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John D. Ferry, Jr., State Court Administrator

**M E M O R A N D U M**

**DATE:** April 26, 2002

**TO:** Chief Judges  
cc: Judges, Court Administrators, Court Clerks, Registers

**FROM:** John D. Ferry, Jr.

**SUBJ:** SCAO Administrative Memorandum 2002-03  
Orders for DNA Sample

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On January 1, 2002, a package of public acts (2001 PA 84 through 91) took effect, expanding the offenses for which a DNA sample is required upon conviction or a finding of responsibility. In relation to this package, the State Court Administrative Office issued Administrative Memorandum 2001-10 (December 14, 2001) and a follow-up memorandum (January 16, 2002).

The Department of Corrections (DOC) should **not** be identified in item 3 of the Order for DNA Sample (SCAO Form MC 382) as the agency to whom the defendant is to provide a DNA sample, even if the individual is already incarcerated.

MCL 750.520m(11)(b) states: "Investigating law enforcement agency" means the law enforcement agency responsible for the investigation of the offense for which the person is convicted. Investigating law enforcement agency includes the county sheriff but does not include a probation officer employed by the department of corrections. DOC probation officers should not be ordered to take DNA samples, nor should the prison facility be ordered to take DNA samples, as they are not the investigating law enforcement agency. Only local sheriff departments or police agencies should be ordered to do the testing.

In order to ensure that courts are properly apprised of the new DNA sampling responsibilities, they are highlighted again below:

**Persons convicted of an offense on or after January 1, 2002 for which a DNA sample is required:**

- DNA samples require a court order. [See MC 283 (Order for DNA Sample).]  
<http://courts.michigan.gov/scao/courtforms/generalcriminal/mc283.pdf>

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- For adults, and juveniles convicted through waiver, the court shall order the county sheriff or the investigating law enforcement agency to take the sample.
- For juveniles convicted through designated proceedings, the court shall order the investigating law enforcement agency to take the sample.
- Persons covered here include those who are convicted of an offense for which a DNA sample is required, who also happen to be in prison or supervised/committed to FIA/DCJ for another offense.
- Investigating law enforcement agency means the law enforcement agency responsible for the investigation of the offense for which the person is convicted, but does not include a probation officer employed by DOC.

**Juveniles found responsible of an offense on or after January 1, 2002 for which a DNA sample is required:**

- DNA samples require a court order. [See MC 283.]  
<http://courts.michigan.gov/scao/courtforms/generalcriminal/mc283.pdf>
- The court is to order the investigating law enforcement agency to take the sample.
- Juveniles covered here include those who are found responsible for an offense for which a DNA sample is required, who also happen to be supervised/committed to FIA/DCJ.

**Prisoners in custody on or after January 1, 2002:**

- No court order is used.
- DOC takes the sample pursuant to statute.

**Juveniles either supervised by FIA or DCJ, or committed to FIA or DCJ, on or after January 1, 2002, and the supervision or commitment is based on a juvenile offense for which a DNA sample is required:**

- No court order is used.
- FIA or DCJ takes the sample pursuant to statute.

For further information concerning the new requirements concerning DNA sampling, please consult the January 16, 2002, memorandum or contact Sandi Hartnell or Patricia Corey Pulver at 517-373-7498.