



MEMORANDUM

TO: All New York State District Attorneys

FROM: John W. Hicks, Director, Office of Forensic Services/DCJS

SUBJECT: DNA Specimen Collections Pursuant to a Plea Agreement

DATE: January 31, 2006

By memorandum from Chauncey G. Parker, Director of Criminal Justice, dated January 23, 2006, you were advised of a DNA initiative pertaining to the creation of a new index in the New York State DNA Databank called the "Subject Index". The Index may include the DNA identification profiles of persons who are convicted of a crime and who voluntarily provide a DNA specimen pursuant to a plea agreement. The DNA Databank was expanded to include the Subject Index after approval by the New York State Commission on Forensic Science and the DNA Subcommittee. As a result, there will be a Subject Index, in addition to the Convicted Offender Index, Forensic Index and the Missing Persons Index. As you know, the "Convicted Offender Index" holds DNA identification profiles collected from offenders convicted of designated offenses as set forth in Executive Law section 995(7). The "Subject Index" will hold DNA profiles collected from offenders not convicted of a designated offense, but convicted of a crime and required to provide a DNA specimen pursuant to, inter alia, a plea agreement. This memo seeks to provide general guidance on the collection of such DNA profiles.

Attached to Director Parker's letter was a waiver and consent form that was developed for this purpose; a copy is also attached to this memo. This form may be used as is or modified to meet your individual needs.

When submitting a DNA specimen for inclusion in the Subject Index pursuant to a plea agreement, it is imperative that a waiver and consent form accompany the DNA Databank Specimen Submission Form that is included in the "standard" DNA specimen collection kit. DNA Databank specimen collection kits are available at no cost to criminal justice agencies and supplies may be obtained by calling PWI at (585) 593-6645, x321. Detailed instructions are included in the kit and the Office of Forensic Services will provide training and support as needed.

As you may be aware, DNA specimen collections for the Databank are already being done routinely by local jails, probation offices and court officers, as well as by

many police departments. It is recommended that DNA collection procedures for this purpose be developed locally in coordination with other criminal justice agencies in your area. The following are some suggested alternatives to consider depending on local circumstances and access:

- the DNA specimen may be collected by an investigator or other staff member in the office of the District Attorney;
- when the offender will be sentenced to a period of confinement or probation supervision, the DNA specimen may be collected by the local jail or probation office, as appropriate;
- when the offender will not be subject to confinement or time served at sentencing, the DNA specimen may be collected by a court officer;
- the offender may be directed by the court to report to the local police department or one of the above-mentioned agencies to provide a DNA specimen.

In all of these situations, appropriate communication should be established so that it is clearly understood by the collecting official that the offender's DNA is being obtained pursuant to a plea agreement and that a copy of the waiver and consent form is to be submitted with the DNA Specimen Submission form.

The Office of Forensic Services will review every DNA Submission Form and corresponding criminal history record to determine if the offender has been convicted of a designated offense for inclusion in the "Convicted Offender Index". If a DNA-designated conviction does not appear on the offender's criminal history record, the DNA sample collected for the "Subject Index" will not be retained without an executed copy of the waiver and consent form. However, a representative of my office will contact the collecting officer before removing the DNA sample from the Databank.

If you have questions or wish to arrange for training or other assistance regarding the implementation of the Subject Index, please call me or Mike Nardolillo at the Office of Forensic Services at (518) 457-1901.