

GENERAL ORDER XXXIX

SUBJECT: DNA/COLLECTION/EXPUNGEMENT NOTIFICATION

EFFECTIVE DATE: 02-25-10

REVIEW DATE: 01-13-12

NOTE: This rule or regulation is for internal use only and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department and then only in a non-judicial administrative setting.

Purpose

It is the purpose of this procedure to meet the guidelines established in Section 650 RSMo for the collection of DNA samples and DNA expungement notifications associated with defined arrests.

Policy

The arrest of a person **who is seventeen years of age or older and who is arrested for burglary in the first degree under section 569.160, RSMo, or burglary in the second degree under section 569.170, RSMo, or a felony offense under chapters 565, 566, 567, 568, or 573, RSMo,** shall have blood or scientifically accepted biological sample collected for purposes of DNA profiling analysis **upon booking by the arresting officer or designated officer of the arresting agency. This information will also be deposited into the CODIS system.**

Procedures for DNA Collection

- A. Lawful arrest of a person who is seventeen years of age or older and is arrested for one of the following offenses.
1. Burglary 1st Degree under 569.160 RSMo., or
 2. Burglary 2nd Degree under 569.170, RSMo, or
 3. **A felony offense** under the following chapters
 - a. 565 RSMo. – Offenses Against Person
 - b. 566 RSMo. – Sexual Offenses
 - c. 567 RSMo. – Prostitution
 - d. 568 RSMo. – Offenses Against the Family
 - e. 573 RSMo. – Pornography and Related Offenses.

B. Process to determine if DNA is needed for purposes of 650 RSMo.

1. Run Criminal History or QDNA Query. This report will provide information if DNA has already been received by the Highway Patrol.
2. If the Criminal History and/or QDNA report shows there is DNA on File, then a DNA collection is not required.
3. .If the Criminal History and/or QDNA report shows there is no DNA on file then collects a DNA sample with the DNA Kit which is provided by the Highway Patrol as directed by the instructions provided with the kit and DNA collection training. (*DNA collection kits must be kept in a temperature-controlled environment and shall not be stored in patrol vehicles.*)
4. The kits will NOT be used to collect samples for evidence submission from suspects or suspected samples from scenes. Different procedures are utilized for the collection of samples related to criminal investigations. (Agency will need to collect another DNA sample for criminal investigations.)

C. Procedures for collections

1. Contents of collection kit:
Each collection kit is designed for one time use and consists of protective gloves, a sample collection card, pre-inked fingerprint sheet, a disposable buccal swab, and a pre-addressed mailing envelope:
2. Collection process:
 - a. Collection kit instructions. Collection kits instructions should be closely followed to ensure the best possible DNA sample is collected. The following additional steps must be followed when completing information on the inside area of the sample card:
 1. Enter the Offense Cycle Number (OCN) from the ten-print card or Livescan device in the blank area next to the Missouri Offense Code boxes.
 2. Write an "A" next to the jail box to indicate the sample was collected following an arrest.
3. Mailing completed collection cards:

1. Upon completion of the collection process, place the collection card into the self addressed envelope, remove the peel and seal strip from the flap and press down firmly.
2. All completed kits must be immediately mailed to the Crime Laboratory Division. Do not mail the buccal swab to the Crime Laboratory Division.
3. After the sample is collected and placed onto the designated area of the collection card, buccal swabs can be placed into a trash receptacle.

4. Minor mistakes during collection process:

Minor errors during the collection process, such as writing the wrong date of birth on the inside of the sample card, are correctible by drawing a line through the wrong information and writing the correct information. Obtaining another DNA collection kit and repeating the process is not needed.

5. Significant collection issues:

Wrong person and non-qualifying offenses Cards containing samples mistakenly collected from the wrong person or for non-qualifying offense should be returned to the Crime Laboratory Division through the mailing process described in this order. A notation should be made on the collection card describing the circumstances associated with the mistaken collection. Crime Laboratory Division personnel will not analyze mistakenly collected samples for DNA.

6. Use of force to procure sample:

- a. According to Section 650.055 RSMo., “Any person required to provide a DNA sample pursuant to this section shall be required to provide a sample, without the right of refusal. Such force may be necessary to the effectual carrying out and application of such processes and operations. The enforcement of these provisions by the authorities in charge of state correctional institutions and others having custody or jurisdiction over those who have **arrested for**, convicted of, pleaded guilty to, or pleaded nolo contendere to felony offenses which shall not be set aside or reversed is hereby made mandatory.”

b. Extreme caution should be taken when attempting to obtain samples from an uncooperative or resisting subject. As an alternative to using force to obtain a DNA sample, assistance from judicial authorities may be appropriate to obtain a DNA sample prior to an arrested person's release from custody. If reasonable efforts to obtain a sample are not successful, the collection card will be completed with all available information and the words "refused" printed on the front of the card.

7. Complete the booking process in accordance with department policy and apply for a warrant.

A. Procedures for DNA Expungement for warrant refusal.

a. Within ninety days of warrant refusal, the arresting agency shall notify the Missouri State Highway Patrol Crime Laboratory which shall expunge all DNA records taken at the arrest for which the warrant was refused in the database pertaining to the person and destroy the DNA sample of the person, unless the Missouri State Highway Patrol determines that the person is otherwise obligated to submit a DNA sample.

b. Notification to the Highway Patrol shall be conducted by the arrest officer or other designated person of the department. Notification to the Highway Patrol of a warrant refusal causing the classified DNA expungement shall be sent on the form entitled "Missouri State Highway Patrol DNA Expungement Notification". This form shall be completed and then forwarded to the Highway Patrol fax, mail or e-mail.

www.mshp.dps.missouri.gov/MSHPWeb/Publications/Forms/documents/SHP-420.pdf

A. This policy is issued by the authority of the Chief of Police. Any policy additions, deviations or revisions shall be made only at the direction of the Chief of Police.

By Authority of:

Charles Brotherton, Jr., Chief of Police