

State of Iowa Department of Corrections Policy and Procedures

Policy Number: IS-RL-05

Applicability: DOC, CBC

Policy Code: Public Access

Iowa Code Reference: 81, 321J.2(2)(b), 321.189A(4)(c), 321.71A, 321.215(2), 321.261(3), 321.279(2), 321.560, 716B.2, 716B.3, 716B.4, 717A.2(2), 717A.3(1)(a, c), 725.7(2)(a-b)

Chapter 4: INSTITUTIONAL SERVICES

Sub Chapter: RELEASE

Related DOC Policies: IO-RD-01

Administrative Code Reference: 661-156

Subject: DNA PROFILING

ACA Standards: N/A

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Authority:

1. PURPOSE

To provide guidelines for compliance with **Iowa Code Chapter 81**, *DNA Profiling* which requires incarcerated individual/clients under supervision convicted of a felony or qualifying misdemeanor offense to submit a DNA sample for DNA profiling.

2. POLICY

It is the policy of the Iowa Department of Corrections (IDOC) to require incarcerated individual/clients to submit a DNA sample for DNA profiling if convicted of a qualifying offense under **Iowa Code Chapter 81**.

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3. DEFINITIONS – As used in this document:

- A. Qualifying offenses - Identified in **Iowa Code Chapter 81**.
- B. DNA Profiling - A procedure established by the Division of Criminal Investigation, Department of Public Safety, for determine a person’s genetic identity.
- C. See IDOC Policy **AD-GA-16** for additional Definitions.

4. PROCEDURES

- A. Incarcerated Individual/clients Classifications Covered by Policy

This policy applies to past or present felony convictions and qualifying misdemeanor convictions as well as federal incarcerated individual/clients and includes Corrections compact and interstate compact transfers both to and from Iowa. This policy also includes all deferred judgment and deferred sentence cases as well as juvenile convictions past or present if information is known and to Federal Detainees currently under Iowa Correctional supervision.

- B. Aggravated Misdemeanors Required to Submit DNA Samples

Incarcerated individual/clients are required to provide DNA samples identified in this policy prior to release from correctional supervision. Effective July 1, 2014 DNA samples shall be collected on Aggravated misdemeanor offenses with the exception of the following code sections. This change only applies to the offenses committed on or after July 1, 2014. Aggravated offenses that require DNA collection under this section do not include deferred judgement or deferred sentence cases. All other procedures of this policy apply.

Aggravated misdemeanors not included in the DNA database collection:

1. Any offense designated an aggravated misdemeanor in **Iowa Code Chapter 321 Motor Vehicles and Law of the Road** including:
 - a. **Section 321.189A(4)(c)** - Display or use by an officer of a license issued pursuant to this section in any manner which is not a public offense but

which is not authorized under this section or who knowingly fails or refuses to surrender the license upon demand by the department.

- b. **Section 321.71A** - Installation, distribution, or sale of non-operable air bags.
 - c. **Section 321.261(3)** - Failing to stop at an accident resulting in serious injury.
 - d. **Section 321.279(2)** - Willfully eluding or attempting to elude a marked official law enforcement vehicle that is driven by a uniformed peace officer after being given a visual and audible signal as provided in this section and in doing so exceeds the speed limit by twenty-five miles per hour or more.
 - e. **Section 321.560** - Operating a motor vehicle while precluded as a habitual incarcerated individual/client (except for a habitual incarcerated individual/client who has been granted a temporary restricted license pursuant to **section 321.215(2)**).
2. Any offense designated an aggravated misdemeanor in **Iowa Code Chapter 716B** *Hazardous Waste Offenses* including:
- a. **Section 716B.2** - Unlawful disposal of hazardous waste (first offense).
 - b. **Section 716B.3** - Unlawful transportation of hazardous waste (first offense).
 - c. **Section 716B.4** - Unlawful storage of hazardous waste (first offense).
3. Any offense designated an aggravated misdemeanor under **Iowa Code Chapter 717A** *Offenses Relating to Agricultural Production* including:
- a. **Section 717A.2(2)** - exercising control, entering or remaining, disrupting an animal control facility or killing or injuring an animal at such facility where the damage exceeds \$100 but does not exceed \$1000.
 - b. **Section 717A.3(1)(a)** - Willfully destroys or damages a crop on a crop facility operation and damages exceeds \$500 but does not exceed \$1000.
 - c. **Section 717A.3(1)(c)** - enter onto or remain on a crop facility with the intent to disrupt, destroy, or damage a crop maintained on a crop operation facility.

4. Any offense designated as an aggravated misdemeanor in **Iowa Code Section 725.7** *Gambling and betting – penalty* including:
 - a. **Iowa Code Section 725.7(2)(a)** - Illegal gaming in the fourth degree.
 - 1) Participate in a game for any sum of money or other property of any value;
 - 2) Make any bet;
 - 3) For a fee, directly or indirectly, give or accept anything of value to be wagered or to be transmitted or delivered for a wager to be placed within or without the state of Iowa;
 - 4) For a fee, deliver anything of value which has been received outside the enclosure of a racetrack licensed under chapter 99D to be placed as wagers in the pari-mutuel pool or other authorized systems of wagering;
 - 5) Engage in bookmaking where the value of the property involved does not exceed \$100 (second offense).
 - b. **Iowa Code section 725.7(2)(b)** - Illegal gaming in the third degree (same as above but a second offense where the amount of value involved exceeds \$100 but does not exceed \$500).
5. **Iowa Code section 321J.2(2)(b)** *Operating While Intoxicated* - A second offense violation of section **321J.2**, unless the person has more than one previous revocation as determined pursuant to section **321J.2(8)**, within the twelve-year period immediately preceding the commission of the offense in question.
 - a. The Department of Transportation shall submit revocation information to the Iowa NCIC (National Crime Information Center) Database.
 - b. Before staff collects a DNA sample from an incarcerated individual/client with the qualifying offense of **321J.2(2)(b)** they shall check the Iowa NCIC database to determine if they have a prior revocation.

C. Taking of Sample

1. The initial request for a DNA sample shall be initiated during the reception process at Iowa Medical and Classification Center (IMCC) or Iowa Correctional Institution for Women (ICIW).

2. If an incarcerated individual/client with an ICON number has a DNA sample taken from another entity, such as a County Jail, juvenile authorities, etc., DCI staff has the authority to add the information into ICON and another sample does not need to be taken by DOC staff. DCI staff shall choose a Region and Work Unit of Central Office on the DNA record in ICON and shall also make a note in the Comment box as to whom the sample was received from.
3. Only trained personnel shall be designated to collect DNA samples. Multiple staff can be trained as the buccal swab collection process is not considered a medical procedure.
4. Upon completion, the DNA sample must be properly sealed and sent as soon as possible to the DCI Criminalities Laboratory.

D. Pre-Release Progress Reports

1. All progress reports to the Parole Board for incarcerated individual/clients required to submit a DNA sample for DNA profiling shall contain one of the following statements:
 - a. This incarcerated individual/client has provided a DNA sample for DNA profiling as required by **Iowa Code Chapter 81**.
 - b. This incarcerated individual/client is required to provide a DNA sample for DNA profiling under **Iowa Code Chapter 81** prior to work release or parole consideration.
 - c. This incarcerated individual/client has refused to give a DNA sample for DNA profiling as required by **Iowa Code Chapter 81** and is not recommended for work release or parole until the sample is given.
 - d. In the event an incarcerated individual/client subject to DNA profiling is given favorable consideration for release and the required DNA sample has not been provided, the incarcerated individual/client's counselor shall notify the incarcerated individual/client and the Parole Board that the incarcerated individual/client cannot be released until the DNA sample is provided.
 - e. All incarcerated individual/clients currently under correctional supervision including Pre Trial Release as identified in Section I of this policy shall be required to provide a DNA sample for DNA profiling upon notice by correctional staff.

- f. All Interstate and Corrections Compact incarcerated individual/clients with a qualifying offense must provide a DNA sample prior to transfer to another jurisdiction.
- g. All actions by staff to collect DNA samples must also be entered into the ICON "DNA" screen under "Core Information."

E. Refusal to Provide Sample

1. Any incarcerated individual/client refusing to provide a DNA sample for DNA profiling shall be subject to immediate disciplinary action.
2. The Classification Committee/Treatment Team shall take reasonable steps to encourage the incarcerated individual/client to participate in the required programming prior to taking disciplinary action. An incarcerated individual/client, who has been disciplined for refusing to provide a DNA sample, shall be subject to disciplinary action again 90 days following the previous disciplinary action. The Classification Committee/Treatment Team shall regularly schedule meetings with those incarcerated individual/clients who have been disciplined in an effort to encourage their providing a DNA sample. (See IDOC Policy **IO-RD-03**, *Major Discipline Report*)
3. Incarcerated individual/clients shall be disciplined up to two times for refusal to provide a DNA sample. Any dismissed disciplinary actions shall not count toward the two time limit of discipline.
4. An incarcerated individual/client who has previously been disciplined for refusing to provide a DNA sample and who has now successfully completed giving a DNA sample may ask the Warden/Superintendent to have their disciplinary decision dismissed per **IO-RD-03**. (If the incarcerated individual/client has been disciplined twice, only the most recent disciplinary decision shall be considered for dismissal.)
5. The institution shall submit a notification to the Board of Parole regarding any incarcerated individual/client refusing to provide a DNA sample for DNA profiling.
6. Community Corrections Districts should submit a report of violation to the Parole Board regarding incarcerated individual/clients on Parole or Work Release refusing to provide a DNA sample for DNA profiling.

F. Referral for Contempt

Incarcerated individual/clients who have been disciplined twice for refusing to provide the DNA sample shall be referred to the local prosecuting authorities. No more than six months shall elapse from the first refusal to filing a civil contempt affidavit. (See IDOC Policy Form **IS-RL-05 F-1**, *DNA Profiling*)

Replaces policy IN-V-35.

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