§ 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.