

1.3.C.10 DNA Collection

I Policy Index:



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II Policy:

Every convicted offender or adjudicated delinquent committed to the custody of the Department of Corrections for a qualifying offense will provide a DNA sample, unless it is verified the offender already provided a DNA sample and their identifying information is entered into the DNA website.

III Definitions:

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. A juvenile in the custody of a DOC facility, in the custody of a DOC approved facility/program or placed on aftercare.

Federal boarders. U.S Marshal holds or other boarders who are under the temporary custody of the SD DOC are not considered "offenders" for the purpose of this policy.

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.

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.

DNA Sample:

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

IV Procedures:

1. DNA Collection Requirements:

- A. Any convicted offender or adjudicated delinquent who is 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 DNA web site, as described in Section 2 of this policy (See SDCL § [23-5A-4](#)).
1. This requirement includes offenders who are received or housed in an out-of-state facility, any halfway house or contractual facility; or who are under supervised release by the DOC but received and/or living out of state.
 2. All offenders sentenced to death or life without the possibility of parole must comply with the requirements of this policy (See SDCL § [23-5A-8](#)).
 3. The acceptance of an offender from another state through interstate compact, other agency reciprocal agreement, or any other 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 who will be confined in a facility or placed on supervised release.
4. An offender serving the incarceration period of a suspended imposition of his/her sentence is subject to providing a DNA sample.
- B. If an offender's DNA sample is determined not adequate for any reason, the offender will provide another DNA sample for analysis until it is determined an adequate sample has been obtained.
- C. Any convicted offender or adjudicated delinquent for a qualifying offense will also provide a fingerprint or fingerprints for the purpose of verifying the identity of the person providing the DNA sample (See SDCL § [23-5A-10](#)).

2. DNA Collection Plan:

- A. Each DOC facility with an admissions area for offenders will designate at least one (1) staff member who is responsible for collecting DNA samples (See DOC policy 1.4.A.2 [Inmate Admission](#)).
- B. DOC facilities that discharge offenders or release offenders to supervision will designate at least one (1) staff member to be responsible for ensuring a DNA sample was or is collected from the offender prior to final discharge or release to supervision.
- C. Each DOC agency that discharges offenders from supervision will designate at least one (1) staff member who is responsible for ensuring a DNA sample was or is collected from offenders prior to their discharge from supervision.
- D. The staff member responsible for ensuring a DNA sample was or is collected will first check the DNA website at: <http://www.riss.net>.

1. In order to sign in to the web site, 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 on the DNA web site, a DNA sample will not be collected by DOC staff.
3. If an offender's name/identifying information does not appear on the DNA web site, a DNA sample will be collected.

3. Refusal to Provide a DNA Sample:

- A. Under no circumstances will a convicted offender or adjudicated delinquent for a qualifying offense be released in any manner unless and until that 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 this chapter, 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. DOC staff may employ reasonable force to obtain a DNA sample if an offender refuses to provide a DNA sample as required by SDCL Chapter § [23-5A](#) (See SDCL § [23-5A-13](#)).
- D. 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.

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 DNA sample submitted to the South Dakota State Forensic Laboratory pursuant to this policy as confidential and will not disclose or share the information with any person or agency unless disclosure is authorized by SDCL § [23-5A](#). (See SDCL § [23-5A-22](#))
 2. Any DNA record or 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](#)).

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.

Denny Kaemingk (original signature on file)

Denny Kaemingk, Secretary of Corrections

08/14/2014

Date