

# **COLORADO BUREAU OF INVESTIGATION**

## **DNA FAMILIAL SEARCH POLICY**

**OCTOBER 22, 2009**

### **CBI POLICY STATEMENT**

The Colorado Bureau of Investigation (CBI) has developed a DNA Familial Search Policy that may result in investigative information provided to law enforcement officials in unsolved cases where other investigative leads have been exhausted. A familial search is a deliberate search for biologically-related relatives of a contributor of an evidentiary profile conducted with specialized (non-CODIS) software designed for this purpose. Because the information that is ultimately provided will be the name or names of an offender or offenders in Colorado's DNA database who may be related to the actual perpetrator, the process developed requires special DNA testing and review of the offender's non-DNA information. The process specified in the policy was developed keeping privacy concerns in mind, while at the same time providing information that may be useful in solving a violent offense and preventing potential victimization.

### **BACKGROUND**

Colorado's DNA Data Bank consists of a database of DNA profiles from persons charged with felony offenses as of September 30, 2010 and persons who are convicted felony offenders ("offender database") and a database of crime scene evidence profiles. The two DNA offender databases form the Colorado CODIS. When a crime scene profile is searched against the offender database, a match is declared if the crime scene profile is the same as the offender's DNA profile. If the profiles are not exact, but there is a scientific connection, the source of the crime scene profile may be a relative of the offender. With the recent advances of DNA technology, DNA testing beyond the standard profiling for individual identification can now be conducted to provide additional information as to whether individuals may be related.

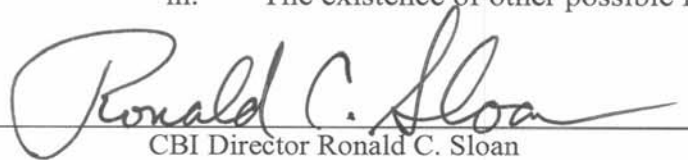
### **PROCEDURES**

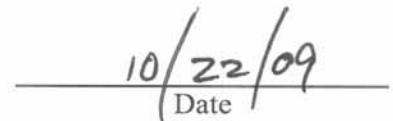
1. A familial search of the state offender DNA database, using specialized non-CODIS software designed for the application, at the discretion of the Director of the Colorado Bureau of Investigation, may be conducted in any of the following general categories:
  - a. A potential match is obtained from a CODIS search and the case is under investigation and is unsolved, or
  - b. A special request for a familial search of a CODIS profile has been made by the chief law enforcement officer of the investigating law enforcement agency, or by the district attorney of the jurisdiction. The preferred practice is a joint request from the chief law enforcement officer and the district attorney. This special request shall be based upon an active investigation having significant public safety concerns, or
  - c. A routine familial search performed by the CBI.

2. When submitting a special request pursuant to paragraph 1(b), the chief law enforcement officer or district attorney shall provide to CBI written certification of the following:
  - a. That the evidentiary DNA profile is from a case having significant public safety concerns and the familial search result is critical to advancing the investigation;
  - b. That the request from the investigating law enforcement agency includes a case summary and a specimen ID produced in accordance with the "Procedure for Conducting a Familial Search";
  - c. That the investigating law enforcement agency and/or the district attorney agree to follow the CBI's investigative policies and procedures relative to this type of evidence;
  - d. That the lead investigator assigned to the case has received CBI approved training in the use of DNA familial search evidence;
  - e. That standard investigative leads have been exhausted, or a specific exception is articulated; and
  - f. That the agency agrees to further investigate the case after CBI releases the identifying information to the requesting agency.
  
3. In determining whether a DNA familial search can be conducted, CBI will utilize the following procedures:
  - a. The evidentiary DNA profile must be entered as either a single-source profile or a clearly defined major component of a mixture with all 13 loci noted.
  - b. When the request for a search is received, a new case number will be assigned.
  - c. For male candidate results, a sample will be provided for Y-STR analysis to a CODIS eligible DNA laboratory.
  - d. Upon completion of the Y-STR analysis, the local law enforcement agency shall return any remaining sample to the CBI for destruction and certify in writing that all extracts and amplified product have been destroyed.
  - e. For female candidate results, Y-STRs are of no value.
  - f. Prior to CBI's release of identifying information, the laboratory performing the Y-STR comparison will provide to CBI written results of the Y-STR analysis from the sample provided by CBI and the forensic unknown.
  
4. The identifying information in the CBI case report provided to the chief law enforcement officer and/or the district attorney shall include the following:
  - a. Identifying information of any individual having sufficient DNA markers in common with the DNA offender profile, to include the name, date of birth, and ethnicity for each individual;
  - b. The CBI case report will include the following statement: "***This information is for law enforcement investigatory purposes only. It is not a statement of identity. The release of the DNA profiles to non-law enforcement agencies/personnel is a violation of both state and federal statutes.***"
  - c. The CBI case report will be mailed or hand-delivered to the law enforcement agency but shall not be electronically transmitted.

5. After receiving from CBI identifying information on DNA profiles determined by the familial search, the investigating law enforcement agency agrees to abide by the following policies, procedures and requirements:
  - a. The CBI, or its delegate, will conduct an initial review of the familial search results to determine individuals or families of immediate interest to the investigation.
  - b. When an individual is identified through the familial search, the investigating law enforcement agency shall investigate whether the identified individual is related to the DNA database offender. As applicable, the investigator may construct a “family tree” of male relatives connected through the DNA and passed through the y-chromosome.
  - c. To determine possible familial relationships, the investigating law enforcement agency, with assistance from CBI, as needed, shall conduct a full background check of the identified individual and family members, including use of the following sources, as available and applicable:
    - i. CCIC/NCIC criminal history checks
    - ii. Inmate profiles from DOC
    - iii. Visitor logs from DOC
    - iv. Presentence investigative reports
    - v. Jail records including visitor logs and telephone logs.
    - vi. Court records searches
    - vii. Public records searches
    - viii. Rocky Mountain Information Network (RMIN)
    - ix. State vital records
    - x. Other public resources
  - d. Following a thorough records investigation of the individual or individuals identified through the DNA familial search as related to the CODIS offender, the investigating law enforcement agency shall examine the investigative records of the subject crime and determine whether this individual is or these individuals are possible suspect(s). Investigative steps and resources that could be utilized include:
    - i. Surveillance data
    - i. DNA samples obtained surreptitiously
    - ii. Work or employment background
    - iii. Adult and juvenile criminal histories
    - iv. Motor vehicle records (driver’s license, ID card, vehicle registration)
    - v. Housing records
    - vi. Financial searches
    - vii. Additional interviews or re-interviews of informants, witnesses, or victims

- e. Based upon information obtained through the investigation, the investigating law enforcement agency should prepare an application for a Colorado Rules of Criminal Procedure, Rule 41.1 Court Order for Nontestimonial Identification, to obtain a DNA sample from the identified suspect. Use of familial DNA alone shall not be the sole basis upon which an investigator requests the Rule 41.1 court order. Additional, articulable evidence must be demonstrated to support the petition for a court order.
  - i. Individuals from whom DNA samples are taken pursuant to a Rule 41.1 court order may not be interrogated during the procedures required to obtain the sample.
  - ii. The sample obtained from the suspect will be compared with the forensic profile. CBI or another CODIS eligible laboratory will provide the results of this comparison to the investigating law enforcement agency and the district attorney's office.
  
- f. Absent exigent circumstances, family members and relatives should only be contacted after initial investigative steps have been taken during the investigative process, to include first obtaining information from public and law enforcement authorized databases. Care should be taken to insure consideration of potential family issues before contacting family members. Potential issues constituting reasons for delaying contact with family members include:
  - i. The possibility that a father is not aware of the existence of an offspring (the "unknown child" issue).
  - ii. The possibility that a family might have assumed a child's father is someone else (the "misbelieved paternity")
  - iii. The existence of other possible family privacy concerns.

  
CBI Director Ronald C. Sloan

  
Date