



# POLICY STATEMENT

Policy Statement 4002

Policy Area: Supervision

Effective Date: FEB 25 2009

Approved:

Adrienne Poteat, Acting Director

## Offender DNA Sample Collection

### I. COVERAGE

This Policy Statement establishes procedures for Court Services and Offender Supervision Agency (CSOSA) staff involved in the identification and processing of offenders subject to Deoxyribo Nucleic Acid (DNA) sample collection. CSOSA staff with specific responsibilities under these procedures include intake staff, Community Supervision Officers (CSOs), Supervisory CSOs (SCSOs), other staff of the Community Supervision Services division, and staff of CSOSA's Office of Information Technology (OIT). The procedures also require the use of DNA sample collection contractors.

### II. BACKGROUND

The federal DNA Analysis Backlog Elimination Act of 2000, signed into law on December 19, 2000, requires, among other things, the collection of DNA samples from persons convicted of certain qualifying District of Columbia offenses who are either in the custody of the Federal Bureau of Prisons or on supervised release, parole, or probation and under the supervision of CSOSA. Qualifying District of Columbia offenses were determined by the D.C. Council in the "DNA Sample Collection Act of 2001," the "DNA Sample Collection Emergency Act of 2001," and the "DNA Sample Collection Congressional Review Emergency Act of 2001."

The Federal Bureau of Investigation (FBI) maintains the Combined DNA Index System (CODIS) for DNA samples. The capacity to analyze and create databases from the DNA information contained in saliva, skin tissue, blood, hair, and semen samples is perhaps the most significant advance in criminal investigations since the advent of fingerprint identification. Increasingly accepted during the past ten years, DNA technology is now widely used by police, prosecutors, defense counsel, and courts both to inculcate and to exonerate individuals accused and convicted of crimes.

### III. POLICY

Offenders who are required to submit a DNA sample must be:

- Convicted of a qualifying District of Columbia offense, as listed in Appendix B of this Policy Statement (qualifying offender); and
- Must currently be under CSOSA's supervision on a parole, supervised release or probation case. Offenders in monitored-inactive parole or monitored-unsupervised probation are required to DNA test if they have a qualifying District of Columbia offense.

Offenders are required to submit a DNA sample if they are under supervision on a current qualifying District of Columbia offense, and/or are under supervision on a non-qualifying District of Columbia offense and have a prior conviction for a qualifying District of Columbia offense, with the following exceptions:

- Civil Protection Order (CPO) cases. Offenders with a CPO case are not subject to DNA collection, even if they have a prior qualifying offense. However, if the offender is being supervised on a CPO case, and has another supervision case which has a qualifying District of Columbia offense, then that offender is to be referred for DNA collection.
- Domestic Violence cases. The conviction, Attempted Threats (Domestic), is not a qualifying District of Columbia offense.
- Interstate-In cases. Offenders who come to CSOSA from another jurisdiction are not required to submit a DNA sample unless they have a qualifying District of Columbia offense (current or prior).
- Certain Misdemeanor Sex Offense cases. If a misdemeanor sex offense was committed against an adult or the offender was not convicted of a misdemeanor sex abuse of a child or minor under D.C. Code § 22-3010.01, then the offender is not required to submit to DNA testing.
- Certain Manslaughter cases. If the offender was convicted of involuntary manslaughter, then the offender is not required to submit to DNA testing.

When staff have any doubt if an offender has a qualifying D.C. conviction or should be DNA submitted, they are to send an e-mail to the OGC Helpdesk.

#### IV. AUTHORITIES, SUPERSEDURES, REFERENCES, AND ATTACHMENTS

##### A. Authorities

Pub. L. 106-546; 114 Stat. 2726; D.C. Official Code § 22-4151 (2001 ed.).  
CSOSA regulations (28 C.F.R. Part 812, Collection and Use of DNA Information) governing the collection and use of DNA samples (see Appendix B of this Policy Statement).

##### B. Supersedures

PS 4002, Offender DNA Sample Collection, effective 8/19/2004.  
Procedures for Offenders Who Refuse DNA Sample Collections Operational Instruction (CSS-2004-02).

##### C. Procedural References

DNA Process (8/2003)  
Schedule of Accountability Through Graduated Sanctions

##### D. Attachments

Appendix A. General Procedures  
Appendix B. Qualifying Offenses for DNA Testing  
Appendix C. DNA Declaration Form

#### **Guidance Disclaimer**

The contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

## APPENDIX A GENERAL PROCEDURES

### A. Qualifying Offenses

Offenses that require DNA collection are specified in accordance with D.C. Code § 22-4151 and are appended to the regulations listed in Appendix B to this Policy Statement.

### B. Time Limits for Collection

1. All qualifying offenders released to CSOSA supervision after sentencing (probation) or incarceration (parole or supervised release) shall be required to provide a DNA sample not later than fifteen (15) business days after notice to do so by his/her CSO, unless CSOSA confirms that the offender already has a valid sample on file in CODIS.
2. Qualifying offenders currently under CSOSA supervision who do not have a valid DNA sample on file in CODIS shall be referred for DNA collection in accordance with the schedule prepared by CSS based upon the data provided by CSOSA's OIT, with priority given to those offenders with the earliest supervision termination dates. **CSOs should make every reasonable effort to ensure that all qualifying offenders are sampled before their supervision period ends, as no efforts may be made to collect samples from qualifying offenders once they are no longer under supervision by CSOSA.**

### C. DNA Collection Sites and Collection Kits

1. DNA Collection Sites are locations specified by CSOSA. Any changes or additions to the designation of DNA Collection Sites are to be issued as a Management Instruction by the Associate Director, Community Supervision Services. DNA Sample Collection Contractors ("DNA Contractors") shall staff all DNA Collection Sites according to a predetermined schedule.
2. The collection kits used to obtain a DNA sample via a finger stick will contain the following items:
  - kit return envelope,
  - sterile gauze pad,
  - alcohol prep pad,
  - adhesive bandage,
  - gloves,
  - pre-inked fingerprint pad,
  - clean wipes for ink removal,
  - Request for National DNA Database Entry Form with collection instructions on back,
  - single-use capillary blood sampling device (Unistick 2),

- Drypak envelope (allows cards to be immediately packaged—no drying time required), and
- FBI Double Genecard with labels for Offender Name, Collection Date and Collector, and finger stick instruction sheet.

#### D. Documentation of DNA Collection

1. Any qualifying offender who requires DNA collection and is released to CSOSA supervision after sentencing (probation) or incarceration (parole and supervised release) will have his/her records flagged automatically at intake in the automated case management database.
2. For offenders released from the Bureau of Prisons (BOP), intake staff will review the offenders' releasing documents to determine if the offender was DNA tested and, if yes, whether or not the offender's DNA testing date has been entered into SMART. If the offender was DNA tested by BOP, but the DNA testing date is not in SMART, intake staff will enter the DNA testing date and BOP DNA tracking number into the Agency's automated case management database. This action will remove the DNA flag from the offender's record in SMART.
3. The Agency's automated case management database shall flag qualifying offenders who require DNA testing. However, the SCSO will review the offender's record upon assignment to ensure that the offender was DNA tested, if required. If the Agency's automated case management database already shows that an offender was DNA tested, a new DNA sample is not required and is not to be taken, unless the FBI needs a new sample.
4. When a DNA sample is collected, the DNA Contractor or CSOSA staff shall complete the automated Request for National DNA Database Entry Form. The printing of the completed DNA submission form will automatically remove the computer flag and record the date of collection in the Agency's automated case management database.
5. If at any time it is determined that a flagged offender has not submitted a DNA sample in accordance with this Policy Statement, the CSO shall refer the offender for sample collection.
6. As part of their regularly scheduled audit of case management and close supervision (Critical Success Factor Audits), SCSOs shall monitor compliance with this Policy Statement and provide specific instructions to CSOs with respect to the referral of offenders for DNA sample collection.

#### E. CSO Referral Responsibilities

1. The CSO must complete referrals for DNA collection in accordance with the time limits established in Appendix A, section B.

2. In order to initiate the referral process, the CSO shall make a referral in the Agency's automated case management database, complete the automated DNA Referral Form, and have it signed by the offender. The CSO then shall provide a copy of the DNA Referral Form to the offender and retain the original in the offender's supervision file.
3. The CSO shall explain to the offender the law authorizing DNA collection, as well as the consequences of noncompliance with DNA testing. The CSO will review the DNA collection process (Appendix A, section F) with the offender. If the offender has technical questions regarding the process, he/she should be referred to medical staff at the collection site. The CSO's signature on the automated DNA Referral Form indicates that the CSO has explained to the offender the law authorizing DNA collection, the consequences for noncompliance, and the DNA collection process. The offender's signature on the DNA Collection Form will serve to certify that the offender understands the legal requirements, collection process, and consequences for failure to comply.
4. The CSO shall then direct the offender to report to the appropriate collection site at a specified date and time.

#### F. DNA Collection Procedures

1. Prior to collection of the sample, CSOSA staff or DNA Contractor shall: (1) verify the offender's identity via official government-issued photo identification or other confirmation of identity, (2) enter the offender's name, date of collection, and collector's name on the FBI Double Genecard used to obtain blood sample (collection cards without this information will not be accepted), (3) imprint the offender's fingerprints onto the fingerprint card using the offender's left and right index fingers only, and (4) sign the collection form.
2. CSOSA staff or DNA Contractor shall then print the identifying offender information from the Agency's case management database on the National DNA Database Entry Form. This action documents in the Agency's automated case management system that the offender reported for DNA collection and provided a DNA sample.
3. The DNA Contractor shall then obtain a blood sample via finger stick from the offender.
4. Immediately after a blood sample is collected from an offender, the following procedures shall be followed:
  - a. The same DNA Contractor who collected the sample must ensure that at least 2 of the 6 circles on the collection card are filled.
  - b. The same DNA Contractor who collected the sample shall:
    - place the collection card in the clear Drypak envelope
    - seal the envelope,
    - place the Drypak envelope and the Sample Collection Form in the white return envelope

- remove the adhesive backing and seal the envelope, and
- mail the envelope to the FBI on the same day that the sample is collected.

Until the sample is mailed on the same day it is drawn, the Contractor shall place it in a locked and secure location to which only authorized employees have access.

5. The DNA Contractors shall follow applicable CSOSA safety protocols at all times.
6. In the event a qualifying offender fails to report for the schedule appointment, the DNA Contractor shall document the offender's non-compliance in the Agency's automated case management system as a no-show and forward the documentation immediately to the CSO. Upon receipt of the refusal to cooperate notice, the CSO shall follow the noncompliance procedures set forth in section IV.G.
7. If the offender refuses to provide a sample at the DNA lab, the DNA Contractor will read the DNA Declaration Form<sup>1</sup> (Appendix C) to the offender prior to the offender signing the form. The DNA Contractor will give the original DNA Sample Collection Referral Form and signed DNA Declaration Form to the Contracting Officer's Technical Representative (COTR) overseeing the DNA contract. The COTR will maintain a copy of the DNA Declaration Form in the offender's file and then will send the original DNA Sample Collection Referral Form and DNA Declaration Form to the CSO. The CSO will keep a copy in the offender file and will forward the originals to the SCSO, who will send the originals to OGC along with the other required documentation.

#### G. Consequences of Offender's Noncompliance with DNA Collection.

If the offender refuses to submit a DNA sample, the following procedures are to be followed:

1. Immediately upon learning of the offender's refusal to comply with testing, the assigned Community Supervision Officer ("CSO") is to reconfirm that the offender's charge is a qualifying offense, and that the offender has not been previously DNA tested by the BOP.
2. The assigned CSO must then notify the offender that failure to submit to DNA sample collection is illegal and will result in the imposition of administrative sanctions in accordance with the Offender DNA Sample Collection Policy Statement and that continued refusal will result in notification of the offender's refusal to the United States Attorney's Office ("USAO") for possible prosecution<sup>2</sup>.
3. The CSO must then reschedule the offender for a second appointment to occur within five (5) business days.

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<sup>1</sup> The declaration form will be available in Spanish.

<sup>2</sup> Failing to submit to DNA sample collection is a Class A misdemeanor. [42 U.S.C. § 14135b(a)(5)]

4. Upon the offender's second refusal to submit to testing, the CSO is to notify his/her supervisor.
5. The SCSO is then to submit to the Office of the General Counsel (via inner-office mail to 633 Indiana Ave., N.W., Room 1232) the following information within five (5) business days:

- a. A copy of the offender's DNA Sample Collection Referral Forms to provide evidence that the offender was directed to report on at least two (2) occasions to one of the sites for DNA sample collection.

**Note:** If the offender refused to sign the form(s), a printed copy of the SMART running record entry, indicating that the offender refused to sign the form(s), must be submitted in addition to the DNA Sample Collection Referral Form(s).

- b. A printed copy of the offender's SMART Basic Profile to include the offender's name, DCDC# or PDID#, and qualifying offense.
  - c. A copy of the offender's related DNA testing Judgment and Commitment or Probation Order.
  - d. A copy of the DNA Testing List for the days the offender failed to report.
  - e. A copy of the DNA Lab Log for the days the offender failed to report.
6. Once the Office of the General Counsel has received the necessary documentation from the SCSO, within five (5) business days, that information will be forwarded with a standard cover letter to the USAO, Major Crimes/Transnational Section for possible prosecution.
  7. The USAO will be instructed to contact the CSO directly if additional information is needed regarding the offender's refusal to submit to DNA sample collection.
  8. The Office of the General Counsel shall maintain a log of all offenders referred to the USAO for prosecution to include the offender's name, PDID#, qualifying offense, date referred, assigned CSO, assigned Assistant U.S. Attorney ("AUSA"), referral status and disposition.
  9. The Office of the General Counsel will be responsible for follow-up with the USAO every thirty (30) days until a determination is reached by that office on whether or not to prosecute, and if so, until a verdict is reached. If the decision is made to prosecute the Office of the General Counsel will provide notice to the assigned CSO<sup>3</sup>.

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<sup>3</sup> If the offender will be prosecuted, the CSO is required to follow agency policy with regards to notifying the releasing authority of the offender's new charge.



10. At the discretion of the AUSA, the assigned CSO will be called as a government witness to testify at the offender's trial<sup>4</sup>.
11. The assigned CSO will maintain supervision responsibilities in the offender's case until a verdict is reached.

**Notes:**

- **All procedures established above must be documented in the SMART running record.**
- **Only if an offender has been ordered to submit to DNA sample collection as a special condition by the USPC, or the sentencing judge, will the CSO need to prepare and submit an Alleged Violations Report (AVR) to the releasing authority indicating the offender refused to comply with the special condition. Under these circumstances, the CSO shall also forward the AVR to OGC for forwarding to the AUSA.**

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<sup>4</sup> If convicted of the offense, the CSO is required to follow agency policy with regards to notifying the releasing authority of the offender's conviction.

**APPENDIX B  
 QUALIFYING OFFENSES FOR DNA TESTING<sup>5</sup>**

The following criminal offenses are qualifying offenses for the purpose of DNA collection.

#	Offense	DC Code	Qualifying Condition <sup>6</sup>
1	Arson	22-301	
2	Burning of one's own property with intent to defraud or injure another	22-302	
3	Malicious burning, destruction, or injury of another's property	22-303	
4	Assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse	22-401	
5	Assault with intent to commit mayhem or with dangerous weapon	22-402	
6	Aggravated assault	22-404.01	
7	Assault on member of police force, campus or university special police, or fire department	22-405	Using a deadly or dangerous weapon.
8	Mayhem or maliciously disfiguring	22-406	
9	Cruelty to children	22-1101	
10	Lewd, indecent, or obscene acts	22-1312(b)	Minor under the age of 16 years
11	Burglary	22-801	
12	Incest	22-1901	
13	Certain obscene activities and conduct	22-2201	Minor under the age of 17 years
14	Sexual performance using minors	22-3102	
15	Kidnapping	22-2001	
16	Murder in the first degree	22-2101	
17	Murder in the first degree – obstructing railroad	22-2102	
18	Murder in the second degree	22-2103	
19	Voluntary manslaughter only	22-2105	
20	Murder of a law enforcement officer	22-2106	
21	Abducting, enticing, or harboring a child for prostitution	22-2704	
22	Pandering; inducing or compelling an individual to engage in prostitution	22-2705	
23	Compelling an individual to live life of prostitution against his or her will	22-2706	

<sup>5</sup> D.C. Code § 22-4151. The DNA Analysis Backlog Elimination Act of 2000 was approved December 19, 2000 (Pub. L. No. 106-546; 114 Stat. 2726).

<sup>6</sup> Further review needs to be taken when a qualifying condition is listed. Please contact the Office of General Counsel for questions relating to these offenses.

#	Offense	DC Code	Qualifying Condition <sup>6</sup>
24	Causing spouse to live in prostitution	22-2708	
25	Detaining an individual in disorderly house for debt there contracted	22-2709	
26	Forcible rape, carnal knowledge or statutory rape as these offenses were proscribed until May 23, 1995 by § 22-4801		
27	Robbery	22-2801	
28	Attempted robbery	22-2802	
29	Carjacking	22-2803	
30	Indecent acts with children as this offense was proscribed until May 23, 1995 by § 22-3801(a)		
31	Enticing a child as this offense was proscribed until May 23, 1995 by § 22-3801(b)		
32	Sodomy as this offense was proscribed until May 23, 1995 by § 22-3802(a)		
33	First degree sexual abuse	22-3002	
34	Second degree sexual abuse	22-3003	
35	Third degree sexual abuse	22-3004	
36	Fourth degree sexual abuse	22-3005	
37	Misdemeanor sexual abuse <sup>7</sup>	22-3006	Minor under the age of 18 years
38	First degree child sexual abuse	22-3008	
39	Second degree child sexual abuse	22-3009	
40	Enticing a child	22-3010	
41	First degree sexual abuse of a ward	22-3013	
42	Second degree sexual abuse of a ward	22-3014	
43	First degree sexual abuse of a patient or client	22-3015	
44	Second degree sexual abuse of a patient or client	22-3016	
45	Attempts to commit sexual offense	22-3018	Includes qualifying offenses in paragraph numbers 33-44 above, with noted restrictions.
45A	Act of terrorism	22-3152(1)	
45B	Manufacture or possession of a weapon of mass destruction	22-3154	
45C	Use, dissemination, or detonation of a weapon of mass destruction	22-3155	
46	Attempt or conspiracy to commit any of the offenses listed in paragraphs (1) through 45C of this section		

<sup>7</sup> D.C. Code 22-3010.01, Misdemeanor Sexual Abuse of a child or minor is not a qualifying offense.

APPENDIX C  
DNA DECLARATION FORM



Court Services and Offender Supervision Agency  
for the District of Columbia

Office of the Associate Director, CSS

**DECLARATION**

I, \_\_\_\_\_, understand

that I have been convicted of a District of Columbia (DC) qualifying offense that requires me to provide a DNA sample to Court Services and Offender Supervision Agency (CSOSA).

I understand that my failure to provide CSOSA with my DNA sample collection, in accordance with the Federal DNA Analysis Backlog Elimination Act of 2000, will result in a Class A misdemeanor, carrying a punishment of a fine not to exceed \$100,000 and/or imprisonment not to exceed one year in jail, following conviction.

: Check this box to indicate that you were read and understand the above information.

Name: \_\_\_\_\_ PDID: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness signature: \_\_\_\_\_