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MARK GWYN
Director

Memorandum

To: Tennessee Sex Offender Registering Agencies
Tennessee Association of Chiefs of Police
Tennessee Sheriffs' Association

Date: May 5, 2009

From: Jason Locke, Assistant Special Agent in Charge
Criminal Intelligence Unit / Sex Offender Registry

RE: **DNA Collection of Registered Sex Offenders: Reminder and Instructions**

The benefit of proper DNA collection from offenders for use in high profile sexual assault and homicide investigations cannot be overstated. The Tennessee Legislature obviously saw these benefits when they passed legislation that went into effect July 1, 2008, mandating the collection of DNA samples for all offenders on the Tennessee Sex Offender Registry, whose DNA sample had not previously been obtained.

As a result of the passage of this important law, the TBI Sex Offender Registry sent out several memoranda statewide, beginning in July 2008 and continuing as late as March 2009, detailing the procedures to be used in the collection of DNA from registered sex offenders. Those memos can be accessed at the Sex Offender Registry web site for law enforcement agencies at: http://www.ticic.state.tn.us/SEX_ofndr/SOR/sor7262004.htm. Click on "Registering Agency Memos".

To date there are many agencies across the state that have not sent their lists of registered sex offenders to the CODIS Unit (Combined DNA Indexing System) at TBI to be checked against the DNA Database to determine if the offender's DNA should be collected. Please remember that this is the only acceptable method for determining if an offender's DNA should be obtained. No other databases, such as the Sex Offender Registry itself, should be used for this purpose (see previous memos). This check must be performed *prior to* the collection of DNA from any offender on the Sex Offender Registry. This is to avoid the costly collection and processing of multiple DNA samples from the same offender.

The potential liability issues for departments that fail to follow this important law on DNA collection from sex offenders are obvious, especially when contemplating the possibility of a



serial rapist who could continue to remain unidentified and victimize additional persons because his DNA has not been collected.

With that in mind, I would urge all departments to ensure the DNA collection process for offenders on the Sex Offender Registry who register/report to their agency be completed as soon as possible. Many agencies across the state have begun to submit DNA samples to the CODIS Unit and several issues have arisen that should be addressed:

The CODIS/DNA Unit in the Nashville Crime Laboratory is in a separate division from the Sex Offender Registry Unit. The only information that should be submitted to the CODIS Unit is DNA information. Please do not submit SOR finger print cards, registration information, billing information, etc., to the CODIS unit. Additionally, please keep in mind that the CODIS Unit does not have access to records, registry or offender information. Therefore, ***all*** information must be completed on the offender DNA collection kit.

The CODIS Unit cannot answer questions on matters related to offenders and any registration issues that may arise. Please contact the SOR hotline at 1-888-837-4170 for any registry or legal questions you may have. However, please contact the CODIS Unit directly if you have questions about DNA kits, to include ordering, filling out paperwork, etc.

The CODIS Unit has reported confusion by registering agencies on the “Database DNA Sample Submittal Form” that is included in the DNA collection kits. The information on this form must be filled out in detail and the samples cannot be processed if the information is missing. Below is a list to clarify what is needed in order to process the sample:

- Name, Race, Sex, DOB and SSN: Fill in *all* the blanks. We are seeing forms where personal information is incomplete.
- TOMIS / SID / SO / FBI #: Fill out any and all that are available.
- Requesting Agency: This is the agency that is requesting the TBI to process the buccal swab sample. The TBI is *not* the requesting agency.
- Type of Offense: “SOR” is not an offense. The conviction offense must be listed.
- Address, Phone, and Fax Number: For clarification or correction of paperwork and to avoid any delay in processing.
- County of Conviction: If only the state is available, that is acceptable.
- Date of Conviction: Day, month and year. If (date of conviction) is not available, then you may list the date of *offense*. Be sure to write in “offense date” or other wording so that the CODIS Unit knows which date was listed.
- TBI Crime Lab Use Only: This refers to the box that requests the “Date Received, Received By”, etc. Left and right thumbprints *must* be obtained by the agency as specified on the form.

For BOPP: If an offender is currently registered with the Board of Probation and Parole, and a DNA sample is not on file with the lab, then the offenders’ PPO must send him/her to the Health Department if the offense (whether SOR related or not) falls under TCA 40-35-321 for certain



sex offenses committed on or after July 1, 1991, and later for all felonies committed on or after July 1, 1998. The above procedure is standard practice and has not changed. Buccal swab kits for SOR compliance may not be substituted if the offender qualifies under TCA 40-35-321.

The below listed portions of the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification, and Tracking Act of 2004, as well as the DNA Collection Law, are listed for your reference:

T.C.A. 40-39-203. Offender registration -- Registration forms -- Contents.

(j) (2) (n) If the offender's DNA sample has not already been collected pursuant to § 40-35-321 or any other law and received by TBI, the offender's DNA sample shall be taken by the registering agency at the time the offender registers or at the offender's next scheduled registration or reporting and sent to TBI.

(i) TBI registration forms shall require the registrant's signature and disclosure of the following information, under penalty of perjury, pursuant to § 39-16-702(b)(3):

(16) Verification by the TBI or the offender that the TBI has received the offender's DNA sample;

(19) (A) Any other registration, verification and tracking information, including fingerprints and a current photograph of the offender, vehicles and vessels, as referred to in subdivisions (i)(10) and (i)(11), as may be required by rules promulgated by the TBI, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

T.C.A. 40-39-206. Centralized record system

(f) The TBI has the authority to promulgate any necessary rules to implement and administer the provisions of this section. These rules shall be promulgated in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

T.C.A. 38-6-113. DNA analysis - Procedures for collection and preservation

(a) As used in this section, unless the context otherwise requires, "DNA analysis" means the process through which deoxyribonucleic acid (DNA) in a human biological specimen is analyzed and compared with DNA from another biological specimen for identification purposes.

(b) The Tennessee bureau of investigation shall develop uniform procedures for the collection and preservation of human biological specimens for DNA analysis in cases of alleged or suspected violations of § 39-13-502, § 39-13-503, § 39-13-504, § 39-13-505, § 39-1.3-522, or § 39-15-302. Law enforcement agencies and medical personnel who conduct evidentiary examinations shall use the uniform procedures in their investigation of the above offenses.

(c) The bureau shall adopt uniform procedures to maintain, preserve and analyze human biological specimens for DNA. The bureau shall establish a centralized system to cross-reference data obtained from DNA analysis. The centralized system shall contain convicted felon profiles, forensic unknown profiles, criminal suspect profiles, and missing person profiles. The detention, arrest or conviction of a person based upon a databank match or



database information is not invalidated, if it is later determined that the specimens or samples were obtained or placed in the database by mistake.

(d) The bureau shall perform DNA analysis and make data obtained available to law enforcement officials in connection with appropriate criminal investigations in which human biological specimens have been recovered. The bureau shall also make the data available to the district attorney general, and the subject of the data in any subsequent criminal prosecution of the subject.

If you have any questions regarding DNA collection and/or DNA procedure, please contact the CODIS Unit directly: Shannon Brown Shannon.Brown@tn.gov (615-744-4504), Jamison Richardson Jamison.Richardson@tn.gov (615-744-4498), or Jacquelyn Poarch Jacquelyn.Poarch@tn.gov (615-744-4256).

All other questions related to the Sex Offender Registry should be directed to the Sex Offender Registry Hotline at 1-888-837-4170.

JTL: jl

Cc: Jeff Puckett, Deputy Director, TBI
Jerri Powell, Special Agent in Charge, Tennessee Fusion Center
TBI CODIS Unit

