

Arrestee DNA Collection Frequently Asked Questions

Newly Added

- **What age is considered a “juvenile” for the purposes of arrestee collection?**

Answer: Under 16 years of age is generally considered a juvenile in NC for purposes of criminal prosecution. The new legislation requires collection of a DNA sample at the time the juvenile is transferred to superior court. Typically the officer will not know on the date of arrest/charge if the juvenile will be transferred to superior court. As a result, the arresting officer will not immediately perform the collection until such time as the juvenile is transferred to Superior Court.

- **If the agency serving the arrest warrant is not the charging agency, is the arresting agency responsible for collection of the arrestee sample?**

Answer: Yes, the arresting agency would collect the DNA sample. The arresting agency must send the standardized collection form to the charging agency to include in their case file as required by the new statute. The arresting agency should also keep a copy of the collection form for their records for future reference if needed.

- **If our agency is serving warrants for multiple counties on an individual, should we collect multiple DNA samples for each warrant?**

Answer: Yes, if the offenses from each jurisdiction for which the individual is being arrested for are offenses specified in G.S. 15A-266.3A.

- **If our agency is arresting someone on a warrant from a different jurisdiction, how do we provide them with the standardized form for their case file?**

Answer: Your agency should keep a copy of the standardized form for your records and then mail and/or fax the original standardized form to the agency that obtained the warrant.

That agency is required to keep a copy of the standardized form in their case file in order to provide it to the District Attorney so they have notice that a DNA sample has been collected.

- **Do we collect a DNA sample for a criminal summons?**

Answer: No.

The new legislation specifically states that a DNA sample shall be collected upon “arrest” and does not include other methods for service of criminal charges such as a criminal summons.

- **If we are arresting someone on a fugitive warrant, do we collect their DNA profile upon arrest?**

Answer: No.

The new legislation mandates collection of DNA when a person is being arrested for the offenses specified in G.S. 15A-266.3A. These offenses are all North Carolina specific general statutes only. Additionally, not all states have statutes that authorize collection of DNA at the time of arrest.

Collection Issues

- **What should the officer do if the arrestee refuses to provide a DNA sample?**

Answer: Notify the magistrate.

G.S. 15A-502A, Section 12.1 (a) states in pertinent part:

“If the defendant is required to provide a DNA sample pursuant to G.S. 15A-266.3A or G.S. 15A-266.4, and (i) the DNA sample has not yet been taken or (ii) the defendant has refused to provide the DNA sample, the judicial official shall make the collection of the DNA sample a condition of pretrial release.”

- **Can the officer collect the sample or does the arrestee/convicted offender have to collect it themselves?**

Answer: Either.

The kits and collection procedures were designed to allow the arrestee/convicted offender to take his/her own sample. This decision was made due to officer safety concerns and the fact that the majority of other states using the cheek cell collectors also have the individual collect his/her own sample. However, the SBI is not mandating that the arrestee/convicted offender has to do the collection. Based on agency policy and procedure, it is acceptable for the collection personnel to collect the DNA sample from the arrestee/convicted offender.

G.S. 15A-266.3A (b) states:

“The **arresting law enforcement officer shall obtain**, or ***cause to be obtained***, a DNA sample from an arrested person at the time of arrest, or when fingerprinted.”

- **Does the arresting officer have to be the person who collects the sample?**

Answer: No.

The arresting officer is not the only person authorized to collect the sample. It is acceptable for the arresting officer to delegate this responsibility to other personnel pursuant to the policies and procedures of their agency.

G.S. 15A-266.3A (b) states:

“The arresting law enforcement officer shall obtain, or ***cause to be obtained***, a DNA sample from an arrested person at the time of arrest, or when fingerprinted.”

- **Can a magistrate or other judicial official make a stipulation that the arrestee give a DNA sample if they plead guilty to or are convicted of a misdemeanor not listed in G.S. 15A-266.3A?**

Answer: No.

DNA samples may only be collected for individuals arrested for the offenses specified in G.S. 15A-266.3A (d) and (e). This list contains only certain misdemeanor offenses. The magistrate is not authorized to require that an arrestee provide a sample if it is not included in the list of offenses specified in G.S. 15A-266.3A.

Furthermore, G.S. 15A-266.3A indicates in part that the SBI shall remove a person's DNA record if, as to the charge resulting from the arrest upon which a DNA sample is required, the defendant is convicted of a lesser-included misdemeanor offense that is not an offense listed in G.S. 15A-266.3A (d) or (e).

- **How long do we have to wait to collect a sample after someone has eaten, drank, or smoked?**

Answer: There is no particular time period suggested.

However, the collection personnel must ensure that the individual no longer has any food, candy, gum, liquids, or tobacco products in his/her mouth prior to collecting the sample.

- **Where should we look to find out if a DNA sample has been previously been collected?**

Answer: If the officer is **not** using Live Scan, he or she can use DOC's website: <http://www.doc.state.nc.us/offenders/index.shtml> as well as a DCI/CIIS Criminal History check to see whether the SBI has a convicted offender sample from this individual. DOC's website or the DCI/CIIS check will say "SBI DNA Yes" if a convicted offender sample has been collected. If the website/DCI says "SBI DNA No," collect a DNA sample for any conviction or arrest.

If the officer is using an upgraded Live Scan System, Live Scan will prompt you to collect the sample if a convicted offender sample is not on file.

- **If the individual is arrested for multiple offenses at one time, do we collect a DNA sample for each offense?**

Answer: No.

If the arrestee is charged with multiple qualifying offenses at one time, it is only necessary to collect one DNA sample. However, the arresting officer must indicate each qualifying offense on the DNA collection card and form that they retain in their case file.

- **If the individual is arrested at different times for qualifying offenses, do we collect a DNA sample from the arrestee each time?**

Answer: Yes.

If the arrestee is being charged with a qualifying offense, collect another DNA sample. Once the individual is convicted of a qualifying offense and provides a convicted offender DNA sample, the SBI will no longer need any additional samples for any subsequent arrests or convictions.

- **How long will it take to get an arrestee sample into CODIS?**

Answer: The arrestee samples should be entered and searched against CODIS within 30 days of the SBI receiving those samples.

The goal of collecting DNA samples from individuals upon arrest is to enter those DNA profiles into CODIS to help solve crimes. Once the samples are entered into CODIS, they can be searched against any forensic samples also contained in CODIS.

- **Will we stop collection of convicted offender samples?**

Answer: No.

North Carolina law still requires the collection of convicted offender samples.

Kit Issues

- **Will the collection cards be included in the kits?**

Answer: No.

The collection cards will not be included inside the kit itself. However, when the kits are initially mailed, the collection cards will be mailed at the same time. Once Live Scan has been upgraded, the collection cards will be printed directly from Live Scan and the pre-printed cards will not be needed. If your agency is not using Live Scan, please check the box requesting collection cards on the fax request form for kits.

- **Can we hand deliver the kits to the SBI lab?**

Answer: Yes.

Any hand delivered kit should be submitted to the Evidence Control Unit of the SBI Crime Laboratory.

- **Do the kits have an expiration date?**

Answer: No.

However, the manufacturer of the kits suggests that they be maintained at room temperature in a dry location.

- **If a police department or state agency has not requested kits, can they use the kits located at the sheriff's office?**

Answer: Yes.

All DNA cheek cell collection kits, for arrestees, supplied by the SBI are the same and can be used by any agency.

- **Do we have to use the gloves contained in the kit?**

Answer: No.

No particular type of glove is required for collection. The gloves contained in the kit are provided in order to prevent contamination of the DNA sample. A new, clean pair of disposable sterile gloves **MUST** be used for each sample collected. If collection personnel do not wear gloves, it is very possible that their DNA could contaminate the collector and be entered into CODIS.

It is also **VERY** important to change gloves between collections. If the same gloves are worn for multiple collections, the gloves will become contaminated and could transfer multiple individual's DNA to each collector.

- **Does the arrestee/convicted offender need to wear gloves?**

Answer: No.

Live Scan Issues

- **Will Live Scan print off the collection card?**

Answer: Yes.

Once Live Scan has been upgraded, the collection card will be populated by Live Scan and can be printed from a printer attached to the Live Scan terminal.

- **How long will it take to get the conviction information from Live Scan?**

Answer: The response should come within minutes.

However, if the data entered into Live Scan is incorrect, this will result in a longer wait time.

- **Where can we order the blank card stock for printing the collection cards from Live Scan?**

Answer:

Law enforcement agencies with a valid ORI are able to order blank card stock at no cost from the Federal Bureau of Investigation (FBI). Place orders for these cards with the FBI's Logistical Support Unit at (304) 625-3983 or by visiting the FBI's website at www.fbi.gov and navigating to the "More Services" section for further instructions. # 90 8"x 8" card stock

- **If the pre-printed collection cards are placed in the Live Scan printer, will the information be printed in the correct areas?**

Answer: No.

The pre-printed cards are not to be used with Live Scan. These cards should only be used when Live Scan is not available and must be filled out manually. Live Scan will be upgraded to print the entire form onto blank card stock.

- **Will Live Scan be upgraded for all vendors?**

Answer: Yes.

The 4 Live Scan Vendors who have contracts in NC (Dataworks Plus, MorphoTrack, Identix , Crossmatch) will be upgrading their systems to include the information needed for DNA collection.

Until the Live Scans are upgraded, it is acceptable for those agencies who use Live Scan to print an extra "10 print card" to send in with the manually completed database collection card. This prevents the agency from having to use ink to collect the thumb prints.

- **When will the Live Scan upgrades be completed?**

Answer: This upgrade process has begun and should be completed in Spring 2011.

Training

- **How do we get materials for training officers?**

Answer:

All materials used by the SBI in conducting training for this collection are available to you on the North Carolina Justice Academy's website: <http://ncja.ncdoj.gov>. When on the main page click on "Training Materials," and you will be taken to the information on the DNA Database Act 2010. This includes the PowerPoint presentation and lesson plan. The instructional video has been distributed to individuals who have participated in the training sessions. A copy of the video and lesson plan will be included in the initial shipment of kits. Also, the Justice Academy has given permission for all training materials to be copied. The following is a link to the enabling legislation which can also be used for training purposes: <http://www.ncga.state.nc.us/Sessions/2009/Bills/House/PDF/H1403v7.pdf>

Sample Types

- **Are these samples evidence? Do we have to fill out an SBI-5?**

Answer: No.

Convicted offender and arrestee samples are not considered evidence. No SBI-5 has to be filled out for these samples.

- **Can we use these kits to collect suspect/victim/elimination standards for criminal cases?**

Answer: No.

These kits are only to be used in the collection of convicted offender and arrestee samples. When collecting DNA standards from suspects, victims, or individuals for elimination, use a sterile cotton swab or collect a blood sample.

- **If we are arresting someone, can we use the arrestee sample as a suspect sample?**

Answer: No.

If the arrestee is being charged with a qualifying offense, the arresting officer must collect the arrestee DNA sample. This same sample will not be used to compare to any items of evidence submitted by your agency. Therefore, if the officer has legal authority such as consent or a search warrant, they should also collect a suspect standard sample separately.