1. Subdivision (q) of Section 6192.1 of 9 NYCRR is amended to read as follows:

(q) The [phrase] phrases **indirect association** and **partial match** [refers] refer to the

determination during the CODIS candidate match confirmation process that a forensic DNA

profile is similar to a DNA profile in the offender index and a comparison reveals that the

offender may be a close biological relative of the source of the forensic index profile. The

phrases may be used interchangeably.

2. New subdivisions (ab) (ac) and (ad) are added to Section 6192.1 of 9 NYCRR to read as

    follows:

(ab) The phrases **familial DNA search** and **familial search** refer to a targeted evaluation of

offenders' DNA profiles in the DNA databank which generates a list of candidate profiles based

on kinship indices to indicate potential biologically related individuals to one or more sources of

evidence.

(ac) The phrase **offender** refers to anyone in the Databank who has been convicted of a crime.

(ad) The phrases **State CODIS administrator** and **State System administrator** refer to an

employee of the state CODIS laboratory who is responsible for administration and security of the

databank.

3. New subdivisions (h), (i), (j) and (k) are added to Section 6192.3 of 9 NYCRR to read as

    follows

(h) When there is not a match or a partial match to a sample in the DNA databank a familial

search may be performed. To perform a familial search, the following case and sample

requirements must be met:

(1) The forensic DNA profile must be associated with:

(i) a Penal Law Article 125 felony offense, other than one defined in Penal Law sections 125.40 or 125.45; or

(ii) a Penal Law Article 130 offense that is defined as a violent felony offense pursuant to Penal Law section 70.02; or

(iii) a class A felony offense defined in Article 130, 135, 150 or 490 of the Penal Law; or

(iv) a crime presenting a significant public safety threat.

(2) The investigating agency and appropriate prosecutor must certify, in the form and manner required by the division, that:

(i) reasonable investigative efforts have been taken in the case; or

(ii) exigent circumstances exist warranting a familial search.

Nothing in this section shall preclude an investigating agency and the appropriate prosecutor from requesting a familial search of an unidentified profile meeting the criteria set forth in the policy which is associated with a case in which a defendant was previously convicted.

(3) The forensic DNA profile must:

(i)   be a single source, or a deduced profile originating from a mixture;

(ii)   appear to have a direct connection with the putative perpetrator of the crime;

(iii)   reside in SDIS; and

(iv)   have been searched against DNA profiles in the DNA databank's offender index.

(i) Any request for a familial DNA search must be made jointly by the appropriate investigating agency and the prosecutor (hereinafter "the requestors") through an application to the division in the form and manner specified by the division.

(1) Upon receipt of an application:

(i) The division will confirm that the requestors have certified that the case requirements in paragraph (1) of subdivision (h) of this Part have been satisfied; and

(ii) The state CODIS administrator will confirm that the sample requirements in subparagraphs (i) and (ii) of paragraph (3) of subdivision (h) of this Part have been verified by the forensic laboratory that generated the forensic DNA profile; and

(iii)   The state CODIS administrator will confirm that the sample requirements in subparagraphs (iii) and (iv) of paragraph (3) of subdivision (h) of this Part have been met.

(2) The commissioner shall review all completed applications.

(i) If, upon review and evaluation of such application, the commissioner determines that any of the case and/or any of the sample requirements are not satisfied, the division shall notify the requestors, in writing, that a familial search cannot be performed and identify the requirements not satisfied.

 (ii) If, upon review and evaluation of such application, the commissioner determines that all of the case and sample requirements have been satisfied, the law enforcement agency, the district attorney, the director of the new york state police crime laboratory or his or her designee, and the commissioner of the division or his or her designee, must execute a memorandum of understanding among themselves detailing the role of each organization.

(j) Upon receipt of the memorandum of understanding described in subparagraph (ii) of paragraph (2) of subdivision (i) of this Part, the new york state police crime laboratory will:

(1) use validated software, which has been approved by the DNA subcommittee and the commission, to perform a familial search of the DNA databank and generate a candidate list;

(2) evaluate the candidate list based on established kinship threshold value(s) approved by the DNA subcommittee and commission;

(3) perform Y-STR testing on the candidate sample(s) if the forensic DNA profile is from a male individual and sufficient forensic DNA sample exists for Y-STR testing; and

(4) if appropriate, ensure additional testing is performed on the candidate sample, provided there is sufficient forensic DNA sample available for testing.

(k) In order for the results of the familial DNA search to be released, the following conditions must be met:

(1) The requestors must satisfactorily complete, and demonstrate an understanding of, a mandatory, in-person or at the discretion of the commissioner, video conference training. At a minimum, the training shall address:

(i) how a familial search is conducted, including the limitations of the method;

(ii) guidance on how to best evaluate leads from a familial search in order to protect unknown family relationships (donor parents/adoptions, previously unknown relatives);

(iii) the confidentiality requirements associated with the DNA profiles generated (see, Executive Law §§995-c; 995-d; 995-f);

(iv) the requirement to withdraw a request if a suspect is identified through other means before the familial search is completed; and

(v) the requirement to provide follow-up information to the division regarding the case at intervals determined by the division.

(2) If the candidate profile(s) exceed the established kinship threshold value(s), and are not excluded by additional testing performed, the name(s) of the offender(s) in the DNA databank will be released. The familial DNA search results shall be provided in writing and shall include the following statements:

(i) The information provided is for investigatory law enforcement purposes only;

(ii) The forensic DNA profile could not have come from the named offender in the DNA databank;

(iii) The information provided is not a definitive statement of a familial (i.e., biological) relationship; and

(iv)The information provided shall be treated only as an investigative lead.

(3) If no candidate profile(s) on the candidate list exceed the established kinship threshold value(s), no name will be released and the requestors will be notified, in writing, that no potential relatives were identified through a familial search.

(4) The forensic DNA sample can be re-searched against the DNA databank upon renewal of the request. In the absence of exigent circumstances, such requests may be made every six months.