



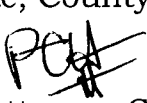
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TO: County Prosecutors
Superintendent of the New Jersey State Police
Directors of State, County and Municipal Forensic Laboratories

FROM: Peter C. Harvey 
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Director, Division of Criminal Justice

DATE: August 22, 2002

SUBJECT: Required Procedures to Facilitate Admissibility of Sworn
Laboratory Certificates Under N.J.S.A. 2C:35-19

N.J.S.A. 2C:35-19 authorizes a prosecutor to submit a sworn laboratory certificate as proof at trial of the composition and quantity of a controlled dangerous substance. One of the principal purposes of this statute is to conserve forensic investigative resources by allowing a prosecutor to prove this critical element in a drug prosecution without having to rely upon the live testimony of the scientist who performed the analysis of the controlled dangerous substance.

The statute sets forth specific disclosure requirements and preconditions for the admissibility of the sworn laboratory certificate at trial. Recent and pending litigation makes it necessary to clarify that when and if the prosecutor decides in a particular case to file a formal notice of intent to use a laboratory certificate as trial evidence pursuant to N.J.S.A. 2C:35-19, the laboratory must compile and transmit to the prosecutor a copy of all reports or other documents prepared by or in the possession of the laboratory that pertain to the examination of the controlled dangerous substance in question. In these circumstances, the documents that must be transmitted to the prosecuting agency by the laboratory would include: a copy of the request for examination of evidence; all reports and notes prepared by the scientist; the underlying data used to reach conclusions



concerning the composition and quantity of the substance submitted for examination, and any graphs, charts or computer printouts that describe the results of any manual or automated test of the substance submitted for examination.

If the prosecutor intends to proffer a sworn laboratory certificate at trial pursuant to N.J.S.A. 2C:35-19, the prosecutor must, pursuant to the literal requirements of the statute, convey to defense counsel a copy of the certificate along with all of the foregoing documents. In addition, in order to ensure that laboratory certificates are admissible as evidence at trial, forensic laboratories must make available for inspection by defense counsel all manuals, standard operating procedures or written protocols developed or relied upon by the laboratory concerning the forensic tests at issue or concerning the use, operation and maintenance of the equipment used to perform the analyses. The prosecutor should advise defense counsel that these additional materials are available for inspection and copying pursuant to R. 3:13-3.

It is important to note that the specific document production requirements set forth in N.J.S.A. 2C:35-19 are only triggered when a prosecutor serves a notice of an intent to proffer a sworn laboratory certificate, which must be done at least 20 days before the trial begins. See N.J.S.A. 2C:35-19c. In many if not most cases, however, a negotiated plea agreement will resolve the case before trial, making it unnecessary to file a formal notice of an intent to proffer a certificate as trial evidence. In order to conserve resources, a prosecutor should not request a laboratory to compile and transmit all of the aforementioned supporting documents unless the prosecutor is reasonably certain that the case will actually go to trial. For purposes of conducting routine plea negotiations, it is sufficient that the laboratory provide the prosecutor with a report in response to the request for examination of evidence. This report may but need not be in the same form as a sworn laboratory certificate.

R. 3:13-3c(3) generally provides for disclosure to defense counsel of reports of scientific tests. For purposes of complying with regular discovery obligations, as compared to the special document production requirements established by N.J.S.A. 2C:35-19, it is not necessary that a copy of all of the aforementioned supporting documents be routinely and automatically transmitted to defense counsel in their discovery package. Rather, in these circumstances, the general provisions of R. 3:13-3b only require that such additional information “be available at the prosecutor’s office.” Accordingly, the aforementioned supporting documents need not automatically be transmitted by the laboratory to the prosecutor unless the defense counsel specifically requests to inspect and copy

these documents. In that event, the prosecutor should then make a specific request for the laboratory to transmit the relevant supporting documents to the prosecutor's office so that arrangements can be made for defense counsel to come to the prosecutor's office to inspect or copy the documents.

In sum, it is the intent of this Directive to ensure compliance with all of the substantive and procedural requirements set forth in N.J.S.A. 2C:35-19. The special document production requirements of that statute will not be triggered, however, unless and until the prosecutor specifically advises the laboratory that the prosecutor has determined in that case to file a notice of intent to proffer a laboratory certificate as trial evidence pursuant to the statute. Accordingly, this Directive is not intended in any way to increase administrative or paperwork burdens on either forensic laboratories or prosecutors in the vast majority of cases where the prosecutor has not yet decided to proffer a sworn laboratory certificate at trial in lieu of the live testimony of a forensic scientist. The overriding objective, rather, is to require forensic laboratory personnel to compile, photocopy and transmit additional documents (i.e., documents other than the laboratory report/certificate itself) only when necessary to comply with explicit statutory or Court Rule discovery requirements.

This Directive shall take effect immediately.

/djv

cc: Vaughn L. McKoy, First Deputy Director