



CHAIRMAN'S MEMORANDUM

NO. 8-2006

July 10, 2006

TO: SHERIFFS, CHIEF ADMINISTRATIVE OFFICERS, COMMISSIONERS OF CORRECTION, NEW YORK CITY WARDENS, CHIEFS OF POLICE, SUPERINTENDENTS OF STATE CORRECTIONAL FACILITIES

RE: EXPANDED LIST OF QUALIFYING CRIMES FOR DNA SAMPLE SUBMISSION TO INCLUDE ALL PENAL LAW FELONIES AND ADDITIONAL MISDEMEANORS

On June 23, 2006, Governor Pataki signed a law which further increases the number of qualifying crimes that, upon conviction and sentence, will require submission of a sample to the DNA data bank. This legislation expands the list of qualifying crimes to now include all Penal Law felonies, and adds an additional set of qualifying misdemeanors, bringing the misdemeanor list to 34 crimes that now qualify for a DNA submission. As a result of this expansion, county jails are expected to collect a much greater volume of DNA samples in the upcoming year. County specific data will be available in the upcoming weeks to better enable you to prepare for this undertaking.

Please find the list that includes the newly designated misdemeanor offenses attached. All Penal Law felony convictions and sentences now require a sample, which should make the question "Is it a qualifying crime" a lot simpler to answer. Since this legislation became effective June 23, 2006, and has retroactive provisions, it is essential that county correctional jurisdictions once again move rapidly to identify and prioritize offenders in custody who now owe DNA samples under the expanded law.

To that end, it is requested that your facility administration act at once to identify those currently serving sentences who owe DNA to the expanded data bank and prioritize and expedite sampling of that population.

In the interest of public safety, it is essential that DNA specimens from offenders designated in the law are collected as soon as possible after sentencing (or upon re-arrest of those who may not yet have provided a specimen but who still owe a sample from a previous conviction). The inclusion of additional misdemeanors in the expanded data bank makes it more likely that some sample-owing offenders will be released with 'time served' directly from courts, including town courts. It is therefore strongly recommended that you review your intake screening and DNA sample collection procedures to ensure designated offenders are identified and their DNA specimens are taken promptly upon admission as sentenced offenders to the local correctional facility. It is also strongly urged that you work cooperatively with the courts to establish a procedure that would direct those who are released from a county, city, town, or village court to submit a DNA sample as part of their sentence. DCJS's Office of Forensic Services will be working in conjunction with the District Attorneys across the state, as well as the Office of Court Administration, to ensure that those sentenced to time served or a fine, such as is possible in the case of a conviction for petit larceny, are advised of their need to submit a sample if they are not to receive any jail or prison time after sentencing.

New York State Commission of Correction
80 Wolf Road, 4th Floor
Albany, New York 12205
(518) 485-2346

Daniel L. Stewart, Chairman

Frederick C. Lamy, Commissioner
Frances T. Sullivan, Commissioner

A joint survey conducted in 2004 by the Commission of Correction and the DCJS Office of Forensic Services to identify problems with collection of DNA samples for those sentenced to jail time or to a split sentence revealed that in some circumstances, facility intake or classification officers were working with outdated lists of qualifying offenses. The addition of the new qualifying misdemeanors and all Penal Law felonies not previously designated as a qualifying crime means that missed samples could reoccur if facilities do not update their listing and train designated officers to look for offenders owing samples per the expanded list.

I urge you to distribute the enclosed list of misdemeanors (as well as a notice that all Penal Law felonies are qualifying crimes) as needed to your booking staff, classification staff or other staff responsible for the DNA offender identification process, update your automated jail management system if appropriate and conduct training as needed to ensure that your staff can identify those inmates who must submit a sample. While it is a challenge to assure that all offenders who must submit DNA are identified and sampled, the resulting number of matches and convictions based on 'hits' will assure that criminals will face a greater chance of being caught and convicted and that the public is safer.

DCJS is currently working on updating its rap sheet capabilities to reflect whether or not a person has submitted a DNA sample. Once a sample has been submitted and accepted by the State Police Lab as sufficient, a flag will be placed on the rap sheet indicating that the person has submitted a sample. No further samples need be taken if one is already verified as being on file. This means that running a rap sheet prior to requesting an inmate submit to a buccal swab for submission may save your staff, as well as DCJS and the labs, time and effort if a new submission is not required.

The cooperation of the Sheriffs, Commissioners of Correction and local correctional administrators in this program has been outstanding since its inception in 1996, and has been instrumental in making our communities safer. Your assistance in making this expansion of the DNA database a success is vital and most appreciated.

If you have any questions or concerns regarding the expanded list of qualifying crimes, or problems with implementation, please call the Office of Forensic Services of the Division of Criminal Justice Services at (518) 457-1901.

Daniel L. Stewart, Chairman

**New York State Commission of Correction
80 Wolf Road, 4th Floor
Albany, New York 12205
(518) 485-2346**

**Daniel L. Stewart, Chairman
Frederick C. Lamy, Commissioner
Frances T. Sullivan, Commissioner**

DNA Sample Qualifying Crimes:-All Penal Law felonies and the following misdemeanors:
(New qualifying crimes are in bold italic)

120.00 - assault in the 3rd degree

110.00/120.12 - attempted aggravated assault upon a person less than 11 years old

110.00/120.13 - attempted menacing in the 1st degree

120.14 - menacing in the 2nd degree

120.15 - menacing in the 3rd degree

120.20 - reckless endangerment in the 2nd degree

120.45 - stalking in the 4th degree

120.50 - stalking in the 3rd degree

110.00/120.55 - attempted stalking in the 2nd degree

130.20 - sexual misconduct

110.00/130.20 - attempted sexual misconduct

110.00/130.25 - attempted rape in the 3rd degree

110.00/130.40 - attempted criminal sexual act in the 3rd degree

130.52 - forcible touching

(prior to this law, a person convicted of forcible touching was required to submit a DNA sample only if the victim was less than 18 OR the person was previously convicted of a sex offense or sexually violent offense, or 130.52 or 130.55, or an attempt thereof)

110.00/130.52 - attempted forcible touching (where victim is less than 18 OR offender has previously been convicted of a sex offense or sexually violent offense, or 130.52 or 130.55, or an attempt thereof)

110.00/130.53 - attempted persistent sexual abuse

130.55 - sexual abuse in the 3rd degree

(prior to this law, a person convicted of sexual abuse in the 3rd degree was required to submit a DNA sample only if the victim was less than 18 OR the person was previously convicted of a sex offense or sexually violent offense, or 130.52 or 130.55, or an attempt thereof)

110.00/130.55 - attempted sexual abuse in the 3rd degree (where victim is less than 18 OR offender has previously been convicted of a sex offense or sexually violent offense, or 130.52 or 130.55, or an attempt thereof)

130.60 - sexual abuse in the 2d degree

110.00/130.60 - attempted sexual abuse in the 2d degree

110.00/130.65-a - attempted aggravated sexual abuse in the 4th degree

135.05 - unlawful imprisonment in the 2d degree

(prior to this law, a person convicted of unlawful imprisonment in the 2d degree was required to submit a DNA sample only if the victim was less than 17 and the person was not the parent of the victim)

110.00/135.10 - attempted unlawful imprisonment in the 1st

(prior to this law, a person convicted of attempted unlawful imprisonment in the 1st degree was required to submit a DNA sample only if the victim was less than 17 and the person was not the parent of the victim)

140.15 - criminal trespass in the second degree

140.35 - possession of burglar's tools

155.25- petit larceny

260.10 - endangering the welfare of a child

260.25 - endangering the welfare of an incompetent or physically disabled person

230.04 - patronizing a prostitute in the 3rd degree

110.00/230.04 - attempted patronizing a prostitute in the 3rd degree

110.00/230.05 - attempted patronizing a prostitute in the 2d degree

110.00/255.25 - attempted incest

110.00/263.11 - attempted possessing an obscene sexual performance by a child

110.00/263.16 - attempted possessing a sexual performance by a child