



Lawfully Owed DNA Collection: A Systematic Review of State-Level Statutes and Procedures

Hannah Pires, Lisa Growette Bostaph, & William R. King
Boise State University
Department of Criminal Justice
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Introduction

Lawfully owed DNA is DNA an offender is required to submit to the state when they are arrested or convicted of a qualifying offense (Melton et al., 2022). Ideally, this DNA profile is then “entered into the appropriate index (i.e., Convicted Offender Index or Arrestee Index [CODIS]) and uploaded into the State DNA Index System (SDIS) and the National DNA Index System (NDIS); SDIS and NDIS are both components of CODIS.” (Forensic Technology Center of Excellence [FTCoE], 2021, p. 1). State statutes detailing DNA collection procedures vary regarding who collects the sample, when and where in the process it is collected, and procedures if an individual refuses to provide a sample. This report will compare DNA collection procedures used among U.S. states and offer suggestions on how to best structure these statutes.

Agencies in Charge

Each state’s statute defines the agency in charge of maintaining the DNA database and the testing of DNA samples. Most often, agencies in charge of the database and testing include state agencies, such as a department of forensic science, state police agencies, and department of justice. In thirty-three states, the agency in charge of the DNA database also creates and communicates the procedures for collection, submission, tracking, and testing of DNA samples. Some statutes also require these agencies to provide the supplies necessary for DNA collection (e.g., Kansas, Kentucky, Maine, Michigan, Missouri).

Ideally, when DNA is collected, the profile is submitted into CODIS, the FBI’s DNA database. For this reason, twenty-three states have a statute specifying that DNA collection and submission procedures must be compatible with the FBI’s. Seven states (Florida, Idaho, Maryland, Nebraska, Nevada, New Mexico, South Dakota) also designate an FBI liaison to ensure samples are properly submitted and results are communicated to the appropriate agencies.

Methods

For this report, we reviewed every state’s owed DNA statute and categorized them on the points during which DNA may be collected. If a statute included multiple points of collection, the state was categorized into each point.

States were grouped by collection at arrest and conviction or at conviction only. Then, states were grouped into each point in the criminal justice process during which DNA may be collected. Figure 1 shows each of these categories.

Additionally, two common procedures for dealing with individuals who refuse to submit their DNA were included. These were states which impose new charges for those who refuse to submit, and states that allow the use of reasonable force to obtain the DNA sample. Table 1 in Appendix A

Figure 1. DNA Points of collection

- Arrest
- Booking
- At/following initial appearance
- After probable cause determined
- Prior to pretrial release
- After conviction
- After sentencing
- Incarceration
 - At intake
 - Within a certain time frame/as soon as practicable
 - Any time /prior to release
- Community Supervision
 - Within specified time frame/as soon as practicable
 - Any time/before release
- At or following sex offender registration
- Upon request from agency or court
- As a condition of out of state transfer

shows each state’s point of collection and the states that have procedures for individuals who refuse to submit.

Point in Process when DNA is Collected

For every state but Delaware, there are a multitude of points in the criminal justice process when DNA may be collected from an offender. The timing of DNA collection in each state is partly dependent on the type of offense committed. See Table 1 in Appendix A for links to individual state statute

Arrest

Twenty-four states with offenses that qualify for collection at arrest require the arresting policing agency to collect the sample when the individual is booked. Other states, such as California and Connecticut, require the individual’s DNA to be collected as a condition of pretrial release (e.g., bail or release on recognizance) and by the agency operating the jail. States that collect DNA after arrest must wait to submit the sample for testing until probable cause has been determined. If the individual is found not guilty at trial, ideally, the sample must be destroyed.

Incarceration

For offenses which require submission at conviction, forty-three states specify that DNA is to be collected by the custodial agency, if the individual is sentenced to incarceration. This means individuals sentenced to incarceration in a jail or prison will have their DNA collected at the facility by the managing agency. Twenty-seven statutes specify that the collection occurs at intake or within a certain number of days after intake. Thirty states mandate that it occurs before release from the facility, allowing for a longer collection timeline. Idaho mandates DNA must be collected at prison intake, or if missed, any time during incarceration as long as it is collected prior to release.

Probation/Parole

Twenty-seven states allow DNA collection during probation and/or parole, and fourteen specify that the supervising agency is the one to collect. Alternatively, five states require a law enforcement agency or the agency in charge of the DNA database to collect samples from the supervised person. Twenty-two statutes only state that the DNA should be collected as a condition of the individual’s sentence and do not specify a time or place for collection. Arizona, Hawaii, Oregon, Virginia, and West Virginia are the exception, as they specify DNA samples must be collected within a certain amount of time or as soon as practical. In Idaho, a DNA sample is to be collected any time during, or before release from, probation or parole, if one has not already been provided.

Table 1. States Using Additional Points of Collection

Additional Points of Collection	Number of States
Collection after conviction	9 States
Collection after sentencing	18 States
Collection during sex offender registration	10 States
Transfer from another state	18 States

Additional Points

Forty-six state statutes detail procedures for collecting DNA samples while offenders are incarcerated or under community supervision.

Twenty-three states, however, have procedures for collecting DNA immediately after the

offender has been convicted or sentenced. These states may require court actors, individuals in the sheriff’s office, or the agency managing the detention facility the offender is housed in to collect the DNA. In Idaho, DNA may only be collected after conviction and before sentencing, if a prosecutor or the Idaho State Police are able to show collecting the sample early will be “in the best interest of justice” (Title 19 Chapter 5507, 1996). For eight states, the collection of DNA after sentencing is only applicable to those who have been given a non-custodial sentence. Florida, for example, specifies offenders sentenced to community supervision may not be released from the court’s custody until their DNA has been collected. Idaho takes a different approach, specifying individuals without a custodial sentence must report within 10 days to a designated collection facility.

All states require DNA submission for the conviction and/or arrest of certain sex offenses. Only 10 state statutes include information on collecting DNA during the sex offender registration process or by the registering agency. Missouri requires samples to be collected at the time of registration, while Hawaii provides offenders with the date and location of their collection appointment while registering. Other states, such as Illinois and Texas, only mention that the agency in charge of the sex offender registry is also in charge of collecting the offender’s DNA, but do not specify a specific time or place for this to occur. In Idaho, the sex offender registration location must check whether a DNA sample has been collected, and if not, collect one.

The last point at which DNA may be collected is transfer from another state. Eighteen states require offenders who move, or are moved, from another state to submit their DNA to the receiving state as a condition of acceptance. Statutes that require DNA submission as a condition of transfer often specify that the custodial or probation/parole agency in the receiving state is responsible for collection within a certain number of days. Idaho requires individuals transferring from another state, who are not incarcerated, to provide a DNA sample to their supervising agency within 10 days of reporting to that agency or of being notified of the requirement, whichever is first.

Individuals Authorized to Collect

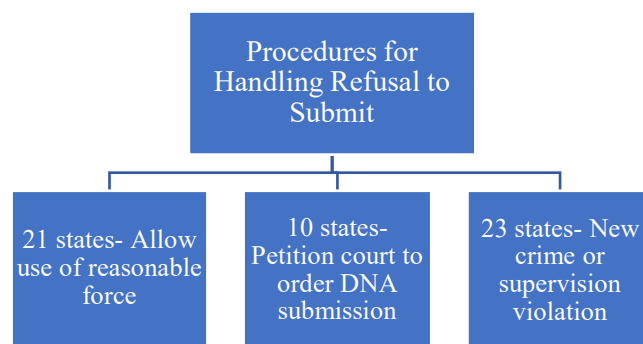
Blood, buccal swabs, and tissue samples are the three types of DNA samples that may be collected by an agency. Seventeen states (e.g., Illinois, Maine, Nebraska, New Jersey) specify only certain types of medical personnel are allowed to collect blood samples. For most states, this includes physicians, registered nurses, phlebotomists, licensed practical nurses, and/or laboratory and medical technicians.

Twelve states (e.g., Delaware, Indiana, Kentucky, Louisiana, Massachusetts) have a more general statute requiring individuals who collect DNA samples to be trained in collection procedures or list the individuals qualified to collect all types of samples.

Steps to Ensure Collection

The points of collection described above are not mutually exclusive. Forty-nine states allow DNA to be collected at multiple points throughout the criminal justice process to prevent individuals from slipping through the cracks.

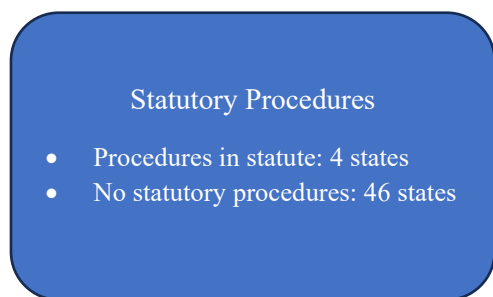
Figure 2. Refusal to Submit DNA Across States



For example, Connecticut’s statutes specify DNA may be collected at booking into jail, prior to pretrial release, prior to release from custody, and prior to release from probation/parole. In states with multi-point collection, agencies are required to check whether the individual has previously submitted their DNA. If so, they do not have to collect a sample. If it has not yet been submitted, then the appropriate agency should collect it.

Some offenders are unwilling to submit their DNA to the collecting authority, so thirty-two states mention in their statutes how to handle a refusal to submit. Twenty-one states allow officers in the collecting agency to use reasonable force if the individual refuses to provide a sample. Ten states also outline procedures for petitioning the court to order the offender to provide a sample. If the offender continues to not cooperate, there are eighteen states which

Figure 3. Collection after Supervision Expires



classify refusal to submit a DNA sample as a new crime and six which specify it is a violation of supervision.

Eighteen states require offenders to submit their DNA if a sample has been requested from an agency or ordered by a court. This may be useful when identifying samples that have been missed, but for fourteen states, submission by request or court order is only applicable to individuals still in the system. Forty-six states’ statutes, including Idaho’s, are silent on procedures for collecting DNA once offenders have exited the criminal justice system. However, Illinois, Minnesota, South Dakota, and West Virginia specify that individuals who are released

from the system without having provided a sample should be sent a court order notifying them of their requirement to provide. Minnesota has the clearest and most detailed procedures for collection after supervision expires.

Discussion and Conclusion

State statutes vary greatly in their DNA collection procedures. Statutes should be as specific as possible in regard to who collects the DNA and at what point in the process it should be collected. States such as Maine, Indiana, and South Dakota have statutes requiring DNA submission but lack information on the agency in charge or timing of this collection. The vagueness of these statutes leaves room for confusion, increasing the chances that offenders and samples slip through the cracks. More detailed procedures leave less room for error. States should construct their statutes to be as clear and specific as possible to prevent missed samples.

The FTCoE (2021) conducted interviews with five collection agencies in different states, which produced suggestions for improving owed DNA collection procedures.

Suggestion 1: *Representatives from crime labs and collection agencies are important stakeholders in the creation of owed DNA legislation.* These stakeholders provide information on the success of procedures already in place and what is needed to improve DNA collection and analysis.

Suggestion 2: *States should focus on improving DNA tracking systems and increasing communication between collection agencies and crime labs.* Interviewees also identified shortcomings in the tracking of sample collection and submission. Some states lack a tracking system which allows collecting agents to see whether an individual has already submitted their DNA or if a sample needs to be collected. In addition, limited communication between collection

agencies and crime labs makes it difficult to track the number of samples submitted to the lab and whether all samples were received.

Suggestion 3: *Procedures should hold collection agencies and those overseeing them responsible when lawfully owed DNA samples are missed.* Although procedures are in place to guide officials in collecting DNA from those who owe, it does not guarantee agencies are following these procedures. Numerous states, such as Ohio, Alaska, and Washington, have discovered serious shortcomings in DNA collection and were forced to create procedures to collect missed samples. Ohio is now an example of successful collection of lawfully owed DNA. Every missed DNA sample is a missed opportunity for solving a case. Holding agencies responsible for missed collections helps emphasize the importance of this process (FTCoE, 2021).

In conclusion, across the country, states initiate DNA collection at a variety of points in the criminal justice process with the majority of states allowing for collection at multiple junctures. There is

Figure 4. Improving Collection Procedures

- Include crime lab and collection agency representatives in the creation of owed DNA legislation
- Improve DNA tracking systems and increase communication between collection agencies and crime labs
- Create procedures that hold collection agencies and those overseeing them responsible when samples are missed

Figure 5. Recommendations for Owed DNA Statutes

- Delineate the point(s) in time for collection.
- Identify the agency and personnel responsible at each collection point.
- Establish and implement a robust and accessible tracking system.
- Hold responsible agencies accountable for missed collections.
- Establish a process for obtaining lawfully owed DNA that is not collected.

little consensus around best practices in terms of a singular point for collection. However, based on observations and experiences with these processes, DNA collection statutes should *clearly*: (1) delineate the point(s) in time for collection, (2) identify the agency(ies) and personnel responsible at each collection point, (3) establish and implement a robust and accessible tracking system, (4) hold responsible agencies accountable for missed collections, and (5) establish a process for obtaining lawfully owed DNA that is not collected.

References

Forensic Technology Center of Excellence (2021). Perspectives on addressing the collection, tracking, and processing of lawfully owed DNA samples. U.S. Department of Justice, National Institute of Justice, Office of Investigative and Forensic Sciences.

Melton, P., Krauss, S., Martin, M., Zablocka, R., Sheppard, M., Gourdet, C., Kurland, J. (2022). A review of legislation associated with lawfully owed DNA samples. Forensic Technology Center of Excellence, U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Office of Investigative and Forensic Sciences.

The Idaho DNA Database Act of 1996, 19 Idaho Statutes § 55507 (1996).
<https://legislature.idaho.gov/statutesrules/idstat/Title19/T19CH55/SECT19-5507/>

Appendix A

Table 2. Elements of Owed DNA Collection by State, as of 2023^a

Collect DNA for Arrest and Conviction	Alabama , Alaska , Arizona , Arkansas , California , Colorado , Connecticut , Florida , Illinois , Indiana , Kansas , Louisiana , Maryland , Michigan , Minnesota , Mississippi , Missouri , Nevada , New Jersey , New Mexico , North Carolina , North Dakota , Ohio , Oklahoma , Rhode Island , South Carolina , South Dakota , Tennessee , Texas , Utah , Virginia , Wisconsin
Collection at Arrest	Michigan, North Carolina, North Dakota
DNA Collected at Booking into Jail	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Indiana, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Utah
Collection at/following Initial Appearance	Arkansas, Colorado, Maryland, North Dakota, Ohio, South Carolina
DNA Collected after Probable Cause Determined by Judge or Indictment Returned by Grand Jury	Illinois, North Carolina, South Carolina, Tennessee, Virginia
Collect DNA Prior to Pretrial Release	California, Connecticut, Nevada, New Jersey, Tennessee, Virginia
Collect DNA Only for Conviction	Delaware , Georgia , Hawaii , Idaho , Iowa , Kentucky , Maine , Massachusetts , Montana , Nebraska , New Hampshire , New York , Oregon , Pennsylvania , Vermont , Washington , West Virginia , Wyoming
DNA Collection after Conviction	Idaho , Kentucky, Massachusetts, Michigan, Montana, New York, Oregon, Utah , West Virginia
DNA Collected after Sentencing	California, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota , New York, North Carolina , Ohio, Pennsylvania, South Dakota , Wyoming
DNA Collected at Intake into Jail/Prison	Alaska, Arkansas, California, Florida, Hawaii , Idaho, Iowa , Louisiana, Maryland, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina , Ohio, Pennsylvania, South Dakota, Texas , Vermont, West Virginia
DNA Collected Within Specified Time Frame/As Soon as Practicable After Entering Jail/Prison	Arizona, California, Georgia , Hawaii, Illinois, Iowa, Massachusetts, North Dakota, Washington
DNA Collected Any Time During/Prior to Release from Jail/Prison	Alabama, California, Colorado, Connecticut, Florida, Idaho, Kansas, Maine, Minnesota, Mississippi , Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma,

	Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia , Wisconsin, Wyoming
DNA Collected during Probation/Parole Within Specified Time Frame/As Soon as Practical	Arizona, Hawaii , Oregon, Virginia, West Virginia
DNA Collected Any Time During/Before Release from Probation/Parole	Alabama, Connecticut, Georgia, Idaho, Illinois, Iowa, Maine, Maryland, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia
DNA Collected Upon Request from Agency or Court Order	Alabama, California, Hawaii , Idaho, Illinois, Minnesota, Montana, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas , Vermont , Washington, West Virginia, Wisconsin
Collection from Out of County/State Transfers	Alaska, Arizona, California, Florida, Hawaii , Idaho, Illinois, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nevada, Ohio, Pennsylvania , South Dakota , Texas, West Virginia
DNA Collected During or Shortly After Sex Offender Registration	California, Hawaii , Idaho, Illinois, Mississippi , Missouri, New Mexico, Texas , Virginia, West Virginia
Additional Charges for Individuals who Refuse to Submit	Arkansas, California, Connecticut, Florida, Idaho, Illinois, Iowa, Kansas, Kentucky, Massachusetts , Michigan , New Hampshire, North Carolina, South Dakota, Washington, West Virginia, Wisconsin, Wyoming
Allowed to Use Reasonable Force if Offender Refuses to Submit	Alaska, Arkansas, California , Colorado Connecticut, Florida, Idaho , Illinois, Louisiana, Massachusetts , Missouri, New Hampshire, Pennsylvania , Rhode Island , South Dakota , Texas, Utah, Vermont, West Virginia, Wisconsin, Wyoming

a. NOTE: This table contains URL links to state statutes. Ensure your software permits access to the URLs