

Proposed Text of Rule: DNA-Familial Search Policy and Unidentified Human Remains

1. +Section 6192.3(g)(1)(iii) of Title 9 of the New York Codes, Rules and Regulations is amended to read as follows:

(iii) the Expected Match Ratio (EMR) and/or the Expected Kinship Ratio (EKR) for the four major ethnic groups in the FBI allele frequency databases (or equivalent likelihood ratio approved by the State DNA Subcommittee) was calculated [by it] and at least one of the four database values for EMR or EKR is greater than or equal to 1.0 and all the others are greater than or equal to 0.1 (or an equivalent pre-determined statistical measure approved by the DNA Subcommittee). If available and appropriate, additional DNA analysis (e.g., Y-STR, mitochondrial) should be performed;

2. Subdivision (h) of section 6192.3 of Title 9 of the New York Codes, Rules and Regulations is amended 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:

3. Section 6192.3(h)(1) of Title 9 of the New York Codes, Rules and Regulations is amended to read as follows:

(1) The forensic DNA profile or unidentified human remains DNA profile must be associated with:

4. Section 6192.3(h)(3) of Title 9 of the New York Codes, Rules and Regulations is amended to read as follows:

3) The forensic DNA profile must:

- (i) be a single source, or a fully deduced profile originating from a mixture;
- (ii) appear to have a direct connection with the putative perpetrator of the crime;

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(iii) reside in SDIS; and

(iv) have been searched against DNA profiles contained in the [DNA databank's offender index] State DNA Databank.

5. A new paragraph 6192.3(h)(4) of Title 9 of the New York Codes, Rules and Regulations is added to read as follows:

(4) The unidentified human remains DNA profile must:

- (i) be a single source profile;
- (ii) have been developed from a deceased individual whose identity is unknown and whose death is suspected to involve the commission of a crime enumerated in paragraph (h) (1) of this section;
- (iii) reside in SDIS; and,
- (iv) have been searched against DNA profiles contained in the State DNA Databank.

6. Subdivision (i) of section 6192.3 of Title 9 of the New York Codes, Rules and Regulations is amended to read as follows:

(i) Any request for a familial DNA search must be made jointly by the appropriate investigating agency and the appropriate 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] familial search requests meets the case requirements in paragraph [(1) of subdivision (h) of this Part have been satisfied] (h)(1) of this section; and

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(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] paragraphs (h)(3)(i) and (ii) or (h)(4)(i) and (ii) of this section have been verified by the forensic laboratory that generated the forensic DNA profile or unidentified human remains 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] paragraphs(h)(3)(iii) and (iv) or (h)(4)(iii) and (iv) of this section 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] the requestors will be notified in writing that their familial search request has been approved and entered into the queue for search processing.

7. Subdivision (j) of section 6192.3 of Title 9 of the New York Codes, Rules and Regulations is amended to read as follows:

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(j) Upon receipt of [the memorandum of understanding described in subparagraph (ii) of paragraph (2) of subdivision (i) of this Part] an approved familial search application from the division, 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 or unidentified human remains 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 or unidentified human remains DNA profile available for testing.

8. Subdivision (k) of section 6192.3 of Title 9 of the New York Codes, Rules and Regulations is amended to read as follows:

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

9. Paragraphs (1) and (2) of subdivision (k) of section 6192.3 of Title 9 of the New York Codes, Rules and Regulations are repealed and two new paragraphs (1) and (2) are added to read as follows:

(1) 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

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databank will be released to the requestors. 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 or unidentified human remains 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.

(2) 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 Databank records, and any samples, analysis or other related documents (see Executive Law sections 995-c; 995-d; 995-f);
- (iv) the requirement to withdraw a request if a suspect or the human remains are 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.

10. Paragraphs (3) and (4) of subdivision (k) of section 6192.3 of Title 9 of the New York Codes, Rules and Regulations are amended to read as follows:

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(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 as such, in writing[, that no potential relatives were identified through a familial search].

(4) The forensic DNA [sample] profile or unidentified human remains DNA profile can be researched against the DNA databank upon renewal of the request. In the absence of exigent circumstances, such requests may be made every six months from the notification that there were no candidates identified.