



CHAIRMAN'S MEMORANDUM

NO. 06-2004 July 6, 2004

TO: SHERIFFS, COMMISSIONERS OF CORRECTION, JAIL ADMINISTRATORS

RE: EXPANDED LIST OF QUALIFYING CRIMES FOR DNA SAMPLE SUBMISSION

On July 6, 2004 Governor Pataki signed a law which increases the number of qualifying crimes that, upon conviction, will require submission of a sample to the DNA databank. This legislation expands the list of qualifying felony sex offenses and adds 19 qualifying sex offense misdemeanors. In addition, certain non-sex felonies were added. The list of qualifying crimes will now cover about 65% of all felony crimes and applies to roughly 15,000 felony offenders each year. Please find the list of newly designated offenses attached. Since this legislation becomes effective **immediately, and has retroactive provisions**, it is essential that county correctional jurisdictions move rapidly to identify and prioritize offenders in custody who now owe DNA samples under the expanded program.

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 databank 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 misdemeanors in the expanded databank makes it more likely that some sample-owing offenders will be released with 'time served' directly from courts, including town courts. It is therefore requested 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, or in cooperation with the courts prior to direct release from a county, city, town, or village court.

A joint survey conducted by 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to a split sentence revealed that in some circumstances, facility intake or classification officers were working with outdated lists of qualifying offenses.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 crimes and of sex offense misdemeanors, the first such expansion since 2000, 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 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 risk of being caught and convicted and that the public is safer.

Of note to corrections practitioners is that among the newly designated qualifying offenses is promoting prison contraband in the first degree. A person is guilty of promoting prison contraband in the first degree when:

1. He knowingly and unlawfully introduces any dangerous contraband into a detention facility; or
2. Being a person confined in a detention facility, he knowingly and unlawfully makes, obtains or possesses any dangerous contraband.

Also included in the list of qualifying crimes are hate crimes as defined in Penal Law § 485.05, and the crime of terrorism, as defined in the Penal Law § 490.25. Crimes that would not otherwise qualify, such as assault 3rd, become qualifying if, under § 485.05 Hate Crimes, they are deemed a hate crime. The same is true for the crime of terrorism. This will require enhanced diligence, since the facility staff will need to be aware of the potential qualifying crimes (such as the assault 3rd) and then determine if the conviction also qualifies as a hate crime. A collaborative arrangement with the courts may be needed so that the proper information is submitted by the courts to the facility, or so that the facility can retrieve that information quickly if not supplied upon admission.

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 safe. 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.

ALAN J. CROCE
CHAIRMAN/COMMISSIONER