NY CLS § 995-a. Commission on forensic science

1. There is hereby created in the executive department, the commission on forensic science, which shall consist of the following fourteen members:

(a) the commissioner of the division of criminal justice services who shall be chair of the commission and the commissioner of the department of health or his or her designee, who shall serve as an ex-officio member of the commission;

(b) twelve members appointed by the governor.

2. Of the members appointed by the governor,

(a) one member shall be the chair of the New York state crime laboratory advisory committee;

(b) one member shall be the director of a forensic laboratory located in New York state;

(c) one member shall be the director of the office of forensic services within the division of criminal justice services;

(d) two members shall be a scientist having experience in the areas of laboratory standards or quality assurance regulation and monitoring and shall be appointed upon the recommendation of the commissioner of health;

(e) one member shall be a representative of a law enforcement agency and shall be appointed upon the recommendation of the commissioner of criminal justice services;

(f) one member shall be a representative of prosecution services who shall be appointed upon the recommendation of the commissioner of criminal justice services;

(g) one member shall be a representative of the public criminal defense bar who shall be appointed upon the recommendation of an organization representing public defense services;

(h) one member shall be a representative of the private criminal defense bar who shall be appointed upon the recommendation of an organization of such bar;

(i) two members shall be members-at-large, one of whom shall be appointed upon the recommendation of the temporary president of the senate, and one of whom shall be appointed upon the recommendation of the speaker of the assembly; and

(j) one member, who shall be an attorney or judge with a background in privacy issues and biomedical ethics, shall be appointed upon the recommendation of the chief judge of the court of appeals.

3. Of the members appointed by the governor, each member shall be appointed to serve a three year term. Any member appointed by the governor may be reappointed for additional three year
4. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed by the governor for the unexpired term of the member he or she is to succeed. Any such vacancy shall be filled in the same manner as the original appointment.

5. The commission shall meet at least four times each year and may establish its own rules and procedures concerning the conduct of its meetings and other affairs not inconsistent with law.

6. No member of the commission on forensic science shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment, by reason of his or her appointment hereunder, and members of the commission shall not be required to take and file oaths of office before serving on the commission.

7. Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder.

§ 995-b. Powers and duties of the commission

1. The commission shall develop minimum standards and a program of accreditation for all forensic laboratories in New York state, including establishing minimum qualifications for forensic laboratory directors and such other personnel as the commission may determine to be necessary and appropriate, and approval of forensic laboratories for the performance of specific forensic methodologies. Nothing in this article shall be deemed to preclude forensic laboratories from performing research and validation studies on new methodologies and technologies which may not yet be approved by the commission at that time.

In designing a system of accreditation pursuant to this article, the commission shall evaluate other systems of accreditation.

2. The minimum standards and program of accreditation shall be designed to accomplish the following objectives:

(a) increase and maintain the effectiveness, efficiency, reliability, and accuracy of forensic laboratories, including forensic DNA laboratories;

(b) ensure that forensic analyses, including forensic DNA testing, are performed in accordance with the highest scientific standards practicable;

(c) promote increased cooperation and coordination among forensic laboratories and other agencies in the criminal justice system;

(d) ensure compatibility, to the extent consistent with the provisions of this article and any other applicable provision of law pertaining to privacy or restricting disclosure or redisclosure of
information, with other state and federal forensic laboratories to the extent necessary to share and
exchange information, data and results of forensic analyses and tests; and

(e) set forth minimum requirements for the quality and maintenance of equipment.

2-a. Any program of forensic laboratory accreditation with respect to a DNA laboratory pursuant
to this section shall be under the direction of the DNA subcommittee established pursuant to
subdivision thirteen of this section. Such subcommittee shall have the sole authority to grant,
deny, review or modify a DNA forensic laboratory accreditation pursuant to this article, provided
that such authority shall be effectuated through binding recommendations made by the DNA
subcommittee to the commission. In the event the commission disagrees with any of the binding
recommendations of the DNA subcommittee made pursuant to this article, the commission may
so notify such subcommittee and request such subcommittee to reasonably review such binding
recommendations. The DNA subcommittee shall conduct such review and either forward revised
binding recommendations to the commission or indicate, with the reasons therefor, that
following such review such subcommittee has determined that such binding recommendations
shall not be revised.

3. The program of forensic laboratory accreditation shall include, at a minimum, the following
requirements:

(a) an initial laboratory inspection, and routine inspections, as necessary, to ensure compliance
with accreditation requirements;

(b) routine internal and external proficiency testing of all laboratory personnel involved in
forensic analysis, including blind external proficiency testing if the commission, or the DNA
subcommittee as the case may be, determines such a blind proficiency testing program to be
practicable and appropriate. In determining whether a blind proficiency testing program is
practicable and appropriate, the commission, or the DNA subcommittee as the case may be, shall
consider such factors as accuracy and reliability of laboratory results, cost-effectiveness, time,
allocation of resources, and availability;

(c) quality control and quality assurance protocols, a method validation procedure and a
corrective action and remedial program;

(d) annual certification to the commission by the forensic laboratories of their continued
compliance with the requirements of the accreditation program which certification, in the case of
a forensic DNA laboratory, shall be forwarded to the DNA subcommittee;

(e) the accreditation of a forensic laboratory may be revoked, suspended or otherwise limited,
upon a determination by the commission or, in the case of a forensic DNA laboratory, upon the
binding recommendation of the DNA subcommittee, that the laboratory or one or more persons
in its employ:
   (i) is guilty of misrepresentation in obtaining a forensic laboratory accreditation;
   (ii) rendered a report on laboratory work actually performed in another forensic laboratory
without disclosing the fact that the examination or procedure was performed by such other
forensic laboratory;

(iii) showed a pattern of excessive errors in the performance of forensic laboratory examination procedures;

(iv) failed to file any report required to be submitted pursuant to this article or the rules and regulations promulgated pursuant thereto; or

(v) violated in a material respect any provision of this article or the rules and regulations promulgated pursuant thereto; and

(f) no forensic laboratory accreditation shall be revoked, suspended, or otherwise limited without a hearing. The commission shall serve written notice of the alleged violation, together with written notice of the time and place of the hearing, which notice shall be mailed by certified mail to the holder of the forensic laboratory accreditation at the address of such holder at least twenty-one days prior to the date fixed for such hearing. An accredited laboratory may file a written answer to the charges with the commission, not less than five days prior to the hearing.

4. A laboratory director who knowingly operates a laboratory without obtaining the accreditation required by this article, or who, with the intent to mislead or deceive, misrepresents a material fact to the commission or DNA subcommittee, shall be subject to a civil penalty not to exceed seventy-five hundred dollars and such other penalties as are prescribed by the law.

5. The commission and the DNA subcommittee established pursuant to subdivision thirteen of this section may require and receive from any agency of the state or any political subdivision thereof such assistance and data as may be necessary to enable the commission or DNA subcommittee to administer the provisions of this article. The commission or DNA subcommittee may enter into such cooperative arrangements with the division of criminal justice services, the department of health, and any other state agency, each of which is authorized to enter into such cooperative arrangements as shall be necessary or appropriate. Upon request of the commission or DNA subcommittee, any state agency may transfer to the commission such officers and employees as the commission or DNA subcommittee may deem necessary from time to time to assist the commission or DNA subcommittee in carrying out its functions and duties. Officers and employees so transferred shall not lose their civil service status or rights, and shall remain in the negotiating unit, if any, established prior to such transfer.

6. All of the commission's records, reports, assessments, and evaluation with respect to accreditation, implementation of quality assurance standards (including proficiency testing) and monitoring thereof, shall be archived by the commission.

7. The commission and DNA subcommittee may establish, appoint, and set terms of members to as many advisory councils as it deems necessary to provide specialized expertise to the commission with respect to new forensic technologies including DNA testing methodologies.

8. The commission or DNA subcommittee shall designate one or more entities for the performance of proficiency tests required pursuant to the provisions of this article.

9. After reviewing recommendations from the division of criminal justice services, the commission, in consultation with the DNA subcommittee, shall promulgate a policy for the
establishment and operation of a DNA identification index consistent with the operational requirements and capabilities of the division of criminal justice services. Such policy shall address the following issues:

(a) the forensic DNA methodology or methodologies to be utilized in compiling the index;

(b) procedures for assuring that the state DNA identification index contains the following safeguards:
   (i) that any records maintained as part of such an index are accurate and complete;
   (ii) that effective software and hardware designs are instituted with security features to prevent unauthorized access to such records;
   (iii) that periodic audits will be conducted to ensure that no illegal disclosures of such records have taken place;
   (iv) that access to record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library is restricted to authorized personnel only;
   (v) that operation programs are used that will prohibit inquiry, record updates, or destruction of records from any source other than an authorized source of inquiry, update, or destruction of records;
   (vi) that operational programs are used to detect and store for the output of authorized employees only all unauthorized attempts to penetrate the state DNA identification index;
   (vii) that adequate and timely procedures exist to insure that any subject of the state DNA identification index has the right of access to and review of records relating to such individual contained in such index for the purpose of ascertaining their accuracy and completeness, including procedures for review of information maintained about such individuals and administrative review (including procedures for administrative appeal) and the necessary documentation to demonstrate that the information is inaccurate or incomplete;
   (viii) that access to the index will be granted to an agency authorized by this article to have such access only pursuant to a written use and dissemination agreement, a copy of which is filed with the commission, which agreement sets forth the specific procedures by which such agency shall implement the provisions of subparagraphs (i) through (vii) of this paragraph, as applicable, and which agreement specifically prohibits the redisclosure by such agency of any information obtained from the DNA identification index; and
   (ix) such policy shall provide for the mutual exchange, use and storage of DNA records with the system of DNA identification utilized by the federal bureau of investigation provided that the commission determines that such exchange, use and storage are consistent with the provisions of this article and applicable provisions of law.

10. Review, and if necessary, recommend modifications to, a plan for implementation of the DNA identification index submitted by the commissioner of criminal justice services pursuant to section nine hundred ninety-five-c of this article.

11. Upon the recommendation of the DNA subcommittee established pursuant to subdivision thirteen of this section, the commission shall designate one or more approved methodologies for the performance of forensic DNA testing, and shall review and act upon applications by forensic DNA laboratories for approval to perform forensic DNA testing.
12. Promulgate standards for a determination of a match between the DNA records contained in the state DNA identification index and a DNA record of a person submitted for comparison therewith.

13. (a) The commission shall establish a subcommittee on forensic DNA laboratories and forensic DNA testing. The chair of the subcommittee shall be appointed by the chair of the commission. The chair of the subcommittee shall appoint six other members to the subcommittee, one of whom shall represent the discipline of molecular biology and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall represent the discipline of population genetics and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be representative of the discipline of laboratory standards and quality assurance regulation and monitoring and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be a forensic scientist and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be representative of the discipline of population genetics and be appointed upon the recommendation of the commissioner of criminal justice services and one of whom shall be representative of the discipline of forensic science and be appointed upon the recommendation of the commissioner of criminal justice services. Members of the DNA subcommittee shall serve for three year terms and be subject to the conditions of service specified in section nine hundred ninety-five-a of this article.

(b) The DNA subcommittee shall assess and evaluate all DNA methodologies proposed to be used for forensic analysis, and make reports and recommendations to the commission as it deems necessary. The DNA subcommittee shall make binding recommendations for adoption by the commission addressing minimum scientific standards to be utilized in conducting forensic DNA analysis including, but not limited to, examination of specimens, population studies and methods employed to determine probabilities and interpret test results. The DNA subcommittee may require a demonstration by an independent laboratory of any proposed forensic DNA testing methodology proposed to be used by a forensic laboratory.

(c) The DNA subcommittee shall make binding recommendations for adoption by the commission with regard to an accreditation program for laboratories performing forensic DNA testing in accordance with the provisions of the state administrative procedure act. Such recommendations shall include the adoption and implementation of internal and external proficiency testing programs, including, if possible, a blind external proficiency testing program for forensic laboratories performing forensic DNA testing. The DNA subcommittee shall also provide the commission with a list of accepted proficiency testers.

(d) The DNA subcommittee shall be authorized to advise the commission on any other matters regarding the implementation of scientific controls and quality assurance procedures for the performance of forensic DNA testing, or on any other matters referred to it by the commission.

§ 995-c. State DNA identification index
1. Following the promulgation of a policy by the commission pursuant to subdivision nine of section nine hundred ninety-five-b of this article, the commissioner of criminal justice services is authorized to promulgate a plan for the establishment of a computerized state DNA identification index within the division of criminal justice services.

2. Following the review and approval of the plan by the DNA subcommittee and the commission and the filing of such plan with the speaker of the assembly and the temporary president of the senate, the commissioner of criminal justice services is hereby authorized to establish a computerized state DNA identification index pursuant to the provisions of this article.

3. Any designated offender subsequent to conviction and sentencing for a crime specified in subdivision seven of section nine hundred ninety-five of this article, shall be required to provide a sample appropriate for DNA testing to determine identification characteristics specific to such person and to be included in a state DNA identification index pursuant to this article.

4. The commissioner of the division of criminal justice services, in consultation with the commission, the commissioner of health, the divisions of parole and of probation and correctional alternatives and the department of correctional services, shall promulgate rules and regulations governing the procedures for notifying designated offenders of the requirements of this section.

5. The sample shall be collected, stored and forwarded to any forensic DNA laboratory which has been authorized by the commission to perform forensic DNA testing and analysis for inclusion in the state DNA identification index. Such laboratory shall promptly perform the requisite testing and analysis, and forward the resulting DNA record only to the state DNA identification index in accordance with the regulations of the division of criminal justice services. Such laboratory shall perform DNA analysis only for those markers having value for law enforcement identification purposes. For the purposes of this article, the term "marker" shall have the meaning generally ascribed to it by members of the scientific community experienced in the use of DNA technology.

6. DNA records contained in the state DNA identification index shall be released only for the following purposes:

(a) to a federal law enforcement agency, or to a state or local law enforcement agency or district attorney's office for law enforcement identification purposes upon submission of a DNA record in connection with the investigation of the commission of one or more crimes or to assist in the recovery or identification of specified human remains, including identification of missing persons, provided that there exists between the division and such agency a written agreement governing the use and dissemination of such DNA records in accordance with the provisions of this article;

(b) for criminal defense purposes, to a defendant or his or her representative, who shall also have access to samples and analyses performed in connection with the case in which such defendant is charged;
New York State Forensic Laboratory Accreditation
Annual Reporting for Accredited Laboratories

Authority and Contact Information:
To meet requirements for New York State Forensic Laboratory Accreditation maintenance, as described in Executive Section 995 and articulated in 9 NYCRR Part 6190, the laboratory must annually provide certain information. Continued New York State Accreditation may be granted after review and acceptance of the maintenance documentation by the New York State Commission on Forensic Science (upon the binding recommendation of the DNA Subcommittee, for DNA testing laboratories). Questions regarding these requirements, and all annual reports, should be forwarded to the Office of Forensic Services, New York State Division of Criminal Justice Services, 4 Tower Place, Albany, NY 12203-3702 [phone (518) 457-1901, facsimile (518) 457-9384].

Laboratory Information:
Name:
Address:
Director:
Telephone: ☐ Facsimile:

Materials Requested (Please supply these materials by April 20, 2009):

Correspondence With Accrediting Body - One copy of all correspondence between the laboratory and ASCLD/LAB and/or ABFT since January 1, 2008 (if not already provided). Note: All correspondence and accreditation materials should be submitted to the Office of Forensic Services concurrent with your submission to either ASCLD/LAB and/or ABFT.

Changes to Organizational Table - If changes in the organizational table have occurred since January 2008 please provide one copy of the current table of employees, including titles or tasks performed, reflecting whether or not proficiency testing is required for the employee.
The laboratory must submit one copy of all documentation related to PTs for all examiners in the laboratory during the period from January 1, 2008 to the date of this maintenance communication. [Note: ASCLD/LAB International accredited laboratories need to submit documents outlined in ASCLD/LAB Program Overview Section 4 (Surveillance Activities), 4.2 (Annual Reports from Accredited Laboratories. This submission should be concurrent to your submission to ASCLD/LAB).

PT data must be provided in a form consistent with the guide approved by the Commission and must include copies of appropriate pages of PT reports from commercial providers. Proficiency tests from CTS (Collaborative Testing Services) are exempt from the requirement for providing additional documentation since DCJS receives this information directly from CTS.

Please complete the approved format guide, Annual Maintenance Reporting of Proficiency Test Information - Part A and Part B (forms attached).