

Compilation of Codes, Rules and Regulations of the State of New York  
Title 9. Executive Department  
Subtitle U. Division of Criminal Justice Services  
Chapter VIII. Forensic Services  
Part 6192. Policy for Establishment and Operation of a DNA Identification Index (Refs & Annos)

9 NYCRR 6192.3

Section 6192.3. Forensic DNA methodology

[Currentness](#)

(a) DNA databank shall be comprised of data generated from DNA testing methods approved in the NDIS Operating Procedures. Loci required for the upload to NDIS of authorized DNA profiles shall be in accordance with the NDIS Operating Procedures.

(b) Forensic DNA profiles to be maintained in the DNA databank shall be comprised of information for at least the minimum required STR loci or other combinations of loci using alternative technologies approved for use in the NDIS Operating Procedures. This requirement for a minimum number of loci applies only to those forensic DNA profiles which an authorized laboratory desires to have maintained in the forensic index of the DNA databank.

(c) For purposes of searches of the DNA databank, the minimum loci required shall be provided by a laboratory requesting a forensic DNA profile search against the DNA databank. Generally, all available loci associated with a forensic DNA profile shall be searched in the DNA databank. Notwithstanding this requirement, the laboratory may, at its discretion, request that a search be performed using fewer loci if there is an investigative need and sufficient scientific reasons which support using fewer than the required loci in a particular case. The scientific reasons shall include, but not be limited to, the apparent presence of mixtures, sample degradation or limited sample availability. The basis of the scientific reason(s) must be summarized in the search request whenever fewer than the required loci are provided with a search request.

(d) DNA profiles that may be added to the DNA databank by forensic DNA laboratories include forensic DNA profiles, convicted offender DNA profiles, subject DNA profiles, DNA profiles of missing persons, relatives of individuals reported missing, unidentified humans or human remains.

(e) In the event of a potential indirect association, laboratories should use Y-STR and/or mtDNA testing to help determine if the indirect association should be pursued further.

(f) Pursuant to NDIS, the division may release the identity of an offender whose DNA profile has been indirectly associated through a national CODIS search with a DNA profile in another state's forensic index. The State CODIS laboratory will review requests from NDIS participating laboratories and notify the division regarding the partial match request. The State CODIS laboratory will notify the NDIS participating laboratory and NDIS Custodian if a name is released. Testing of additional loci of the offender sample may be required and may include Y-STR and/or mtDNA analysis.

(g) The division may release the name of an offender whose DNA profile has been indirectly associated through a State CODIS search with a forensic DNA profile when it has been determined that the information may lead to the identification of an individual related to the offender. For associations obtained from a State CODIS search, the following conditions must be met:

(1) The laboratory submitting the forensic DNA profile to the CODIS program shall complete an application to the division requesting the name of the offender and, as part of the application, confirm that:

(i) an LDIS search has been performed using the profile in the Forensic Index;

(ii) the forensic DNA profile derives from a single source and contains at least 10 of the CODIS core loci;

(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 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;

(iv) the submitting agency and the appropriate prosecutor have committed to pursue further investigation of the case if the name is released. Such entities also agree to provide follow-up information to the division regarding the outcome of the case, which the division will provide to the DNA Subcommittee at six month intervals; and

(v) the submitting laboratory has confirmed that release of the name will be followed by a notification to the investigating agency.

(2) The notification from the submitting laboratory to the investigating agency shall indicate that:

(i) the association is indirect;

(ii) the information provided is an investigative lead;

(iii) the available data suggests that the source of the forensic DNA profile is potentially a relative of the convicted offender but is not conclusive evidence of the same.

(3) A partial match request from a local CODIS laboratory that satisfies all criteria described above will be submitted to the State CODIS laboratory for verification. Upon receipt of such verification, the division will release the name of the offender to the local CODIS laboratory. If the criteria are not satisfied, the State CODIS laboratory will notify the division and the convicted offender's name will not be released.

(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 or unidentified human remains 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 fully 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 contained in the State DNA Databank.

(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.

(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 familial search requests meets the case requirements in paragraph (h)(1) of this section; and

(ii) The state CODIS administrator will confirm that the sample requirements in 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 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 requestors will be notified in writing that their familial search request has been approved and entered into the queue for search processing.

(j) Upon receipt of 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.

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

(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 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.

(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.

(4) The forensic DNA 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.

## Credits

Sec. filed: June 30, 1998 as emergency measure; Sept. 1, 1998; amds. filed: March 28, 2000; Oct. 28, 2002; Jan. 3, 2006 as emergency measure; March 7, 2006 eff. March 22, 2006; amd. filed: Nov. 3, 2009 eff. Nov. 18, 2009; amds. filed Sept. 22, 2010 eff. Oct. 13, 2010; amd. filed Sept. 10, 2013 eff. Sept. 25,

2013; amd. filed May 23, 2017 eff. June 7, 2017; amd. filed Oct. 3, 2017 eff. Oct. 18, 2017; amd. filed April 1, 2021 eff. April 21, 2021.

Current with amendments included in the New York State Register, Volume XLIII, Issue 39 dated September 29, 2021. Some sections may be more current, see credits for details.

N.Y. Comp. Codes R. & Regs. tit. 9, § 6192.3, 9 NY ADC 6192.3

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