

The potential for positive impact on law enforcement investigative success through the construction of a system for determining, cataloguing and rapidly accessing DNA records has been recognized by the State of New York for many years. In July 1988, the New York State Division of Criminal Justice Services (DCJS) formed the Forensic DNA Analysis Panel to study the burgeoning field of forensic DNA testing and explore the development of such a forensic and investigative tool, which is commonly referred to as a “DNA Databank.” At the time of its final report in September 1988, the Panel called for development of the “DNA identification index” with due diligence taken to craft authorizing law which would include appropriate protection of privacy rights and mandate significant quality performance measures in participating laboratories.

Executive Law Article 49-B

In 1994, a new Article 49-B was added to the Executive Law (L. 1994, ch. 737). The first section of this Article defines key terms used in the law (§995), then sets forth the provisions for development and duties of a Commission of Forensic Science (at §995-a and §995-b, respectively), the development of a DNA identification index (§995-c), requirements for confidentiality (§995-d), the applicability of the law solely to public forensic science laboratories in the State of New York (§995-e), and penalties for inappropriate disclosure of information related to the DNA identification index (§995-f).

Section 440.30 of the Criminal Procedure Law was amended at the same time to allow for post-conviction DNA testing. The effective date of this 1994 legislation was as follows: January 1, 1996 for the collection of blood samples from offenders sentenced of index offenses; January 1, 1996 as the date by which New York State public forensic laboratories performing DNA testing pursuant to the law must be accredited; and July 1, 1997 as the date by which all other New York State public forensic laboratories must be accredited. All New York State public forensic laboratories have been accredited since the creation of this implementation plan.

Throughout this law – and in general in the greater forensic science forum – the terms “DNA identification index” and “DNA Databank” are used synonymously to mean the computerized collection of “DNA records” prepared by forensic laboratories using established standards for testing and data handling. A “DNA record” consists of the information obtained through the use of such established tests and stored in the DNA Databank. Another phrase – “DNA profile” – is often used to describe the identifying information generated from DNA testing, before it is stored in a database.

Amendments to Executive Law Article 49-B

Several amendments to Article 49-B were signed into law on October 18, 1999 with an effective date of December 1, 1999. Effective July 6, 2004, the law was amended again to add more than 100 new offenses to the list of those requiring submission of a DNA specimen for the DNA Databank. Essentially, all convicted violent felony offenders, as well as certain non-violent felony offenders, are required to provide DNA samples for inclusion in the NYS DNA Databank. The list of new DNA-qualifying offenses that went into effect in July 2004 includes more than a dozen sex-related misdemeanors, as well as Hate Crimes and Crimes of Terrorism. In addition, there were retroactive provisions to the 1999 and 2004 amendments that required more than 70,000 offenders who were convicted prior to the effective dates of the amendments to provide DNA samples.

The law also was amended to broaden the type of biological specimen accepted for DNA testing. The law now states that a designated offender shall be required to provide a “sample appropriate for DNA testing” instead of a “blood sample.” This will allow for alternative methods of sample collection. In 2001, a simplified specimen collection system was instituted using oral swabs (buccal swabs) and remains the primary method for collecting offender DNA specimens. This method is fast, safe, economical, reliable and easy to administer.

Finally, the law was amended to increase the penalty for intentionally disclosing a DNA record, misusing a DNA record or tampering with any DNA sample or the collection container without lawful authority to a Class E felony as opposed to a Class A misdemeanor.

Number of Samples Anticipated for Inclusion in the DNA Databank

From the inception of the program in January 1996 to the 2004 amendments, more than 150,000 DNA specimens were collected from qualifying offenders. It is estimated that an additional 20,000 individuals will be convicted of index offenses each year.

General Structure of the New York State DNA Databank

The power of the DNA Databank lies in its ability to offer investigative information when other sources (e.g., witnesses, physical evidence) are not available. Criminals who commit multiple crimes may leave behind biological evidence from which DNA may be extracted and tested. Collection and testing of DNA recovered from this biological evidence generates a DNA record for each crime. This “casework” DNA information may be entered into the DNA Databank, so that searches of new casework DNA data against the DNA Databank can reveal linkages between unsolved crimes. Even if an individual has not been previously identified, such linkages provide a useful investigative tool. In its most powerful application, the use of the DNA Databank can

result in an identification of an assailant from *one* of the linked cases to *all* of the linked cases simultaneously, resolving many more crimes than previously possible.

Upon notification by the NDIS Custodian that all applicable NDIS requirements have been satisfied, DCJS may release the name of an offender whose DNA profile has been indirectly associated through a national CODIS search with a DNA profile in another state's forensic index. Testing of additional loci of the offender sample may be required and may include Y-STR and/or mtDNA analysis.

DCJS may release the name of an offender whose DNA profile has been indirectly associated through a State CODIS search with a forensic DNA profile when it has been determined that the information may lead to the identification of an individual related to the offender. For associations obtained from a State CODIS search, the following conditions must be met:

1. The laboratory submitting the crime scene DNA profile to the CODIS program shall complete an application to DCJS requesting the name of the offender and, as part of the application, confirm that:
 - i. an LDIS search has been performed using the profile in the Forensic Index;
 - ii. the forensic DNA profile derives from a single source and contains at least ten of the CODIS core loci;
 - iii. the submitting agency and the appropriate prosecutor have committed to pursue further investigation of the case if the name is released. Such entities also agree to provide follow-up information to DCJS regarding the outcome of the case, which DCJS will provide to the DNA Subcommittee at six month intervals; and
 - iv. the submitting laboratory has confirmed that release of the name will be followed by a report to the investigating agency.
2. The report from the submitting laboratory to the investigating agency shall indicate that:
 - i. the match is indirect;
 - ii. the available data suggests that the source of the evidentiary DNA pattern is potentially a relative of the convicted offender;
 - iii. the information provided is an investigative lead that the source of the evidentiary DNA pattern is potentially a relative of the convicted offender, but is not conclusive evidence of the same.
3. DCJS will provide the match information to the State DNA databank which, in turn, will calculate and report whether the appropriate statistical threshold approved by the DNA Subcommittee has been met.

4. Upon receiving a completed application from the local participating CODIS laboratory and confirmation from the databank that the appropriate statistical threshold has been met, DCJS will release the name of the offender to the submitting laboratory. If the appropriate statistical threshold value is not supported by the available data, then testing of additional loci of the offender sample may be required and may include Y-STR and/or mtDNA analysis. If the subsequent testing does not meet the appropriate threshold, the databank will notify DCJS and the offender's name will not be released.

In situations in which there is not an association ("match") or an indirect association ("partial match") to a sample in the DNA Databank, a procedure known as familial searching can be utilized upon a joint application from law enforcement and the district attorney (requestors). Familial searching is a targeted evaluation of the offenders in the DNA Databank. It generates a list of candidates based on kinship statistics to indicate potential biologically related individuals. Familial searching is not conducted automatically and can only be performed if certain case and sample requirements are met.

Upon receipt of a joint application, DCJS will confirm that the requestors have certified that the case requirements have been satisfied, and the State System administrator will confirm that sample requirements have been verified by the forensic laboratory that generated the evidence DNA profiles and that all other sample requirements have been met.

The completed application will be provided to the Commissioner of DCJS for review. If the Commissioner determines that any of the case and/or any of the sample requirements are not satisfied, then the requestors will be notified in writing that a familial search cannot be performed. If the Commissioner determines that both the case and sample requirements have been satisfied, a Memorandum of Understanding (MOU) detailing the role of each entity must be executed between the law enforcement agency, district attorney, Director of the FIC or designee, and Commissioner of DCJS or designee.

Upon receipt of an MOU executed by all parties, the FIC will utilize validated software which has been approved by the New York State DNA Subcommittee and the Commission on Forensic Science to perform a familial search of the DNA Databank and generate a candidate list. The FIC must evaluate the candidate list based on an established threshold value approved by the New York State DNA Subcommittee and the Commission on Forensic Science and select candidate samples, and perform Y-STR testing on the candidate sample(s) if the evidence sample is from a male individual and sufficient evidence sample exists for Y-STR testing. If appropriate, the FIC will ensure additional testing is performed on the candidate sample(s), provided there is sufficient evidence sample available for testing.

If there are candidates that exceed the established threshold who are not excluded by additional testing, the familial DNA search results will be provided in writing. The notification will state that the information provided is for investigatory law

enforcement purposes only and that the evidence profile could not have come from the named offender in the DNA Databank. It will also indicate that the information provided is not a definitive statement of a familial relationship and should be treated only as an investigative lead.

If no candidate(s) on the list exceed the established threshold, no name will be released and the requestors will be notified in writing that no potential relatives were identified through a familial search. The evidence sample will be re-searched against the Databank at appropriate intervals, but no less than bi-annually, as determined by the State System administrator, in consultation with DCJS. These searches will continue until the request is withdrawn by the requestors.

The DNA profiles of convicted offenders are stored in the DNA Databank following conviction and sentencing. If an offender should ever commit another offense and leave behind sufficient biological evidence, testing will once again provide casework DNA information for the unknown assailant. A search of the casework DNA profile against the DNA Databank will lead to a match between the casework sample and the offender DNA record in the DNA Databank. Investigators may then use this linkage of casework-to-offender data as probable cause to gain a court order for collection of another sample from the identified offender for subsequent comparison to the casework evidence. Confirmation of the DNA association using the newly collected specimen provides an important quality control step to assure there were no errors in the processing and handling during collection and analysis of the offender's original specimen taken for the DNA Databank.

In addition, DNA profiles may be collected from subjects convicted of a crime whose DNA specimen was collected: pursuant to a plea agreement; as a condition for participation in a temporary release, CASAT, or shock incarceration program; as a condition of release on parole, post-release supervision, presumptive release, or conditional release on a definite or indeterminate sentence; or as a condition of probation or interim probation supervision. These "subject profiles" may be entered into the DNA Databank so that searches of new casework DNA data against the DNA Databank can reveal linkages to unsolved crimes.

A fourth function of the database involves the maintenance of DNA profiles from unidentified persons or remains. These profiles are then compared against the DNA profiles of voluntarily provided family member specimens in an effort to identify the person or remains through paternity/maternity matching.

The overall structure of the DNA Databank, therefore, includes four indices. One index contains the casework DNA profiles generated by accredited New York State public DNA laboratories. These may be searched against one another at any time to generate case-to-case linkages, known within the forensic community as "hits." One index contains the DNA records from convicted offenders. These may be searched against cases at any time to generate case-to-offender hits. The third index contains DNA profiles obtained from subjects convicted of a crime whose DNA specimen was collected: pursuant

to a plea agreement; as a condition for participation in a temporary release, CASAT, or shock incarceration program; as a condition of release on parole, post-release supervision, presumptive release, or conditional release on a definite or indeterminate sentence; or as a condition of probation or interim probation supervision. These profiles may be searched against cases to generate case-to-subject hits. Finally, the last index includes the DNA profiles of unidentified persons and remains for comparison with DNA exemplars provided voluntarily by family members who have reported a missing person.

Linking the New York State DNA Databank to Other DNA Databanks

The New York State DNA Databank is not a stand-alone information source. The format used for coding each New York State DNA profile shall meet appropriate federal standards published by the Federal Bureau of Investigation. These coding standards provide the uniform platform for a Federal DNA Databank known as the Combined DNA Index System (CODIS). CODIS is comprised of three levels of databases – the Local DNA Index System (LDIS) containing DNA casework profiles generated within a single laboratory; the State DNA Index System (SDIS) containing DNA casework uploaded from each linked laboratory in the state, as well as the convicted offender and other authorized DNA records; and the National DNA Index System (NDIS) comprised of uploaded casework and convicted offender DNA and other authorized DNA records.

The Role of Laboratory Accreditation for the New York State DNA Databank

It is important to note that the mandatory accreditation of laboratories, specified under Executive Law §995-b, incorporates compliance with the FBI's *Quality Assurance Standards for Forensic DNA Testing Laboratories* as requisites for successful accreditation of a DNA laboratory. All New York State public laboratories have met these accreditation requirements for DNA testing, and shall be allowed to generate casework DNA testing data for inclusion in the LDIS, SDIS, and NDIS. Other laboratories in New York State which desire to provide DNA testing services, and make use of CODIS and the DNA Databank, must first gain New York State accreditation for DNA testing.

CODIS requirements are periodically updated to enhance the quality and utility of the LDIS, SDIS and NDIS. In all future analytical, formatting, and administrative decisions, compliance with the FBI standards shall be an ongoing first requirement for the DNA Databank.

B. IMPLEMENTATION PLAN AND ADMINISTRATIVE STRUCTURE

Generation and Approval of the Implementation Plan

Executive Law §995-c(1) states that “[f]ollowing the promulgation of a policy by the commission pursuant to subdivision nine of section nine hundred ninety-five-b of this article, the Commissioner of Criminal Justice Services is authorized to promulgate a plan for the establishment of a computerized state DNA identification index within the Division of Criminal Justice Services.”

Further, §995-c(2) states that “[f]ollowing the review and approval of the plan by the DNA Subcommittee and the Commission and the filing of such plan with the speaker of the assembly and the temporary president of the senate, the commissioner of Criminal Justice Services is hereby authorized to establish a computerized state DNA identification index pursuant to the provisions of this article.”

In its deliberations, the DNA Subcommittee and Commission have determined that the official name to be used in describing the New York State DNA identification index is the “New York State DNA Databank”. Since the term “State DNA identification index” is established by law, this term may also be used. An abbreviated form of the official name – “DNA Databank” – also is appropriate for use.

Pursuant to §995-c(1) and §995-b(9), the Commission reviewed and approved a policy for the establishment and operation of a DNA identification index. Further, the implementation plan herein documented was drafted with input from New York State Police and all appropriate DCJS offices, was reviewed and forwarded with a binding recommendation for approval from the DNA Subcommittee to the Commission, and was approved by the Commission following review and action at a regular meeting of the Commission.

Pursuant to the provisions of the State Administrative Procedure Act, and under the authority of Article 49-B, regulatory controls have been promulgated in Sections 6190 through 6193 of Title 9 NYCRR to provide oversight of DNA laboratories and standards, DNA specimen collections, and operations of the State DNA Identification Index. These rules were established under the direction of, and with the review and approval of, the DNA Subcommittee and the Commission of Forensic Science.

Authorities and Responsibilities of DCJS Under Article 49-B

The Division of Criminal Justice Services (DCJS) is assigned certain responsibilities by Executive Law Article 49-B. As noted above, §995-b(9) provides that recommendations developed by DCJS are referred to the Commission so that a policy for the establishment and operation of the DNA identification index can be promulgated. Also noted above, §995-c(1), authorizes the commissioner of criminal justice services to promulgate a plan for the establishment of a computerized state DNA identification index within DCJS.

Under the authority of §995-c(4), the Commissioner of DCJS, in consultation with other agencies with a lawful interest as defined in this section, promulgates rules and regulations governing the procedures for notifying designated offenders of their requirement to provide a biological specimen. These rules and regulations have been promulgated at 9 NYCRR Part 6191. Pursuant to §995-c(5), DNA records shall be forwarded to the State DNA identification index in accordance with the regulations of DCJS, as set forth in this Implementation Plan. Section 995-c(6)(a) provides that release of DNA Databank records may be made to authorized agencies and for authorized purposes,

and only if a use and dissemination agreement exists between DCJS and the agency. Further, §995-c(6)(c) allows DCJS to authorize release of DNA records for the purpose of creating or maintaining a population statistics database or for identification research and protocol development, or quality control purposes, after personally identifiable information has been removed from the records.

DCJS prescribes the form that written requests to the DNA Databank for DNA records must take, and maintains such written requests, under the authority of §995-c(7). In addition, §995-c(9) provides DCJS with the authority to prescribe procedures for return of DNA records, samples, analytical documents and copies thereof to the individual or his or her attorney following reversal of a conviction or pardon, or in other appropriate circumstances in which expungement of a DNA record is indicated. These procedures have been promulgated in 9 NYCRR §6193.4

Operating Liaison Between DCJS and the New York State Police Forensic Investigation Center

DCJS and the NYSP Biological Sciences Section at the Forensic Investigation Center (FIC) must work in close cooperation in order to accomplish the goals of Article 49-B. Administration of the State CODIS network shall be the responsibility of the NYSP FIC Biological Sciences Section. Technical assistance needed for the management of hardware and a telecommunications capacity shall be collaboratively supported by NYSP and DCJS Information Services Units.

The NYSP FIC shall receive, process and test biological specimens from convicted offenders, and enter data in the DNA Databank in compliance with appropriate portions of this Implementation Plan and the Commission's Policy. Access to, and use of, the data and information derived from these actions by the FIC is similarly limited by the Commission's Policy and Implementation Plan. Coordination of sample processing issues between DCJS and FIC shall be on-going, as DCJS serves as the primary liaison with the staff performing the sample collection. DCJS Office of Forensic Services (OFS) works with the county sheriffs, jail administrators, parole and probation directors, and the Office of Court Administration on policy and programmatic issues. OFS develops the collection kits, collection forms and their attendant instructions, and provides these materials to agencies performing sample collection. OFS is responsible for making the changes needed to ensure the effectiveness of the program for the collection of the appropriate offender samples.

The NYSP FIC shall receive, process, and test biological specimens submitted in connection with the subject index, and enter data in the DNA Databank subject index in compliance with appropriate portions of the SDIS Administrators Manual, this Implementation Plan, and the Commission's Policy. Access to, and use of, the data and information derived from these actions by the FIC is similarly limited by the SDIS Administrator's Manual, this Implementation Plan, and the Commission's Policy. OFS will coordinate development and distribution of collection kits, including forms and their attendant instructions, and provide these materials to agencies submitting specimens.

DCJS oversees the DNA Databank to ensure compliance with all appropriate aspects of the Commission's Policy and this Implementation Plan.

Operating Liaison Among DNA Testing Laboratories in New York State

There are currently eight laboratories within New York State which are accredited to provide DNA testing services and which may participate in the DNA Databank by entering data and performing searches: the New York State Police FIC Biological Sciences Section, Erie County Forensic Laboratory, Monroe County Public Safety Laboratory, Onondaga County Center for Forensic Sciences, Nassau County Department of Forensic Genetics DNA Laboratory, New York City Office of the Chief Medical Examiner Forensic Biology Laboratory, Suffolk County Crime Laboratory, and the Westchester County Division of Laboratories and Research Crime Laboratory. Each of these laboratories has the capacity and technical capability to provide STR testing of DNA recovered from biological evidence and each shall be equipped with a CODIS workstation. Through this workstation, each laboratory shall be able to create LDIS, upload data to the SDIS (DNA Databank), and search the CODIS NDIS.

All laboratories participating in the New York State DNA Databank must comply with the appropriate provisions of the Implementation Plan, the Commission's Policy and the requirements of CODIS, as published by the FBI. An authorized representative of DCJS shall assure that the participating, accredited New York State laboratories are complying with these provisions and that updated hardware, software and testing systems are accessible and in use for accomplishing testing.

Special consideration must be given to the needs of local DNA testing laboratories to inform local district attorneys, law enforcement officials, legislators, medical examiners and members of the public regarding the design, application, policies and anticipated outcomes for the DNA Databank. In addition, methods used in accounting for "hits" (case-to-case and case-to-offender) must be standardized because recognition of these products of the DNA Databank are critical to the public acceptance and on-going viability of the State and Federal program. Therefore, the laboratories must comply with specific program elements of this Implementation Plan, the Commission Policy, and the CODIS guidelines published by the FBI which address this "hit" accounting policy, such as protocols for generation of feeder reports to DCJS and system and information security measures.

DNA Databank Implementation Plan Technical Protocol and Laboratory Elements

The Implementation Plan provides an outline of the DNA Databank program. Standard operating procedures have been generated by DCJS and NYSP FIC to ensure proper compliance with the Commission's policy and the FBI standards. The protocols and operating procedures of each agency are reviewed periodically and revised as appropriate.

A. Sample Receiving, Processing and Storage

After receipt, biological specimens are examined by designated personnel to ensure that all required identifying information is present and agrees on both the sample label and the accompanying submission form. This information is then entered into a secure computer database. The records in this database are then forwarded to DCJS.

A procedure for the processing of the biological specimens is described in the standard operating procedure of the DNA Databank. Samples are kept in a locked dedicated storage unit within the NYSP FIC Biological Sciences Section. Access to the laboratory and the Biological Sciences Section is restricted and requires a key card. Only authorized personnel performing authorized Databank functions shall be permitted to access samples in the storage units.

A process is in place to rectify discrepancies. Criteria for refusal of samples, and for notifying the submitters of errors leading to such refusal, are also in place.

Safety

The NYSP FIC employs a safety officer and has developed and implemented a Laboratory Safety Manual. Employees receive safety training as mandated by the applicable New York State Department of Labor standards. For DNA Databank analysts this includes specific training in blood borne pathogen safety; analysts are also encouraged to receive hepatitis B immunization at no cost to the employee. Laboratory employees also receive safety eyewear, laboratory coats, and the opportunity for yearly occupational health screening, all free of charge.

The FIC follows all applicable New York State Department of Health and Labor guidelines for laboratory safety, chemical hygiene, biohazard exposure and other safety and health issues. These State standards must conform to federal occupational Safety and Health Act (OSHA) standards, including:

- A. 29 CFR Part 1910.1450 "Occupational Exposure to Hazardous Chemicals in Laboratories."
- B. 29 CFR Part 1910.1030 "Blood-borne Pathogens."

C. 29 CFR Part 1910.1200 “Hazard Communication Standard”

New York State has its own worker safety law, known as the “Right to Know” law, which is enforced by the New York State Department of Labor. The NYSP FIC complies with this law.

B. Technology

Choice of Loci and Analysis Methods

Type of Polymorphisms to be Detected

In accordance with the recommendation of the New York State Commission on Forensic Science, the NYSP FIC shall employ amplification by the polymerase chain reaction (PCR) of short tandem repeat (STR) loci.

Choice of STR Loci

The NYSP FIC, as operators of the Databank, shall abide by the promulgated Implementation Plan with respect to the STR loci used in the development of DNA profiles for offender sample testing. These shall include the loci required by CODIS, which specifies: CSF1PO, D3S1358, D5S818, D7S820, D8S1179, D13S317, D16S539, D18S51, D21S11, FGA, TH01, TPOX, vWA.

Amplification and typing procedures shall be validated in accordance with the FBI’s published quality assurance standards for forensic DNA analysis.

Validation

Compliance with FBI Guidelines for PCR Analysis

The New York State DNA Databank meets all applicable professional standards including the most recent FBI guidelines. All aspects of these guidelines shall be followed with respect to both the design of validation studies and the quality control of the final protocols for analysis of databank samples. The DNA Databank facility incorporates complete physical separation of pre- and post-amplification areas.

Standards for accuracy of typing, to be incorporated in each set of PCR reactions, shall include all known DNA controls that may be supplied as part of STR typing kits utilized for convicted offender profile testing, appropriately validated in-house standards, and/or any additional standards that may be required by CODIS for acceptance of STR profiles.

Training of Personnel

Procedures for Training and Activation of Analysts

All FBI guidelines on the education, training and proficiency testing of DNA Databank analysts shall be met. All personnel who will be producing DNA Databank profiles shall undergo an appropriate training and proficiency-testing program, in accordance with all applicable guidelines and professional standards, prior to working on the analysis of official Databank samples. Currently, DNA Databank analysts shall be required to undergo appropriate proficiency tests every 180 days in order to maintain active status.

C. Quality Assurance/Quality Control Program

Introduction

The New York State DNA Databank shall operate according to all applicable professional standards set forth in the FBI's *Quality Assurance Standards for Forensic DNA Testing Laboratories*. The New York State Police Laboratory and the DNA laboratories participating in the DNA Databank in New York State shall continue to maintain accreditation by the American Society for Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or other standard as defined by the Commission.

Sample Processing

The following Quality Control measures shall be implemented to insure accurate processing of DNA Databank submissions:

- A. Information on all samples, as they are received, shall be checked for accuracy and agreement against submission forms.
- B. Identifying information entered into the database shall always be confirmed by a second person.
- C. During sample processing, the identifying information on the sample and the label generated by DNA Databank personnel shall be checked for accuracy and agreement.

STR Analysis Quality Control

Ten percent of the specimens analyzed shall be resampled and subjected to a second STR analysis. If the analyst performing the Quality Control reanalysis obtains a profile for any specimen which is not identical to the profile originally recorded, the appropriate supervisor of the NYSP FIC Biological Sciences Section shall immediately be

informed in writing of the discrepancy and all DNA Databank STR analysis shall cease immediately until the cause of the discrepancy has been identified and corrected.

The DNA Databank staff shall meet with the appropriate supervisor of the laboratory to review the discrepant results and determine the type and source of the error. If the discrepancy was caused by an administrative error, all samples that were run on the gel that generated the erroneous result shall be reanalyzed to insure that the correct profile has been reviewed and revised as necessary to prevent recurrence of the problem.

If it is determined that the discrepancy was due to a technical error, DNA Databank STR analysis shall not resume until it is demonstrated, via analysis of known samples, that the problem has been corrected. If it is determined that the discrepancy was the result of incorrect procedures followed by an analyst, that analyst shall be retrained by the appropriate supervisor of the laboratory, and shall not resume DNA Databank analysis functions until demonstrating competency via the analysis of known samples. The supervisor shall also review and authenticate that previous results generated by the suspended analyst are acceptable. If the results of that review so warrant, the supervisor shall require that samples previously profiled by the suspended analyst be reanalyzed.

Proficiency Testing

The DNA Databank shall submit to both open and (should it become available) blind proficiency testing. Each analyst shall complete one proficiency test from an external source each 180 days as defined in standards established by the FBI.

Audits

The DNA Databank shall conduct audits in accordance with the quality assurance standards published by the FBI. Once every two years, a second agency shall participate in the annual audit. Additionally, reaccreditation inspection of the laboratory shall be conducted by ASCLD/LAB twice every five years. Records of all audits shall include audit results, corrective action and audit schedule.

Documentation, Interpretation, and Review

As stipulated by the FBI guidelines, documentation shall be reviewed by a second qualified individual and there shall be explicit instructions for the interpretation of data.

D. Security

Introduction

The security goals of the New York State DNA Databank are to maintain the confidentiality of all DNA records and specimens and to eliminate the possibility of specimen tampering.

Physical Security at the New York State Police Forensic Investigation Center

Specimens arrive at the NYSP FIC in a sealed container. Designated personnel check the seals to see if they are intact. The mode of delivery and the condition of the seals are recorded.

Before the specimens are processed, they are stored in a locked storage unit. The storage units are located in a limited access area within the Databank laboratory, which requires a cardkey for entry.

The Forensic Investigation Center is equipped with the following security features:

- A. Motion detectors are located throughout the building.
- B. A cardkey is required to move beyond the front lobby.
- C. A cardkey is required to enter the laboratory section of the building.
- D. A cardkey is required to enter the DNA Databank.
- E. Storage units shall be locked when not attended by authorized personnel.

Computer Security

All computers shall be located in a secure area, have a system of unattended software protection and be protected by an anti-virus system. Laboratory personnel with access to the DNA Databank and CODIS software shall include only those individuals whose duties require such access.

In order to facilitate the strictest possible controls on the privacy of DNA profiles, separate databases containing Databank-related information shall be maintained. The Databank submissions database for the Convicted Offender Index and for the Subject Index contains barcode numbers and personal identifiers (or other unique reference numbers) but shall *not* contain DNA profiles. All records from these indices, as well as paper copies of the specimen submission forms, shall be transferred periodically to DCJS.

A second database shall consist of the Convicted Offender Index and the Subject Index of the CODIS State DNA Index System (SDIS). These indices shall contain only barcode numbers or other unique numerical identifiers, racial identifiers (Black, Caucasian, etc.) when available, and DNA profiles. (Racial classifications shall be retained for the sole purpose of enabling the profiles to be used for the construction of allele-frequency databases.) In the SDIS, barcode numbers or other unique numerical identifiers shall be the only identifying information. In other words, DNA profiles and personal identifiers shall never be together in the same physical file, nor shall there be any software

link between the two databases. As a result, the following three characteristics will be present in the system: (1) bar codes or other unique numerical identifiers shall be the only identifying information which can be used directly to retrieve individual DNA profiles; (2) unauthorized laboratory personnel could never identify the DNA profile of a specific person; and (3) the expungement of the file shall make it impossible to connect the DNA profile with an individual subject.

The server on which CODIS and other databank applications run shall be equipped with the following security features:

1. Defined, need-to-know security levels of access to information in CODIS.
2. Appropriate computer resources shall be dedicated to CODIS and Databank functions exclusively.
3. A secure method of communication shall be employed; such as STU III, CJIS WAN, or other authorized methods.
4. There shall be a strict prohibition against leaving any terminal unattended while Databank-related applications are running. Written laboratory policy shall call for operators to close all such applications, and to log out in such a way that password entry is required for renewed access before leaving the terminal even for a brief period.
5. The standard computer security features known as “logon security”, “user ID”, and “password” shall be utilized. The software is designed so that the password expires every six months. Repeated unsuccessful logons shall disconnect an attempted user.

E. Searching the CODIS Database

Procedures

Searching of records in the various Local DNA Analysis System (LDAS), LDIS and SDIS files (e.g., casework, convicted offender, subject index, population, or missing persons) is performed by application of either the CODIS Searcher or Autosearcher programs.

Frequency – LDIS

At the local stand-alone level, LDIS searches shall be run at the discretion of the subscribing laboratory. Users can perform single target searches or batch searches. All LDIS and LDAS records can be searched as many times as meets the needs of the laboratory.

Only data associated with valid CODIS users shall be allowed into SDIS. The State System Administrator is responsible for creating and maintaining the user list. The user list must include all of the CODIS users in the NYSP FIC, as well as all of the CODIS users from other DNA laboratories within the state and from contract laboratories.

For local systems with a dedicated communications server, CODIS can automatically route bulk uploads to the CODIS Custodian. These uploads are scheduled on a routine basis by prior agreement with the CODIS Custodian.

Frequency – SDIS

At the State level, SDIS index searching shall be conducted at least **weekly**. In addition, authorized keyboard searches will be conducted on a routine basis.

When received, all profiles meeting NDIS standards are marked for bulk upload to NDIS. After all submitted profiles are marked for submission, the CODIS Custodian submits the profiles to NDIS.

F. Post-Implementation Actions

The DNA Subcommittee shall conduct a post-implementation review to determine the effectiveness of the DNA Databank in meeting the defined and implied objectives of Executive Law §995. This review shall include, but is not limited to, determination of the use of the data generated from automated searches of the DNA Databank, evaluation of the results of the policy for reporting indirect associations that result from CODIS searches, needs for improved case tracking, evaluation of emerging technologies and determination of the needs for changes in reporting formats.

Pursuant to 9 NYCRR §6192.3, the indirect association **and familial search policies** will be subject to review every two years. DCJS will report to the DNA Subcommittee any information received from investigating agencies regarding names released pursuant to this policy.

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