



STATE DIRECTOR'S MEMORANDUM #2006-7

To: All Probation Directors and Commissioners

From: Robert M. Maccarone, State Director

Date: July 10, 2006

Subject: DNA Chapter 2, Laws of 2006

Over the past several months many Probation Directors and Commissioners have indicated to me their support for a more comprehensive DNA collection law. I am pleased to advise you that Governor George E. Pataki recently signed legislation into law, **effective June 23, 2006,** expanding the list of designated offenders for whom DNA collection is mandatory. This new law provides the probation community with an unprecedented opportunity to participate in a Statewide initiative that will help solve crimes and assist victims of crime far into the future by the addition of about 38,000 DNA samples to the State Databank in the coming months.

The new law, Chapter 2 of the Laws of 2006, amends Section 995(7) of the Executive Law, which contains the definition of a "designated offender" for purposes of DNA collection. Now included in this definition is anyone convicted of any felony or an attempt to commit a felony, where the attempt is itself a felony offense, and anyone convicted of thirty-four specified misdemeanor offenses, 18 of which are newly added, including petit larceny. All designated offenders are required to provide a DNA sample for the State DNA Databank and their samples will be in the Convicted Offender Index. This law applies to offenders convicted of one of the newly designated offenses on or after June 23, 2006, and also to offenders who have been convicted of one of the newly designated offenses prior to June 23, 2006, but who have not completed their sentence as of that date. Accordingly, those probationers still under a sentence of probation supervision as of June 23, 2006 that meet the new definition of designated offender are subject to this new law.

DPCA is working with DCJS in establishing listings of probationers already under supervision who are subject to this new law. We will be disseminating departmental listings the week of July 17th to assist in your efforts to collect DNA samples from these individuals. I would strongly encourage you to develop policies and procedures that prioritize the DNA collection from the retroactive pool taking into consideration collection first from probationers approaching maximum expiration dates, collection before early discharge, felony convictions and then misdemeanors. Due to the changes created by this new law, DPCA will be issuing revised and

simpler reimbursement protocols along with the departmental listings. Departments will be advised at that time of the amount of state aid they will receive and be better able to use these resources for the prompt and efficient collection of DNA samples.

Procedures have been established to transfer Subject Index DNA samples already taken to the Convicted Offender Index, where applicable. If a probationer has a DNA sample included in the Subject Index and now becomes a designated offender under the new law, they can opt to transfer their DNA sample to the Convicted Offender Index rather than give a new sample. To facilitate the prompt transfer of DNA samples, the attached DNA SAMPLE—TRANSFER ACKNOWLEDGEMENT FORM should be utilized. Should a probationer not agree to sign this form, he/she must have another DNA sample collected and forwarded to DCJS.

The Subject Index regulations promulgated by DCJS are still in effect and DNA collection should still be considered for those not falling within the definition of “designated offender”. As a cautionary note, individuals under interim probation supervision have been convicted, yet not sentenced. Such individuals do not fall within the definition of designated offender and, therefore, while they may have a DNA sample within the Subject Index, the new law is not applicable to such individuals. Attached is a copy of the new law for your review. DCJS’s website will be updated in the immediate future to reflect the statutorily enumerated offenses contained in the definition of “designated offender” in the new law.

Lastly, I want to emphasize that this new law offers probation and other law enforcement agencies an unprecedented opportunity to solve crimes and prevent victimization in our communities. There exists 18,000 DNA samples on file for unsolved crimes and it is important that we collect DNA samples from the probation population as quickly and efficiently as possible.

Questions regarding the New York State DNA Databank or DCJS’s regulations in this area should be directed to DCJS, specifically Michael Nardolillo, Databank Coordinator in Forensic Services at DCJS at (518) 457-8417. However, DPCA Counsel Linda Valenti is also available to answer questions related to the new law via her email address: Linda.valenti@dpc.state.ny.us or telephone (518) 485-2394.

Att.