

Key Considerations and Strategies for Collecting Lawfully Owed DNA

What is Lawfully Owed DNA?

In recent years, many jurisdictions around the country have begun to identify gaps in the process of collecting DNA from individuals with qualifying offenses for subsequent DNA profile upload into the Combined DNA Index System (CODIS). There are a variety of reasons for how these gaps in DNA sample collection may occur. The collection of lawfully owed DNA (LODNA) samples has been missed at various points within the criminal justice process, and these missed opportunities result in fewer DNA profiles in CODIS, leading to fewer hits to sexual assault kits, including cold case sexual assaults being addressed in the Bureau of Justice Assistance's (BJA's) National Sexual Assault Kit Initiative (SAKI) program (see [Collecting Lawfully Owed DNA](#)). Identifying individuals who lawfully owe DNA through the creation of a census is the first step to effectively supporting the successful application of CODIS to resolve cases and is a critical part of the comprehensive approach to addressing sexual assault response reform. While the testing of previously unsubmitted sexual assault kits is also an essential component, the importance of populating CODIS with DNA samples from individuals with qualifying arrests and convictions cannot be underestimated. Without a comprehensive DNA database containing legally required samples from as many individuals as possible, fewer investigative leads in the form of CODIS hits will be obtained from testing sexual assault kits. Addressing LODNA collection gaps has led to the resolution of unsolved violent crimes around the country.¹

After the compilation of a robust census of persons who lawfully owe a DNA sample, the next step in a comprehensive approach to addressing LODNA is to verify the census data and collect samples from the individuals identified. This is a labor-intensive and time-consuming process, so it is critical that the LODNA multidisciplinary team (MDT) is appropriately staffed to assist with sample verifications and collections. For additional information, see *Key Considerations for a Multidisciplinary Team Approach to Creating a Lawfully Owed DNA Census*.

1. Wade, L. (2013). Cold hit. *Investigative Review*, 5(2), 6–7. https://www.lindseywade.org/files/ugd/c02435_8c66bcac4aa345a6b0a9a18ea4f30bed.pdf

Verification of LODNA Census Data

Confirming Qualifying Offenses

Reliance on initial database search results may prove unsuccessful in determining whether an individual listed in the census lawfully owes a DNA sample. Instead, it will be necessary to manually verify qualifying convictions or offenses for individuals listed on the LODNA census to confirm which individuals the LODNA MDT will collect a DNA sample from. This could include running criminal history analyses and, in some cases, pulling the judgment and sentence documentation to verify the conviction data. Sometimes an individual on the LODNA census may not lawfully owe a DNA sample for the following reasons:

- ◆ A DNA profile is already in CODIS, but the individual was listed on the census as a result of:
 - Use of aliases,
 - Incorrectly spelled name(s),
 - Incorrect date of birth, or
 - The State Identification Number (SID) was not used for the sample ID in CODIS.
- ◆ A DNA sample is not lawfully owed because:
 - The individual was convicted out of state and is serving an out-of-state prison sentence under an interstate compact agreement.
 - ◆ These individuals may owe a DNA sample to the state where the conviction originated.
 - The individual has no qualifying offense.

LODNA Collection Strategies

Confirming Location

After verifying which individuals within the jurisdiction lawfully owe a DNA sample, it becomes necessary to locate the individual in preparation for collection of a DNA sample. Because individuals move or can reenter the correctional population, efforts to determine the most recent address or location may be best accomplished immediately prior to collection, since the location of the individual may change

frequently and quickly. It may be possible to get assistance locating individuals from:

- ◆ The United States Marshals Service
 - May be able to assist with locating individuals required to register as a result of a sex offense conviction who have absconded.
- ◆ A State Information/Fusion Center
 - Assists with comprehensive reports for location inquiries.

Establishing Collection Teams

The collection of LODNA samples may be accomplished by various law enforcement representatives. It is suggested that the LODNA MDT identify teams of individuals who will be responsible for the collection and relevant documentation of LODNA sample collection. Some key considerations the MDT should review prior to collecting LODNA samples include:

- ◆ Who will collect samples for each phase?
- ◆ Does the crime laboratory provide training on DNA collection procedures?
- ◆ Does the crime laboratory have an adequate supply of DNA Collection Kits?
- ◆ What happens in the case of a refusal?

Creating a Phased Collection Plan

The LODNA MDT may want to consider organizing the collection of LODNA samples into phases. Such strategies may include phases organized by geographic region, population, qualifying offense, or a combination of other factors. One example of a phased plan that considers population and qualifying offense is highlighted below. Also included are possible strategies for the collection of LODNA samples. Regardless of collection strategy, it is critical to carefully document and track the collection of LODNA samples. See the **Comprehensive LODNA Sample Tracking** section below for additional information.

Phase 1: Individuals Currently Incarcerated

- ◆ Request collections by Department of Corrections (DOC) staff.

Phase 2: Individuals on Probation or Parole

- ◆ Request collections by DOC probation or parole officers.

Phase 3: Individuals Required to Register for Sex Offense Convictions

- ◆ Request collections by local police or sheriff's departments where the registered individual resides.

Phase 4: Individuals Residing in the Community – Request qualifying individuals report for collection

- ◆ It is recommended that samples collected in the community be obtained by a commissioned law enforcement officer.
- ◆ Consider prioritization by conviction or offense.
- ◆ Request individuals come to you at a designated time or location.
 - **Letters:** One strategy that has been successful for other LODNA SAKI sites is to send letters to individuals with a notification that a DNA sample is owed because of a qualifying offense. The letter may direct the individual to report to the local law enforcement agency to provide a DNA sample. This strategy can be particularly effective for sites operating with limited law enforcement resources or with large census numbers.
 - **Collection Clinics:** Another strategy utilized by some SAKI sites to collect LODNA samples is to organize collection clinics on specific dates and times at a designated location to allow for bulk collections. These collection clinics have been held at libraries, community centers, or the local police or sheriff's office.

Phase 5: Individuals Residing in the Community – Seek out qualifying individuals directly

- ◆ It is recommended that samples collected in the community be obtained by a commissioned law enforcement officer.
 - Consider prioritization by conviction or offense.
 - Go to the individual's residence or other location that the individual can be found.

Phase 6: Deceased Individuals

- ◆ Depending on the jurisdiction, LODNA samples from deceased individuals may be able to be entered into the state DNA database. It is recommended that sites consult a legal advisor and CODIS representative to determine whether this is allowable or if a court order is required. See call-out box **Collections from Deceased Individuals Legislation: "Jennifer and Michella's Law"** for information on how one SAKI site implemented changes to allow for these collections.²

² For additional reading, see: Schubert, A., & Burke, C. (n.d.). Dead man talking: DNA secrets from the grave. *CDAAs Prosecutor's Brief*, 36(1), 15–18.

◆ **If allowable, it may be difficult to obtain a DNA sample from deceased individuals. Some locations where DNA from deceased individuals may be found include:**

- Medical Examiner/Coroner's Office: Blood card or tissue blocks if the individual had an autopsy.
- Law Enforcement Agency's Property & Evidence Room: DNA reference sample collected by the agency.
- Crime Laboratory: DNA reference sample or DNA extract retained after previous testing.

Collections from Deceased Individuals Legislation: "Jennifer and Michella's Law"

Jennifer and Michella's Law was inspired by the murders of two young girls in Tacoma, Washington. The cases were unsolved for more than 30 years. Despite the fact that law enforcement had DNA evidence in both cases, there were no matches in CODIS. Populating the CODIS database with individuals who may have slipped through the cracks will undoubtedly help to solve more cases in the future. In recognition of this, Washington State expanded the collection laws to allow inclusion of samples from deceased individuals. The law now states:

*"Law enforcement may submit to the forensic laboratory services bureau of the Washington state patrol, for purposes of DNA identification analysis, any lawfully obtained biological sample within its control from a deceased offender who was previously convicted of an offense under subsection (1)(a) of this section, regardless of the date of conviction."*³

Comprehensive LODNA Sample Tracking

It will be necessary to utilize a system to track all of the census data as well as the progress of the collections, CODIS uploads, resulting CODIS hits, and any follow-up investigations. Consider whether this is something that could be created by an analyst or Information Technology (IT) personnel, or if an existing database could be modified for this purpose. The LODNA MDT should consider the following aspects:

³ Jennifer and Michella's Law, RCW 43.43.754 (2019 & rev. 2022). <https://app.leg.wa.gov/RCW/default.aspx?cite=43.43.754&pdf=true>

- ◆ Collaborate with the crime laboratory CODIS Administrator and IT staff to ensure the project runs smoothly. This communication will include verifying individuals who owe a DNA sample, preventing duplicate DNA sample collection, and keeping the LODNA census up to date. Consider setting up a secure Shared File Transfer Site to share information between the laboratory and the LODNA MDT. Constant communication and sample verification is critical.
- ◆ Request that **LODNA Census Sample** be written or stamped on the DNA sample collection kits to assist with tracking. There may be instances where an individual on the census is arrested or convicted of a new offense and has a DNA sample collected because of that new offense, not because of the LODNA project. Being able to distinguish between these two scenarios will assist with accurate tracking for grant reporting purposes, and regular communication with laboratory personnel will be necessary to keep the census updated.

Conclusion

A comprehensive effort to collect LODNA is a critical component of the BJA SAKI program and supports an effective strategy to address violent crime. While effective strategies to test sexual assault kits is a critical step in addressing sexual assault response reform, the importance of populating CODIS with DNA samples from individuals with qualifying offenses cannot be underestimated. Without a robust DNA database containing legally required DNA samples from as many individuals as possible, fewer CODIS investigative leads will result from testing previously unsubmitted sexual assault kits. A comprehensive approach to addressing the systemic inadequacies that result in failure to effectively identify and collect LODNA is necessary to prevent the problem from recurring and to create sustainable solutions for the future.

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