

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, must provide a DNA sample as ordered by DOC staff and required by law, unless it is verified the offender has previously provided a sufficient sample, and the sample and identifying information is documented within the State's Combined DNA Index System.

III Definitions:

Adjudicated Delinquent:

Any child ten (10) years of age or older who, regardless of where the violation occurred, is 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 consisting 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 Parole Services.
3. An adjudicated delinquent placed under supervision of the Division of Juvenile Services.

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

Qualifying Offense:

SDCL 23-5A-1(8) Any felony offense under the laws of South Dakota, a crime of violence, as defined in SDCL § 22-1-2, or a violation of chapter 22-22 (sex offense). Includes and any offender who is required to register as a sex offender, pursuant to SDCL § 22-24B-1- 22-24B-14.

IV Procedures:

1. Requirements:

- A. Any adult offender (eighteen years of age or older) sentenced and admitted to a DOC facility, 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 provided sufficient sample and the offender's name and 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 institution, a halfway house or contractual facility, and those offenders under supervised release by the DOC but received or living outside of the state.
 2. Offenders sentenced to capital punishment or life in prison who have committed a qualifying offense are required to provide a DNA sample (See SDCL § [23-5A-8](#)).
 3. The acceptance of an offender from another state through the interstate compact program, other agency reciprocal agreement, or any provision of law, who is convicted or adjudicated of an offense in any jurisdiction which would be considered a qualifying/equivalent offense in South Dakota (See SDCL § [23-5A-7](#)), is conditional upon the offender providing a sufficient DNA sample, in accordance with this policy and state law.

Note: This requirement is mandatory and applies to all offenders confined in a facility or placed on supervision.
 4. Adult offenders serving the incarceration period for receipt of a suspended imposition of sentence (SIS), are subject to providing a DNA sample.
- B. If an offender's DNA sample is determined inadequate for any reason, the offender shall be required to provide an adequate DNA sample for submission to CODIS.
- C. Offenders required to provide a DNA sample must provide a completed fingerprint card to verify identity (See SDCL § [23-5A-10](#)).

2. DNA Collection:

- A. Each adult institution operating an admissions and orientation (A&O) unit will designate at least one staff person responsible for collecting DNA samples from new admission offenders (See DOC policy 1.4.A.2 [Inmate Admission](#)) who have not previously provided a sufficient DNA sample to CODIS.
- B. Juvenile Corrections agents will ensure all juvenile offenders required to comply with SDCL Chapter 23-5A complete the requirement to provide a sufficient DNA sample during the intake process. Tracking will be through a list generated each month by the Division of Criminal Investigations that identifies juvenile offenders who have not yet complied with the DNA requirements.
- C. The state forensic lab provides the DOC with directions and materials used in collecting biological samples, cheek (buccal) swabs from offenders who have committed a qualifying offense.

- D. Each adult institution shall have at least one staff who is trained and responsible for ensuring all offenders who are scheduled to discharge, or release from the custody of the institution has completed the requirement to provide a sufficient DNA sample.
- E. Parole Services and Division of Juvenile Services staff will ensure all offenders discharging/releasing from supervision have previously completed the requirement to provide a sufficient DNA sample to CODIS.
- F. Staff members responsible for collecting DNA samples from offenders will verify the status of an offender's sample with the electronic database maintained by CODIS, 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, unless otherwise directed.
 - 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 an offender required to provide a sufficient DNA sample be released from DOC custody or supervision until the offender has provided the sample to DOC staff (See SDCL § [23-5A-6](#) and DOC policy 1.4.G.2 *Inmate Release Procedure*).
- B. Any offender subject to the requirements of Chapter 23-5A, 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 or Director will jointly decide on a course of action.
- D. If an offender refuses to provide a DNA sample, as required in Chapter 23-5A, DOC staff may employ reasonable force to obtain the DNA sample from the offender (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 (CODIS).
 - 1. DOC staff will treat any DNA record or sample collected from an offender as confidential and will not disclose or share identifying information or the sample with any unauthorized person or agency (See SDCL § [23-5A-22](#)).
 - 2. Any DNA sample submitted to the State Forensic Laboratory pursuant to this policy, is confidential and is not a public record under Chapter 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:

Chapter 1-27, Chapter 23-5A, SDCL §§ [22-1-2\(9\)](#) and [22-24B-1](#).

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.

June 2018: **Reviewed** with no changes.

June 2019: **Revised** B. in Section 2 and **Added** E. to Section 2.

Mike Leidholt (original signature on file)

Mike Leidholt, Secretary of Corrections

08/12/2019

Date