



# Department of Defense INSTRUCTION

NUMBER 5505.14  
May 27, 2010

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IG DoD

SUBJECT: Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations

References: See Enclosure 1

1. PURPOSE. This Instruction:

a. Establishes policy, assigns responsibilities, and provides instructions for DNA collection requirements for criminal investigations in accordance with the authority in DoD Directive (DoDD) 5106.01 (Reference (a)) and the guidance in section 1565 of title 10, United States Code (U.S.C.); section 28.12(b) of title 28, Code of Federal Regulations; and sections 14132, 14135, and 14135a of title 42, U.S.C. (References (b), (c), and (d)).

b. Recognizes the Department of Defense and the Coast Guard as “agencies of the United States” for the collection of DNA samples pursuant to References (c) and (d).

c. Does not eliminate other legal or policy requirements to provide DNA, fingerprints, or criminal history data, including submissions to the Defense Incident-Based Reporting System pursuant to DoDD 7730.47 (Reference (e)).

d. Does not regulate DNA or other biometric data collected from non-U.S. persons who are detained or held by the Department of Defense or the Coast Guard during combat or operational activities.

e. Does not regulate DNA or other biometrical data collected pursuant to DoDD 8521.01E and Public Law 108-458 (References (f) and (g)).

f. Does not regulate DNA samples maintained for identification of human remains, referred to in section 1565a of Reference (b).

2. APPLICABILITY. This Instruction applies to OSD, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and

the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the “DoD Components”).

3. POLICY. It is DoD policy that:

a. Appropriate approving authorities of the following organizations shall take DNA samples, or direct they be taken, from Service members who are suspects of criminal investigations under the conditions in section 3 of Enclosure 3.

(1) The Defense Criminal Investigative Service, U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations (hereafter referred to collectively as the “Defense Criminal Investigative Organizations (DCIOs)”).

(2) The Pentagon Force Protection Agency, U.S. Army Military Police, U.S. Navy Masters at Arms, U.S. Air Force Security Forces, and U.S. Marine Corps Criminal Investigation Division (hereafter referred to collectively as “other DoD law enforcement organizations”).

(3) The Coast Guard Investigative Service (CGIS).

b. DCIOs, other DoD law enforcement organizations, and CGIS shall take DNA samples from civilians under the conditions in section 6 of Enclosure 3.

c. DNA samples taken by DCIOs and other DoD law enforcement organizations shall be expeditiously forwarded to the United States Army Criminal Investigation Laboratory (USACIL).

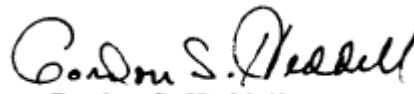
d. Service members from whom samples are taken and forwarded to USACIL, but who are not convicted of any offense by general or special courts-martial, may request in writing that their DNA records be expunged.

e. Civilians whose samples were taken and forwarded to USACIL, but who are not convicted of any offense, may request in writing that their DNA records be expunged.

f. DCIOs, other DoD law enforcement organizations, and CGIS shall provide instructions concerning expungement rights and procedures to all persons from whom they collect DNA samples in accordance with this Instruction. Such instructions shall be included in the USACIL DNA collection kits.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.
  
6. INFORMATION REQUIREMENTS. DoD internal reporting of the DNA sample kit is exempt from licensing in accordance with paragraphs C4.4.2. and C4.4.7. of DoD 8910.1-M (Reference (h)).
  
7. RELEASABILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.
  
8. EFFECTIVE DATE. This Instruction is effective immediately.

  
Gordon S. Heddell  
Inspector General

Enclosures

1. References
2. Responsibilities
3. Procedures

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5106.01, "Inspector General of the Department of Defense," April 13, 2006
- (b) Sections 912a, 1565, and 1565a of title 10, United States Code
- (c) Section 28.12(b) of title 28, Code of Federal Regulations
- (d) Sections 14132, 14135, and 14135a of title 42, United States Code
- (e) DoD Directive 7730.47, "Defense Incident-Based Reporting System (DIBRS)," October 15, 1996
- (f) DoD Directive 8521.01E, "Department of Defense Biometrics," February 21, 2008
- (g) Public Law 108-458, "Intelligence Reform and Terrorism Prevention Act of 2004," December 17, 2004
- (h) DoD 8910.1-M, "Department of Defense Procedures for Management of Information Requirements," June 30, 1998
- (i) DoD Directive 5400.11, "DoD Privacy Program," May 8, 2007
- (j) DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007
- (k) DoD Instruction 5505.11, "Fingerprint Card and Final Disposition Report Submission Requirements," June 20, 2006
- (l) Manual for Courts-Martial, United States, 2008
- (m) Commandant Instruction M5527.1 (series), "Coast Guard Investigations Manual," July 2, 2001<sup>1</sup>

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<sup>1</sup> This is a restricted USCG document. A list of offenses that are investigated (see paragraph 3.a. of Enclosure 3) may be obtained by contacting the US Coast Guard Freedom of Information Act Office, from the Internet at <http://www.uscg.mil/foia/>

ENCLOSURE 2

RESPONSIBILITIES

1. IG DoD. The IG DoD shall monitor and evaluate compliance with this Instruction.
  
2. HEADS OF THE DoD COMPONENTS AND COMMANDANT OF THE COAST GUARD. The Heads of the DoD Components and Commandant of the Coast Guard, with respect to the criminal investigative and law enforcement organizations under their control, shall:
  - a. Issue guidance to implement and comply with this Instruction.
  
  - b. Require that:
    - (1) Commanders coordinate closely with the appropriate DCIO, other DoD law enforcement organization, or CGIS to ensure DNA samples are taken and processed as required by section 3 of Enclosure 3.
  
    - (2) Commanders and Directors of the DCIOs, other DoD law enforcement organizations, and CGIS provide appropriate Privacy Act statements to persons from whom DNA samples are taken as required by DoDD 5400.11 and DoD 5400.11-R (References (i) and (j)).
  
    - (3) The final disposition of each criminal offense giving rise to the collection of DNA under this Instruction be reported on Federal Bureau of Investigation (FBI)/Department of Justice Form R-84, "Final Disposition Report," or its electronic equivalent, in accordance with DoD Instruction 5505.11 (Reference (k)). (Information on where to obtain this form is available on the Internet at <http://www.fbi.gov/hq/cjisd/arrestdispositions.htm>.)
  
3. SECRETARY OF THE ARMY. The Secretary of the Army, in addition to the responsibilities in section 2 of this enclosure and through USACIL, shall:
  - a. Ensure a DNA collection kit is developed and provided to locations designated by the DoD Components with law enforcement organizations. The collection kit shall include a notice of general expungement rights.
  
  - b. Analyze all DNA samples submitted in accordance with this Instruction and forward the results to the FBI for inclusion in the Combined DNA Index System (CODIS).
  
  - c. Expunge profiles and destroy samples as required by this Instruction.

ENCLOSURE 3

PROCEDURES

1. The purposes for DNA collection are similar to those for taking fingerprints. They include making positive identification and providing or generating evidence to solve crimes through database searches of potentially matching samples.
2. DNA samples required by this Instruction shall be collected with the USACIL DNA collection kit. Kits may be requested from USACIL through its CODIS Branch at DSN 797-7258, (404) 469-7258, or codislab@conus.army.mil. The kit shall include the Privacy Act statement in the Appendix to this enclosure as well as instructions for collecting DNA samples and for requesting expungement. The Privacy Act statement and notice of the general rights for requesting expungement shall be provided when the sample is collected.
3. The DCIOs, other DoD law enforcement organizations, DoD corrections authorities, and CGIS shall take DNA samples from Service members and forward them to USACIL in accordance with Reference (d) and the Manual for Courts-Martial (Reference (l)) when:
  - a. Fingerprints are taken in connection with an investigation, for offenses identified in Reference (k) and Commandant Instruction M5527.1 (Reference (m)), conducted by a DCIO, other DoD law enforcement organization, or CGIS and in which the investigator concludes there is probable cause to believe that the subject has committed the offense under investigation. The investigator must consult with a judge advocate prior to making a probable-cause determination. Samples may be collected, but not forwarded, prior to consultation. For the purposes of this Instruction and pursuant to section 912a of Reference (b) (commonly known as “Article 112a of the Uniform Code of Military Justice”), DNA shall not be taken for the wrongful use of a controlled substance, nor shall it be taken for the wrongful possession of a controlled substance, when the controlled substance possessed:
    - (1) Is not intended for distribution.
    - (2) Is not possessed in connection with wrongful importation or exportation.
  - b. Court-martial charges are preferred in accordance with Rule for Courts-Martial (RCM) 307 of Reference (l) if a DNA sample has not already been submitted.
  - c. A member is ordered into pre-trial confinement by a competent military authority after the completion of the commander’s 72-hour memorandum required by RCM 305(h)(2)(C) of Reference (l) if a DNA sample has not already been submitted.
  - d. A member is confined to a military correctional facility or temporarily housed in civilian facilities as a result of any general or special court-martial conviction if a DNA sample has not already been submitted.

4. Current Service members from whom samples are taken but who are not convicted of any offense by general or special courts-martial (including action generally inconsistent with such a conviction, such as administration of non-judicial punishment, administrative separation, or referral to a summary court) may request in writing that their DNA records be expunged in accordance with the procedures in this section.

a. Requests for expungement shall be forwarded through the first commanding officer in the grade of major or lieutenant commander, or higher, in the member's chain of command. Such requests shall include adequate proof that the charges have been dismissed, withdrawn, disposed of in a manner not resulting in preferral of charges pursuant to RCM 307 of Reference (1), or otherwise have not or will not result in a conviction of any offense (including proof of any action by a general or special court-martial convening authority that has the effect of a full acquittal).

b. The first commanding officer in the grade of major or lieutenant commander, or higher, will review and confirm the information and then submit the request through the DCIOs, other DoD law enforcement organizations, or CGIS, which will then validate that the member has no convictions that would prohibit expungement and forward the request to USACIL.

c. The DCIOs, other DoD law enforcement organizations, and CGIS will send appropriate requests for expungement to USACIL. Requests will be on letterhead and bear the title, signature, and telephone number of the special agent or law enforcement officer forwarding the request. Requests will clearly state that the member concerned is entitled to expungement and list the member's full name, Social Security number (SSN), and mailing address. Requests will include all documents submitted by the member along with any additional relevant documents in the possession of the commander or official receiving the request. The DCIOs, other DoD law enforcement organizations, and CGIS should maintain a copy of all requests in the case file, including those requests not forwarded to USACIL because expungement was not appropriate.

d. USACIL shall review all requests for expungement to ensure they contain all of the required information. Incomplete requests will be returned to the submitter. USACIL will notify the member of its actions and maintain documentation of that notice.

e. If the commanding officer, after consulting with a legal advisor, determines that expungement is not authorized, the commander should notify the requestor in writing with a copy furnished to the servicing DCIO, other appropriate DoD law enforcement organization, or CGIS.

5. Former Service members from whom samples were taken but who were not convicted of any offense by a general or special court-martial may request in writing that their DNA records be expunged in accordance with the procedures in this section.

a. Requests for expungement shall be submitted to the Military Department Clerk of Court (or similar appropriate official) and include all reasonably available proof showing that none of the offenses giving rise to the collection of DNA resulted in a conviction at a general or special court-martial (including a final court order establishing that such a conviction was overturned, or establishing action by the convening authority that has the effect of a full acquittal). A court

order is not final if time remains for an appeal or application for discretionary review with respect to the order. Such former members must include their name, SSN, current contact information, date of offense, and contact information of the unit that the former member belonged to when the sample was taken. Requests that do not provide adequate information to identify the offense or to confirm the offense did not result in a conviction will be returned by “return receipt requested” with an explanation of the deficiency.

b. The Military Department Clerks of Court (or similar appropriate officials) shall search their records for any conviction pertaining to the former member and determine whether the former member is entitled to expungement. The Military Department Clerks of Court (or similar appropriate officials) will send appropriate requests for expungement by former Service members to USACIL. Requests will be on letterhead and bear the title, signature, and telephone number of the Military Department Clerk of Court (or similar appropriate official) forwarding the request. Requests will clearly state that the member concerned is entitled to expungement and list the member’s full name, SSN, and mailing address. Requests will include all documents submitted by the member along with any additional relevant documents in the possession of the official receiving the request.

c. USACIL will review all requests for expungement that it receives to ensure they contain all the required information. Incomplete requests will be returned to the submitter. For complete requests, USACIL will coordinate with the FBI to expunge the DNA profile from the CODIS database.

6. DCIOs and other DoD law enforcement organizations will take DNA samples from civilians whom they detain or hold and who remain within their control at the point it is determined there is probable cause to believe the civilian has violated any provision of Federal law that requires an in-court appearance. DNA samples may also be taken by civilian law enforcement organizations; however, an individual DNA sample does not need to be taken more than once.

a. DNA samples taken by the DCIOs and other DoD law enforcement organizations shall be forwarded to USACIL. The DCIOs or other DoD law enforcement organizations shall document in the appropriate case file when civilian law enforcement organizations handle any aspect of the DNA processing and whether the civilian law enforcement agency forwarded the DNA sample to the FBI Laboratory. This Instruction does not require DCIOs or other DoD law enforcement organizations to take samples from a civilian not in their control at the point when a probable-cause determination is made.

b. Civilians whose samples are taken and forwarded pursuant to paragraph 3.b of this Instruction but who are not convicted of any offense, may request in writing that their DNA sample be expunged.



(1) To request expungement of DNA records for civilians pursuant to Reference (d), the requestor or legal representative must submit a written request to:

FBI  
Laboratory Division  
2501 Investigation Parkway  
Quantico, VA 22135

Attention: Federal Convicted Offender Program Manager.

(2) If the request is for expungement of DNA records resulting from an arrest pursuant to the authority of the United States, the requester must include, for each charge for which the DNA record was or could have been included in the national DNA index, a certified copy of a final court order establishing that such charge has been dismissed, has resulted in an acquittal, or that no charge was filed within the applicable time period.

(3) The copy of the court order must contain a certification that it is a true and accurate copy of the original court order and be signed and dated by an appropriate court official, such as a court clerk. The copy of the court order itself must be signed by a judge, be dated, and include sufficient identifying information (at a minimum the person's full name, SSN, and/or date of birth) to determine the identity of the person and that the conviction offense was overturned, the charge was dismissed, the charge resulted in an acquittal, or no charges were filed within the applicable time period.

7. Expungement is not authorized under any of the conditions in section 6 of this enclosure if the individual seeking expungement has a Federal conviction for a separate offense that should have but did not result in the collection and forwarding of DNA to USACIL in accordance with this Instruction.

Appendix  
Privacy Act Statement for DNA Sampling

APPENDIX TO ENCLOSURE 3

PRIVACY ACT STATEMENT FOR DNA SAMPLING

Figure. Privacy Act Statement

PRIVACY ACT STATEMENT

This statement is provided in compliance with the provisions of the Privacy Act of 1974, 5 U.S.C. § 552a, which requires that Federal agencies inform individuals who are requested to furnish personal information about themselves as to certain facts regarding the information requested.

The collection of a sample of an individual's deoxyribonucleic acid (DNA) by the U.S. Department of Defense is authorized by and conducted pursuant to 10 U.S.C. § 1565; 42 U.S.C. § 14135a et seq.; and 28 C.F.R. § 28.12. Collection is authorized for all offenses investigated pursuant to 42 U.S.C. § 14135a(a)(1)(A) and for all qualifying military offenses, as defined in 10 U.S.C. § 1565(d), including offenses which constitute a felony under the United States Code and offenses for which a sentence of confinement for more than 1 year may be imposed under the Uniform Code of Military Justice.

The purpose of the Department of Defense's collection of a sample of an individual's DNA is to allow for positive identification and to provide or generate evidence to solve crimes through database searches of potentially matching samples.

It is mandatory that United States persons who are arrested, facing charges, or convicted and non-United States persons who are detained by the Department of Defense or Coast Guard in non-combat or operational activities, cooperate in the collection of a sample of his or her DNA. Failure to do so may result in samples taken by the minimum force necessary and/or in disciplinary action for a violation of Article 92, Uniform Code of Military Justice, or a determination that the individual is guilty of a class A misdemeanor and punishment in accordance with title 18 (Crimes and Criminal Procedure), United States Code.

Analysis conducted on DNA samples collected by the Department of Defense will be forwarded by the U.S. Army Criminal Investigation Laboratory (USACIL) to the Federal Bureau of Investigation for entry into the Combined DNA Index System (CODIS).

Pursuant to 42 U.S.C. § 14132(d) and 10 U.S.C. § 1565(e), an individual whose DNA is collected and analyzed in the above manner may request that his or her DNA analysis be expunged from USACIL records and CODIS if the individual is (i) not convicted of an offense in a federal court, or in the case of a current or former Service member, not convicted of an offense by general or special courts-martial (including action generally inconsistent with such a conviction, such as administration of non-judicial punishment, administrative separation, or referral to a summary court), and (ii) meets certain conditions set forth in DoD Instruction 5505.14, "Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations."