

# Collecting Lawfully Owed DNA

Investigators and prosecutors rely on DNA samples in the Combined DNA Index System (CODIS) to help solve cases and bring justice to victims. The solvability of cases increases as the database becomes populated with more samples. Sexual assaults and other crimes are less likely to be solved if there is delay over collecting, testing, and uploading of DNA samples. Thus, collecting lawfully owed DNA from qualifying offenders contributes to a comprehensive approach to addressing sexual assault reform.

## Lawfully Owed DNA

A DNA sample from a qualifying offender that was never collected or submitted to a crime laboratory for testing and upload into CODIS.

Based on the type and time of the offense in relation to applicable state law, a DNA sample may be legally obtained from an offender for testing and upload into CODIS.

A thorough review of operating procedures for DNA collection and submission from qualifying offenders may identify possible gaps in the process. These gaps may lead to non-collection or identify language that may need updating to interpret the law or to remove limiting stipulations.

There may be uncertainty around whether the law can be applied retroactively to situations in which DNA collection laws have changed; such updates may include adding crime categories as qualifying offenses. Other issues involve laws that include effective dates or don't specify the agency responsible for collection. Legal uncertainty may result in non-collection of hundreds to thousands of individual samples, especially if the offenders have already been released on parole.<sup>1</sup> It is important to determine if collection can occur either via a court order (if the intent of the law can be interpreted) or if current legislation language can be modified.

## Success Story

In 2011, the Michigan Department of Corrections collected 5,000 lawfully owed inmate samples. The collected samples linked the inmates to 74 additional unsolved crimes, including 5 murders, 23 rapes, and 3 armed robberies.<sup>2,3</sup> This was made possible by amended laws.

The timing of collection can also be critical in helping to solve other crimes. Some jurisdictions wait to collect DNA until releasing the offender because the offender does not pose a threat to society during incarceration.<sup>4</sup> However, if the offender committed other crimes, then this may not be discovered for many years (if not decades) if DNA collection occurs at the time of release.

## Possible Reasons for Owed Samples

- ◆ Changes in DNA collection laws were not applied retroactively or include limiting stipulations.
- ◆ Collection occurs at time of release instead of time of entry.
- ◆ Offender released on parole.
- ◆ Offender bypassed certain steps of intake admission to the criminal justice system.
- ◆ Offender resisted collection and no follow up was conducted.
- ◆ Offender is deceased.

If DNA collection is missed at the time of release, then it may not be possible to collect DNA afterwards. Collection at the beginning of incarceration recognizes the benefits of adding the offender's DNA sample into CODIS to search against the database.

Remember that offenders are not always admitted to an intake system according to standard operating procedures.<sup>4</sup> An offender's intake may include admission through a different location, such as an infirmary or a mental hospital. Training, collaborating, or traveling to a site for collection may need to occur for these situations.

Offenders also do not always comply with requests to obtain DNA samples, making it difficult to collect the lawfully owed sample.<sup>1</sup> If this occurs, procedures need to be in place to record the noncompliance and to collect a sample "non-voluntarily" through a court order or other means. Legislation can also be updated to include the acceptability of "use of force" to obtain a DNA sample.

## Success Story

Project D3 was an initiative to determine (1) if deceased inmates and parolees in Sacramento County, California, had qualifying offenses to collect DNA and (2) if biological material existed in order to obtain a DNA profile.

As a result, 40 autopsy slides were collected from Folsom State Prison. A dead inmate who was convicted of five murders in Los Angeles County but whose DNA was never collected, was linked to another unsolved murder in LA through a DNA profile developed from an autopsy slide.<sup>5</sup>

Deceased offenders who never had a DNA sample collected may be another category of lawfully owed DNA. Autopsy slides may be a viable source of DNA for these deceased offenders. There may also be DNA associated with the offender in evidence obtained by law enforcement, at the crime laboratory, or even with the court.<sup>5</sup>

Collecting and testing of lawfully owed DNA samples can provide new leads for unsolved sexual assaults and other violent crimes. Reviewing some of the possible reasons for owed samples against current State legislation and operating procedures for collection may identify process gaps and outline ways to guarantee timely collection of qualifying samples.

For more information on the collection and utilization of lawfully owed DNA, please see the following two SAKI Training and Technical Assistance webinars:

### Lawfully Owed DNA, Part 1:

[http://bit.ly/lawfullyoweddna\\_pt1\\_webinar](http://bit.ly/lawfullyoweddna_pt1_webinar)

### Lawfully Owed DNA, Part 2:

[http://bit.ly/lawfullyoweddna\\_pt2\\_webinar](http://bit.ly/lawfullyoweddna_pt2_webinar)

## References:

1. Augenstein, S. (2017, July 17). Hidden in prison: 7 states have thousands of inmates not in DNA databases. *Forensic Magazine*. Retrieved from <https://www.forensicmag.com/news/2017/07/hidden-prison-7-states-have-thousands-inmates-not-dna-databases>
2. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance. (2017). *National Sexual Assault Kit Initiative (SAKI)*. FY 2017 Competitive Grant Announcement.
3. Michigan Department of Corrections. (n.d.). *DNA profile collection completed* [Web site]. Retrieved from <http://www.michigan.gov/corrections/0,4551,7-119--264812--,00.html>. Accessed August 31, 2017.
4. Wade, L. (2015, January 16). Cold hit: New technology reveals old evidence. *Forensic Magazine*. Retrieved from <https://www.forensicmag.com/article/2015/01/cold-hit-new-technology-reveals-old-evidence>
5. Schubert, A., & Burke, C. (n.d.). Dead man talking: DNA secrets from the grave. *CDAAs Prosecutor's Brief*, 36(1), 15–18.

## Author:

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