

1.3.C.10 Offender DNA Collection

I Policy Index:



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II Policy:

Every offender committed to the custody of the Department of Corrections (DOC) for a qualifying offense will provide a DNA sample, unless it is verified the by DOC staff there is record of the offender providing a DNA sample and identifying information within the DNA database.

III Definitions:

Adjudicated Delinquent:

Any child ten (10) years of age or older who, regardless of where the violation occurred, was found by a court to have violated any federal, state, or local law or regulation for which there is a penalty of a criminal nature for an adult; except state or municipal hunting, fishing, boating, park, or traffic laws that are classified as misdemeanors, or petty offenses.

DNA Sample:

A biological sample of deoxyribonucleic acid (DNA) taken from an offender for submission to the South Dakota State Forensic Laboratory, pursuant to SDCL Chapter § 23-5A, for storage and/or analysis.

Offender:

For the purposes of this policy, an offender is any of the following:

1. An inmate (in the custody of the DOC institutional system).
2. A parolee (under parole or suspended sentence supervision of South Dakota Parole Services).
3. An adjudicated delinquent placed in a DOC approved facility or on aftercare.

Federal boarders, U.S. Marshal holds or other temporary boarders placed in the custody of the DOC are not considered "offenders".

Qualifying Offense:

Any felony offense under the laws of South Dakota, a crime of violence as defined in SDCL § 22-1-2(9), or a sex offense in violation of SDCL § 22-24B-1.

IV Procedures:

1. Requirements:

- A. Any convicted offender or adjudicated delinquent remanded to the DOC for a qualifying offense, is required to provide a DNA sample at the time of admission, provided he/she has not previously done so and his/her name/identifying information is not entered into the Combined DNA Index System (CODIS) (See SDCL § [23-5A-4](#)).
1. This requirement includes offenders received or housed in an out-of-state facility, halfway house or contractual facility and those offenders under supervised release by the DOC but received and/or living outside of the state.
 2. Biological samples will be collected from offenders meeting the criteria, include offenders sentenced to death or life without the possibility of parole (See SDCL § [23-5A-8](#)).
 3. Acceptance of an offender from another state through the interstate compact program, other agency reciprocal agreement or any provision of law is conditional upon the offender providing a DNA sample in accordance with this policy, if the offender was convicted of an offense in any other jurisdiction which would be considered a qualifying/equivalent offense in South Dakota (See SDCL § [23-5A-7](#)).
- Note:** This requirement is mandatory and applies to offenders confined in a facility or placed on supervised release.
4. Offenders serving the incarceration period of a suspended imposition of his/her sentence are subject to providing a DNA sample.
- B. If an offenders' DNA sample is determined inadequate for any reason, the offender shall be required to provide an adequate DNA sample for incorporation into the DNA Index System.
- C. Offenders required to provide a DNA sample will also provide a fingerprint or fingerprints for the purpose of verifying their identity (See SDCL § [23-5A-10](#)).

2. DNA Collection:

- A. Each institution with an admissions and orientation (A&O) unit will designate at least one staff member who shall be responsible for collecting DNA samples from offenders (See DOC policy 1.4.A.2 [Inmate Admission](#)).
- B. The state forensic lab provides the DOC with directions and material used in collecting biological samples, cheek (buccal) swabs, from offenders who have committed qualifying offenses.
- C. Institutions that house offenders who discharge or release directly from the institution will designate at least one staff member who shall be responsible for ensuring a DNA sample collected from the discharging or releasing offender.
- D. Parole Services staff will ensure all offenders discharging from parole supervision have complied with the statutory requirements for submission of a DNA sample.

- E. Staff members responsible for ensuring the collection of DNA samples from offenders will verify the status of the offender's sample with the electronic database, which can be found at: <http://www.riss.net>.
1. To sign into the database, a name and password must be entered. Names and passwords are issued by the SD Division of Criminal Investigation (DCI).
 2. If an offender's name/identifying information appears in the database, a DNA sample will not be collected by DOC staff.
 3. If an offender's name/identifying information does not appear in the database, a DNA sample will be collected from the offender.

3. Refusal to Provide a DNA Sample:

- A. Under no circumstance will a convicted offender or adjudicated delinquent be released from DOC custody or supervision unless and until the offender has provided a DNA sample (See SDCL § 23-5A-6 and DOC policy 1.4.G.2 *Inmate Release Procedure*).
- B. Any offender who is subject to the requirements of SDCL § 23-5A, and who, after receiving notification of the requirement to provide a DNA sample, knowingly refuses to provide such DNA sample, is guilty of a Class 5 felony (See SDCL § 23-5A-14).
- C. The Attorney General's Office will be notified immediately of any offender who refuses to provide a DNA sample. The Attorney General's Office and the respective Warden will jointly decide on a course of action.
- D. If an offender refuses to provide a DNA sample as required by SDCL Chapter § 23-5A, DOC staff may employ reasonable force to obtain the DNA sample (See SDCL § 23-5A-13).

4. Control of DNA Samples:

- A. DNA samples collected pursuant to this policy will be forwarded to the South Dakota State Forensic Laboratory.
1. DOC staff will treat any DNA record or sample submitted to the South Dakota State Forensic Laboratory as confidential and will not disclose or share the information with any unauthorized person or agency, unless disclosure is authorized by SDCL § 23-5A (See SDCL § 23-5A-22)
 2. Any DNA sample submitted to the South Dakota State Forensic Laboratory pursuant to this policy is confidential and is not a public record under SDCL § 1-27 (See SDCL § 23-5A-23).
 3. Analysis of DNA samples obtained pursuant to this policy is not authorized for identification of any medical or genetic disorder (See SDCL § 23-5A-17).
 4. The DOC will be notified of any Offender Hit report involving an offender DNA profile match.

V Related Directives:

SDCL §§ 1-27, 22-1-2(9), 22-24B-1 23-5A, 23-5A-6, 23-5A-7, 23-5A-8, 23-5A-10, 23-5A-13, 23-5A-14, 23-5A-22 and 23-5A-23.

DOC policy 1.4.A.2 -- [Inmate Admission](#)
DOC policy 1.4.G.2 -- [Inmate Release Procedure](#)

VI Revision Log:

June 2003: New policy.

June 2004: **Removed** most references to the effective date of July 1, 2003. **Deleted** the requirement to procedures for obtaining DNA samples within six months of the old effective date.

July 2004: **Added** a section under DNA Collection Plan for responsible staff to check the DNA web site. **Noted** that staff may update the internal DNA database and **deleted** specific requirements for the DNA database.

July 2005: No changes.

June 2006: **Revised** the definition of "offender" **Revised** the policy statement **Adjusted** the wording throughout the procedures to account for the new definition of offender.

July 2007: No changes made.

June 2008: **Revised** formatting of policy in accordance with DOC policy 1.1.A.2 Policy and Operational Memorandum Management. **Added** hyperlink to the following website:
<http://dci.sd.gov/dna/login.asp>.

June 2009: **Added** section (9) when referencing 22-1-2 and **replaced** SDCL 22-22 in definition of Qualifying Offense and within section V. **Deleted** ss (B of Control of DNA Samples) regarding updating the database on Citrix **Replaced** "offender convicted" to "convicted offender" throughout policy **Revised** SDCL 22-1-12 to 22-1-2(9) within Section V. **Added** hyperlinks throughout policy.

May 2010: **Revised** formatting of Section I.

July 2011: **Added** definition of DNA Sample. **Added** "and had his/her name/identifying information verified on the DNA web site as described in Section 2 of this policy" to Section 1 A. **Deleted** "from newly admitted offenders" from Section 2 A. **Added** C. "DOC staff may employ reasonable force to obtain a DNA sample if an inmate refuses to provide a DNA sample as required by SDCL Chapter § 23-5A." to Section 3.

July 2012: **Changed** title from "DNA Testing" to "DNA Collection". **Added** "and their identifying information is entered into the DNA website" to the Policy section. **Added** "at the time of admission" to Section 1 A. **Added** D. to Section 3.

July 2013: **Deleted** 4 "A federal detainee being held in a DOC facility as the result of a conviction" from the definition of "Offender". **Added** "Federal boarders or other state boarders who are under the temporary custody of the SD DOC are not considered "Offenders" for the purpose of this policy" to the definition of "Offender".

June 2014: **Reviewed** with no changes.

June 2015: **Changed** title from DNA Collection to "Offender DNA Collection".

June 2016: Minor grammar and sentence structure changes.

June 2017: **Added** B. to Section 2. **Added** 4. to Section 4 A.

Denny Kaemingk (original signature on file)

Denny Kaemingk, Secretary of Corrections

08/14/2017

Date