



State of Alaska Department of Public Safety  
*SCIENTIFIC CRIME DETECTION LABORATORY*

GOVERNOR  
SARAH PALIN

COMMISSIONER  
WALT MONEGAN

*"Public Safety through Public Service"*

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## MEMORANDUM

**To:** All State Trooper, Municipal Police, and Corrections Agencies  
**Date:** September 21, 2007

**Thru:** John Glass, Deputy Commissioner  
**Thru:** Orin Dym, Crime Lab Supervisor

**From:** Antoinette Otten, Crime Lab Paralegal  
**Subject:** AS 44.41.035  
DNA Sampling FAQ

In June 2007 the Department of Public Safety released a dispatch to all law enforcement and corrections agencies within the state explaining the implications of HB90—Arrestee DNA Sampling. DPS included information about who qualifies under the law, instructions on how to utilize the old collection kits, and contact information regarding further inquiry.

Since that time, the Crime Lab has been receiving inquiries for further direction. In addition, the Crime Lab has received enough samples since the law's effective date (July 1, 2007) to assess and identify unanticipated problems. This bulletin will address the most primary issues being faced statewide.

**1) Officers and Troopers prefer not to use force to obtain a DNA sample. What alternative action is available for them when an Arrestee is uncooperative?**

AS 44.41.035(n) does allow the use of force option. Understandably, most officers prefer not to risk injury to obtain a DNA swab and they are seeking guidance for alternatives to the use of force option. The recommended course of action for non-compliant Arrestees is to advise the prosecutor who may then request that the court order the DNA sample be given and authorize the non-compliant arrestee to be held until the sample is provided.

**2) But doesn't AS 11.56.760 say an Arrestee who refuses to submit to DNA testing is committing a class C felony offense? Can't we just charge them with this new crime?**

NO! AS 11.56.760 refers only to those convicted, not arrested, and an Arrestee may not be threatened with a felony offense should they refuse to comply. This does remain an option for uncooperative Convicted Offenders.

**3) Is there an easy way for our officers to identify who is legally mandated to give DNA?**

Utilize the DNA flow chart designed to assist as a quick guide to determine who is and who is not mandated to give a DNA sample. This can be obtained through the ASCDL web site. <http://www.dps.alaska.gov/Crimelab/docs/DNA-FlowChart.pdf>

**4) Some misdemeanor crimes against persons are missing from the list, such as Harassment or Violating a DVRO. If the crime involves a person, or if it is Domestic Violence-related, isn't it a qualifying crime?**

Not necessarily. The language in the law is a legal phrase and is not to be taken literally. AS 11.41 crimes come under the *Chapter heading: Offenses Against the Person*. It is only a qualifying misdemeanor offense if it falls under AS 11.41. The DNA flow chart illustrates this. As well, there is a list provided by the Department of Law that outlines every Offense Against a Person. This can also be obtained from the ASCDL web site. [http://www.dps.alaska.gov/Crimelab/docs/DNA\\_QUALIFYING\\_OFFENSES-CrimesAgainstPersons.pdf](http://www.dps.alaska.gov/Crimelab/docs/DNA_QUALIFYING_OFFENSES-CrimesAgainstPersons.pdf) **Always check to be sure it is a qualifying offense and that you have legal authority to take a DNA sample.**

**5) What if the person is not arrested, but is ordered to appear on a summons?**

The law only applies to arrestees, those who are convicted for a qualifying offense, or who are mandated to register as a convicted sex offender or child kidnapper. If they do not fall under one of these three prerequisites, do not take their DNA.

**6) John Doe was arrested for a qualifying offense two weeks ago and DNA was taken at that time. He is back again on another qualifying arrest—why do we have to take a sample every time he's arrested?**

In order for a person's DNA to be analyzed and entered into the CODIS database, that person's identity must be verified. This verification is done through the subjects fingerprints. Until the state of Alaska has universal LiveScan capability, DNA will need to be taken every time a person is arrested for a qualifying offense.

**7) Other agencies have received Training DVDs; how does my agency acquire one?**

Training DVDs are available to all affected agencies. If your agency has not received one, please contact Lori Zirkle at 907 269-5582, or email her at [lori.zirkle@alaska.gov](mailto:lori.zirkle@alaska.gov) .

**8) On the Training DVD it talks about red and blue kits. Our agency only has one kit style and it doesn't look anything like the red or blue kits displayed in the DVD.**

The red and blue kits displayed in the Training DVD refer to new kits that have been updated to reflect the most current law. The color-coding is meant to assist those in the field in distinguishing adult kits from juvenile kits and thus prevent mistakes. Currently, DPS is using up old kits and will be sending out the new, revised kits when the old ones are used up. If still using an old kit, all additional information should be written on the back of the sample card.

**9) The Training DVD also asks that we include an AK Statute for all Interstate Compact persons required to submit to DNA sampling. What does this mean and how do I determine what state statute is the equivalent?**

AS 44.41.035(*k*) states the DNA law applies “to a person from another state that this state has accepted under any interstate corrections or probation agreement or compact” if that person has committed an “offense that is similar to an offense described in (b) of this section.” You should consult with your Interstate Compact Administrator or agency legal representative when in doubt and for statute information.

**10) Our agency is receiving sample cards that are being returned to us with missing information and a request to fill in the missing information. I don’t understand why my felony DUI cards are being returned; I filled in the proper statute number as requested.**

In order to determine that a DUI is in fact a felony, it is important to include the (*n*) which distinguishes it from the rest of the statute code. This is also true for some other offenses in which a statute code can be either a misdemeanor or a felony depending upon the subsection number and/or letter. It is important to write out the complete statute code.

**11) Letters are being received saying the sample was destroyed because of illegible or missing fingerprints and now you’re asking for a new sample. Arrestees are here and gone. What if we can’t find them or they refuse to give another sample?**

Once the sample is taken, the Arrestee has complied with the law. This is also true for Convicted Offenders. You may ask for a new sample, but if refused, a Prosecutor would have to ask the court to order a new sample, explaining the first sample was not viable.

The best way to avoid this issue is to make sure all staff is trained in how to take a sample properly. This means all of the following critical information is included: the sample is clearly marked “Arrestee” or “Convicted Offender”; Arrest Tracking Number is provided; qualifying statute code is listed in its entirety; all personal identifying information is listed; APSIN number is correct; **thumbprints are included and legible**; and date the sample was taken is provided. If the sample procedure is completed correctly and completely, it will not be rejected.

**11) What happens if a sample is taken by mistake and the person does not have a qualifying conviction or arrest?**

The simple answer is the sample will be destroyed, but it isn't *really* that simple for us. So far for the year 2006-2007, approximately 70 out of every 125 samples taken are for offenses such as driving infractions and non-qualifying misdemeanors. In researching why this is happening, the lab has found the following:

- a) **There has been confusion regarding the definition of a crime against a person** resulting in DNA samples for anything DV-related, or misdemeanor crimes not included under AS 11.41, such as Harassment (see #4 above.)
- b) **DNA sampling appears to be routinely taken upon release at some facilities, no matter what the offense.** We have been able to isolate numerous cases in which court records indicate the date a person was bailed, or released after the DA has declined to prosecute, matches the date the sample was taken.

**The Department of Public Safety recommends DNA be taken only upon admission to a facility for Arrestees and as soon as possible following initial order for DNA at conviction and sentencing for Convicted Offenders for the following reasons:**

- a) **The window of opportunity for DNA collection can be very slim.** If there is a problem with the sample, it may be easier to obtain a second sample while an individual remains in custody or under jurisdiction of the court. **Be sure to check the code to be certain a person qualifies for legally obtainable DNA.**
- b) If there are unsolved crimes and a Convicted Offender is not sampled until he/she is released from a correctional institution, by the time a match is obtained in CODIS, the offender is more difficult to locate. **It makes good sense to obtain the sample on a Convicted Offender while that person is still in State's custody and as early in the process as possible.**

**The most important thing to do in each instance is to make sure there is a legal basis for having a person submit a DNA sample**—check the crimes against persons list, and utilize the flow chart, both of which are available at the crime lab website <http://www.dps.alaska.gov/Crimelab/DNA.aspx>