

N.Y. Comp. Codes R. & Regs. tit. 9, § 6193.4


## C

Compilation of Codes, Rules and Regulations of the State of New York [Currentness](#)

Title 9. Executive Department

Subtitle U. Division of Criminal Justice Services

Chapter VIII. Forensic Services

 [Part 6193](#). Use and Dissemination Agreement for Access to State DNA Databank; Right of Subjects to Access Records, and Expungement ([Refs & Annos](#))

### →→ Section 6193.4. Expungement of DNA records

(a) An individual whose DNA record has been included in the convicted offender index of the DNA databank or an individual whose DNA record has been included in the subject index of the DNA databank pursuant to a plea agreement may request expungement on the grounds that the conviction which formed the basis for such inclusion in the DNA databank was reversed or vacated or a pardon was granted. An individual shall provide the request in writing to the division along with a certified copy of the final court order reversing or vacating the conviction or a certified copy of the pardon. Upon receipt of such request for expungement:

(1) the division shall verify whether a DNA sample was ever collected from an individual with personal identifying data which corresponds with information provided in this subdivision. If needed, the division shall use other computerized databases within the authority of the division to assist in fulfilling the subject's request;

(2) if no record is found using this information, or if there is any discrepancy discovered in the information submitted by the subject or his or her representative in the request, the division shall notify the subject in writing within 30 business days, setting forth reasons why documents were not returned and requesting additional information, if appropriate, by certified or registered mail return receipt requested. For purposes of this section, *DNA record* shall refer to the DNA record relating to the subject's conviction which has been reversed or vacated or which a pardon has been granted and for which expungement has been requested. Only the DNA records relating to the conviction that has been reversed or for which a pardon was granted shall be subject to these expungement procedures;

(3) if a record is found for the identified subject in the DNA databank and no discrepancies are identified in the submitted information, the division shall determine the location and extent of all documents related to the subject's DNA record. The list of documents identified in this search will be communicated by the division to the subject in writing within 30 days of the notification of need for expungement, by return receipt requested mail. In this same letter, the division shall define for the subject the expected time needed to obtain all copies of all documents to be returned to the subject. The time to obtain and return these records to the subject shall not exceed 120 days from the date of notification of the need for expungement;

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(4) the division shall thereafter obtain all documents related to the subject's DNA databank record. After insuring that all documents, and all copies thereof, have been obtained, these records shall be catalogued and any DNA sample(s) obtained in connection with the subject conviction shall be destroyed. These documents, including a certification of destruction of the subject's DNA sample, if applicable, shall be forwarded to the subject of the expungement using return receipt requested mail;

(5) the catalogue of the documents returned to the subject or the subject's representative shall be maintained, with documentation of notification of the need for expungement and all related correspondence between the division and the subject, in a file at the division. After completion of all activities by the division related to this expungement, this file shall be sealed and maintained by the division for a period of three years and shall not be opened except pursuant to an order of a court of competent jurisdiction; and

(6) at the end of this three-year period, the sealed file shall be disposed in accordance with the requirements of the State Archives and Records Administration (SARA) procedures.

(b) An individual whose DNA record has been included in the subject index of the DNA databank as a condition for participation in a temporary release, CASAT, or shock incarceration program; or 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 may request expungement on the grounds that he or she no longer participates in a temporary release, CASAT, or shock incarceration program; or is no longer under the jurisdiction of the Division of Parole; or under probation supervision. An individual shall provide the request in writing to the division along with documentation sufficient to substantiate the request for expungement. Upon receipt of such request for expungement:

(1) the division shall verify that the subject is no longer participating in a temporary release program, CASAT, or shock incarceration program; is no longer under the jurisdiction of the Division of Parole; or no longer under probation supervision, as applicable. If needed, the division shall use computerized databases within the authority of the division to assist in fulfilling the subject's request. If the division verifies that the subject is no longer participating in a temporary release, CASAT, or shock incarceration program; under the jurisdiction of the Division of Parole; or under probation supervision, it shall obtain all documents related to the subject's DNA databank record. After insuring that all documents, and all copies thereof, have been obtained, these records shall be catalogued and any DNA sample obtained in connection with the subject conviction shall be destroyed. These documents, including a certification of destruction of the subject's DNA sample shall be forwarded to the subject of the expungement using return receipt requested mail; and

(2) the catalogue of the documents returned to the subject or the subject's representative shall be maintained, with documentation of notification of the need for expungement and all related correspondence between the division and the subject, in a file at the division. After completion of all activities by the division related to this expungement, this file shall be sealed and maintained by the division for a period of three years and shall not be opened except pursuant to an order of a court of competent jurisdiction; and

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(3) at the end of this three-year period, the sealed file shall be disposed in accordance with the requirements of the State Archives and Records Administration (SARA) procedures.

Sec. added by renum. and amd. 6192.13, filed March 28, 2000; amds. filed: Jan. 3, 2006 as emergency measure; March 7, 2006 eff. March 22, 2006.

9 NYCRR 6193.4, 9 NY ADC 6193.4

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