

EXECUTIVE ORDERS

Executive Order No. 143: Directing the Commissioner of the Division of Criminal Justice Services to Expand the State DNA Identification Index to Include DNA Identification Profiles Obtained From Additional Convicted Offenders.

WHEREAS, it is the first obligation of government to protect its citizens from crime and violence;

WHEREAS, the introduction of DNA technology represents the most important application of forensic science in law enforcement since the development of fingerprint technology;

WHEREAS, DNA is a proven, powerful crime-fighting tool that has helped to convict the guilty, exonerate the innocent, reduce recidivism and bring justice to victims and their families;

WHEREAS, the State first established a DNA Identification Index ("DNA Databank") in 1996, and the DNA Databank currently includes DNA identification profiles from persons convicted of certain designated criminal offenses;

WHEREAS, the Division of Criminal Justice Services is authorized, pursuant to Executive Law § 995-c, to establish and revise the framework for the operation of the DNA Databank and the type of profiles that may be included in the Databank through an implementation plan which is subject to review and approval by the New York State Commission on Forensic Science and the DNA Subcommittee;

WHEREAS, the Legislature expanded the DNA Databank in 1999 to require the collection of DNA profiles of all persons convicted of violent felony offenses and again in 2004 to require the collection of DNA profiles from persons convicted of a felony or misdemeanor under the Sex Offender Registry Act, crimes of terrorism, felony hate crimes and other specified felonies;

WHEREAS, the 1999 and 2004 expansions of the DNA Databank have resulted in more than 1,600 "hits" linking crime scene evidence to offenders in the DNA Databank;

WHEREAS, of the more than 1,100 offenders linked to sexual assault cases through the DNA Databank, more than 80% were included in the DNA Databank for a crime other than a sex related offense;

WHEREAS, more than half of the individuals who are convicted of felony offenses in the State still are not required to provide a DNA sample for inclusion in the DNA Databank;

WHEREAS, the State's DNA Databank currently contains crime scene DNA evidence from more than 16,000 unsolved crimes in the State that could lead to the identification of the perpetrator if the DNA Databank were expanded;

WHEREAS, I have repeatedly proposed legislation that would expand the DNA Databank to include the DNA profiles of all convicted offenders;

WHEREAS, while the State Senate has passed my proposed legislation by overwhelming, bi-partisan majorities, the State Assembly has refused to allow the bill to the floor for a vote;

WHEREAS, consistent with our obligation to protect New Yorkers from crime and violence, it is imperative that all State agencies take all

appropriate steps within the bounds of current law to add the DNA profiles of convicted offenders to the DNA Databank;

WHEREAS, some convicted offenders who are not currently required to provide a DNA sample for inclusion in the DNA Databank are presently under the jurisdiction of the Division of Parole ("Parole"), and must comply with various requirements imposed by Parole as a condition of parole;

WHEREAS, some convicted offenders who are not currently required to provide a DNA sample for inclusion in the DNA Databank are presently serving sentences of probation or are subject to interim probation supervision, and must comply with various requirements imposed by the sentencing court or supervising authority, as applicable, as a condition of such probation and interim probation supervision;

WHEREAS, some convicted offenders who are not currently required to provide a DNA sample for inclusion in the DNA Databank presently are serving sentences of State imprisonment with the Department of Correctional Services ("DOCS") and are eligible to participate in voluntary programs, at the discretion of DOCS, that confer significant benefits upon inmate participants and require inmates to agree to conditions prescribed by DOCS as a condition of participation;

WHEREAS, some convicted offenders who are not currently required to provide a DNA sample for inclusion in the DNA Databank were convicted pursuant to a voluntary plea agreement, and must comply with various requirements established by the sentencing court, in consultation with the prosecution, as a condition of such plea;

WHEREAS, expanding the DNA Databank to include DNA profiles from convicted offenders who are currently under Parole supervision, who are serving a sentence of probation or interim probation supervision, who will participate in DOCS voluntary programs or who negotiate voluntary plea agreements would, *inter alia*, aid in solving past and future crimes, discourage recidivism, ensure that prison, parole and probation officials are aware of prior violent crimes committed by a person in their custody or under their supervision, and detect crimes committed by persons while under Parole supervision or while serving a sentence of probation or while participating in a DOCS voluntary program;

NOW, THEREFORE, I, GEORGE E. PATAKI, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and Laws of the State of New York, do hereby direct the Commissioner of the Division of Criminal Justice Services to promulgate a DNA Databank implementation plan that would include within the Databank an additional index consisting of DNA identification profiles obtained from convicted offenders pursuant to a plea agreement, as a condition of the DOCS Temporary Release Program, the DOCS CASAT Program, the DOCS Shock Incarceration Program, release on parole, post release supervision, presumptive release, conditional release, or as a condition of probation or interim probation supervision.

FURTHER, I do hereby direct the Commissioner of the Division of Criminal Justice Services to submit such DNA Databank implementation plan to the DNA Subcommittee and the Commission on Forensic Science forthwith for review and approval pursuant to Executive Law § 995-c(2).

FURTHER, upon approval of such DNA Databank implementation plan, I do hereby order the Commissioner of the Division of Criminal Justice Services to promulgate, modify, adopt or rescind any rules or regulations, or emergency rules or regulations, or directives, as may be necessary to administer such plan.

FURTHER, upon approval of such DNA Databank implementation plan, I do hereby order the Division of Parole to promulgate, modify, adopt or rescind any rules or regulations, or emergency rules or regulations, or directives, as may be necessary from time to time, to permit, as a condition of parole, at the discretion of the Parole Board or appropriate Parole authority, the submission of a DNA sample if such parolee's DNA identification profile is not already part of the DNA Databank.

FURTHER, upon approval of such DNA Databank implementation plan, I do hereby order the Division of Probation and Correctional Alternatives to promulgate, modify, adopt or rescind any rules or regulations, or emergency rules or regulations, or directives, as may be necessary from time to time, to permit, as a condition of probation or interim probation supervision, at the discretion of the sentencing court and supervising authority where applicable interstate cases, the submission of a DNA sample if such offender's DNA identification profile is not already part of the DNA Databank.

FURTHER, upon approval of such DNA Databank implementation plan, I do hereby order the Commissioner of the Department of Correctional Services to promulgate, modify, adopt or rescind any rules or regulations, or emergency rules or regulations, or directives, as may be necessary from time to time, to prevent the future acceptance of an inmate into the Temporary Release Program, CASAT Program, or the Shock Incarceration Program, if such inmate's DNA identification profile is not already part of the DNA Databank and such inmate refuses to provide a DNA sample.

FURTHER ORDERED, that said rules and regulations or emergency rules and regulations are responsive to emergencies affecting the public safety or welfare and are exempt from any restrictions imposed pursuant to Executive Order Number 20.

(L.S.) GIVEN under my hand and the Privy Seal of the State in the City of Albany this fifth day of December in the year two thousand five.

BY THE GOVERNOR
/S/ George E. Pataki
/s/ John C. Cahill
Secretary to the Governor