



MEMORANDUM

TO: All New York State District Attorneys

FROM: Chauncey G. Parker

SUBJECT: Establishment of Subject Index in the State DNA Databank

DATE: January 23, 2006

This is to advise you of an important change in the New York State DNA Databank that will permit the inclusion of DNA profiles from individuals who are subject to some sort of supervised release, or who are convicted of a crime and whose sample is collected pursuant to a plea agreement. These profiles will be retained in a new index in the Databank called the Subject Index. This change represents a significant expansion in the number of criminal offenders whose DNA may be included in the NYS DNA Databank.

As you know, the introduction of DNA technology represents the most important application of forensic science in law enforcement since the development of fingerprint technology. DNA is a proven, powerful crime-fighting tool that has helped to convict the guilty, exonerate the innocent, discourage recidivism and bring justice to victims and their families.

History has shown that expansion of the DNA Databank solves and prevents crimes. Accordingly, a Subject Index has been added to the State DNA Databank, effective January 3, 2006. The Division of Criminal Justice Services (DCJS) is authorized, pursuant to Executive Law §995-c, to establish and revise the DNA Databank through an Implementation Plan, subject to the review and approval of the Plan by the New York State Commission on Forensic Science (Commission) and the DNA Subcommittee and the filing of the Plan with the State Legislature. This Implementation Plan provides the framework for the operation of the Databank and specifies the type of profiles that may be included in the Databank. The Implementation Plan and related regulations, 9 NYCRR Part 6192, previously authorized inclusion of profiles obtained from convicted offenders pursuant to Executive Law §995-c(3), profiles obtained from crime scene evidence, and profiles from missing persons or relatives of persons reported missing.

While offenders convicted of designated offenses, as defined in Executive Law §995(7), must, in accordance with Executive Law §995-c(3), provide a DNA sample for inclusion in the State DNA Databank, the statute does not expressly limit the State DNA Databank to convicted

offender profiles, nor does it set forth what profiles should be included the Databank or how the Databank should be set up. Rather, as noted, it is the DNA Subcommittee, Commission, and Commissioner of DCJS, through the Implementation Plan, that determine how the Databank will be established and what types of profiles will be included.

The DNA Subcommittee and Commission recently approved changes to the Implementation Plan and related regulations authorizing the establishment of a fourth index in the Databank, known as the Subject Index. The changes will allow the Databank to accept and maintain in the Subject Index DNA profiles obtained from offenders convicted of crimes whose DNA specimens were collected: (1) pursuant to a plea agreement; (2) as a condition for participation in a DOCS' temporary release, comprehensive alcohol and substance abuse treatment ("CASAT"), or shock incarceration program; (3) as a condition of release on parole, post-release supervision, presumptive release, or conditional release on a definite or indeterminate sentence; or (4) as a condition of probation or interim probation supervision. Maintaining such samples in the Databank is a sound public protection measure.

Your office obviously will play a key role in obtaining samples from offenders pursuant to plea agreements. A waiver and consent form for use in this regard is attached, or you may modify the form to meet your office's needs. It is imperative, however, that a waiver and consent form accompany DNA samples taken pursuant to a plea agreement and submitted to the Subject Index. Given the potential beneficial impact on public safety and offender accountability, I encourage you to seriously consider such a condition in all your plea bargain negotiations.

The collection of DNA specimens from individuals to be included in the Subject Index may be performed using the "standard" DNA specimen collection kit in use for obtaining DNA from offenders required to provide a specimen pursuant to Executive Law §995(7). However, a copy of the documentation which provides the basis for the collection must accompany the DNA Specimen Submission Form that is included in the kit in order for the offender's profile to be entered into the Subject Index. For DNA specimen collection kits, or for guidance on DNA specimen collections, you may contact the Office of Forensic Services at DCJS at (518) 457-1901.

An offender may request removal and destruction of his/her sample when he/she is no longer participating in a DOCS' temporary release, CASAT, or shock incarceration program; no longer under the jurisdiction of the Division of Parole; or no longer under probation supervision. A DNA sample provided pursuant to a plea bargain may be removed from the Databank only if the conviction underlying the plea bargain is vacated or the offender is granted a pardon.

While the new Subject Index will broaden the scope of the Databank, it is not a substitute for the legislation repeatedly proposed by the Governor that would expand the Convicted Offender Index of the Databank to include the DNA profiles of all convicted criminals. In 2006, we will continue to work toward achieving this crucial goal.

Please feel free to contact me with any questions or concerns.

Attachment