

AMENDMENTS TO CHAPTER 10-17-01

Section 10-17-01-02 is amended as follows:

10-17-01-02. Definitions. The following terms are defined as follows for purposes of this chapter, unless otherwise made appropriate by use and context.

1. "Buccal swab" means a sample from the inside of the mouth taken by scraping the cheek. The sample includes saliva.
2. "Designated agency" means the entity ~~designated by this chapter to be~~ responsible for the collection of ~~sample specimens~~ DNA samples.
3. "Division" means the state crime laboratory division of the office of the attorney general.
4. "DNA identification index" means the division's DNA identification record system and the federal bureau of investigation's combined DNA index system, established under North Dakota Century Code section 31-13-05.
5. "DNA record" means DNA identification information stored in the state DNA data base and the federal bureau of investigation's combined DNA index system for purposes of generating investigative leads, establishing identification in connection with law enforcement investigations, and supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of analysis, such as numerical representation of DNA fragment lengths, ~~autoradiographs and the digital image of autoradiographs,~~ and discrete allele assignments ~~numbers~~.
6. "DNA testing" means DNA analysis of ~~materials derived~~ samples collected from the human body, crime scenes, medical examinations, unidentified human remains, and qualified offenders for the purposes of identification.
7. "Kit" means the ~~genetic marker~~ sample collection kit provided by the division.
8. "Marker" means a method of describing individuals by the genetic loci recognized for the participation in the combined DNA index system.
9. "Other body fluids" means a sample of fluid containing human cells, including saliva, in which markers can be profiled from a qualifying offender.
10. "Qualified medical personnel" means any person trained in sampling techniques and approved by the division ~~as described in North Dakota Century Code chapter 31-13~~ to collect DNA samples.

11. “Qualifying offender” means any convicted a person eighteen years of age or over arrested for a felony offense; a person required to register under North Dakota Century Code section 12.1-32-15; or a person convicted of an offense as described in North Dakota Century Code chapter 31-13 section 31-13-03.
12. “Registering agency” means a law enforcement agency where a qualifying individual is required to register under North Dakota Century Code section 12.1-32-15.
13. “Sample” includes a vial of blood and other body fluids collected from a qualifying offender.
14. “Sampling techniques” includes venipuncture and buccal swab and other recognized medical techniques.
15. “Venipuncture” means a puncture of a vein as for drawing blood.

History: Effective May 1, 2004. Amended effective:

General Authority: NDCC 31-13-08

Law Implemented: NDCC 31-13-08

Section 10-17-01-03 is amended as follows:

10-17-01-03. ~~Procedures for responsibilities of samples~~ Responsibility for collection of DNA.

1. ~~When a person becomes a qualifying offender, the state’s attorney, at the time of sentencing, shall request the court to issue an order requiring the qualifying offender to comply with North Dakota Century Code chapter 31-13. The following agencies are designated agencies for the collection of DNA samples from qualifying offenders:~~
 - a. If the qualifying offender has not previously had a sample collected for inclusion in the law enforcement DNA data base, the law enforcement agency in the county where the qualifying offender has been arrested or the correctional facility where the qualifying offender has been booked for the commission of a felony offense shall collect the DNA sample.
 - b. If the qualifying offender has not previously had a sample collected for inclusion in the law enforcement DNA data base and is serving a term of incarceration in a correctional facility subject to North Dakota Century Code chapter 12-44.1, the correctional facility shall collect the DNA sample prior to release of the offender.

- c. If the qualifying offender has not previously had a sample collected for inclusion in the law enforcement DNA data base and is in the custody of the department of corrections and rehabilitation, the department of corrections and rehabilitation shall collect the DNA sample.
 - d. If the qualifying offender has not previously had a sample collected for inclusion in the law enforcement DNA data base and is subject to probation under the supervision and management of the department of corrections and rehabilitation, the department of corrections and rehabilitation shall collect the DNA sample from the offender prior to expiration of the offender's probation.
 - e. If the qualifying offender has not previously had a sample collected for inclusion in the law enforcement DNA data base and is required to register under North Dakota Century Code section 12.1-32-15, the registering agency in the county where the qualified offender is registered shall collect the DNA sample.
2. ~~At the time of sentencing the qualifying offender, the sentencing judge shall issue an order requiring the offender to provide a sample and shall assess costs against the qualifying offender which shall be submitted to the division in accordance with North Dakota Century Code chapter 31-13. At the time of arrest or booking, registration under section 12.1-32-15, or sentencing, if no order has been issued requiring the qualifying offender to provide a sample and the qualified offender refuses to provide a sample, the designated agency may ask the state's attorney of the county of arrest, registration under section 12.1-32-15, or conviction, or the county in which the offender is located, to request the court to issue an order requiring the qualifying offender to submit a DNA sample for inclusion in the law enforcement DNA data base. The court may require the qualifying offender to pay costs.~~
3. ~~The designated agency responsible for sample collection of qualifying offenders is as follows:~~
- a. ~~The sheriff's office in the county where the qualifying offender is sentenced is the designated agency and is responsible for the sample collection.~~
 - b. ~~If the qualifying offender has not previously had a sample collected and is serving a term of incarceration in a facility under the control of the county sheriff, the sheriff's office is the designated agency and is responsible for the sample prior to release of the offender.~~
 - c. ~~The department of corrections and rehabilitation shall be responsible for collecting, storing, and sending sample specimens~~

~~of people housed in facilities administered by the department of corrections and rehabilitation.~~

- ~~d. If the qualifying offender has not previously had a sample collected and is serving a sentence but is not physically incarcerated, the supervising agency (such as a probation office) is the designated agency and is responsible for the collection of the sample prior to the termination of the sentence.~~
- ~~4. At the time of sentencing, if no order has been issued requiring the qualifying offender to provide a sample, the designated agency shall ask the state's attorney of the county of the conviction or the county in which the offender is located to request the court to issue such an order, including awarding costs to the division.~~
- ~~5. The state's attorney shall designate a person or entity to collect, store, and send the sample specimen of all other people.~~
- ~~6. For convictions on or after August 1, 1995, if If the qualifying offender voluntarily consents to provide the sample and pays the costs, no court order is necessary and the state's attorney is not required to request one.~~
- ~~7. A general order issued under the administrative authority of the chief judge of a judicial district is sufficient to satisfy the court order requirements of these rules. In the event such an order exists and is valid with respect to the qualifying offender, the state's attorney need not seek an individualized order.~~

History: Effective May 1, 2004. Amended effective:

General Authority: NDCC 31-13-08

Law Implemented: NDCC 31-13-03

Section 10-17-01-04 is amended as follows:

10-17-01-04. Procedures for collection of samples.

1. The division shall provide kits to the designated agencies as needed. Each kit must include a receipt form, an instruction sheet, and containers for sample collections.
2. The collection site shall be any location chosen by the designated agency for sample collection.
3. The qualifying offender must be identified by the designated agency by one or more of the following: a driver's license, fingerprints, identification by law enforcement that has the individual qualifying offender in custody, or any other reasonable means within the designated agency's discretion before the samples are collected.

4. The samples must be collected by ~~personnel described in North Dakota Century Code section 31-13-04 and by qualified medical personnel as described in this chapter~~ a qualified individual approved by the division.
5. The receipt form must be completed by the designated agency at the time of sample collection.
6. The completed kit must be delivered or sent to the division address indicated in the kit instructions.
7. All costs associated with the collection of the sample must be assessed to the qualifying offender as provided in North Dakota Century Code section 31-13-03.

History: Effective May 1, 2004. Amended effective:

General Authority: NDCC 31-13-08

Law Implemented: NDCC 31-13-04

Section 10-17-01-05 is amended as follows:

10-17-01-05. Procedures for analysis of samples. The division shall perform DNA analysis in accordance with ~~national standards for DNA quality assurance and proficiency testing issued pursuant to the DNA Identification Act of 1994 [Pub. L. 403-322; 108 Stat. 2065]~~ the quality assurance standards established by the federal bureau of investigation.

History: Effective May 1, 2004. Amended effective:

General Authority: NDCC 31-13-08

Law Implemented: NDCC 31-13-05

Section 10-17-01-06 is amended as follows:

10-17-01-06. Procedures for classification of samples. The division shall classify samples in accordance with the criteria quality assurance standards established by the federal bureau of investigation for inclusion of DNA records in the combined DNA index system.

History: Effective May 1, 2004. Amended effective:

General Authority: NDCC 31-13-08

Law Implemented: NDCC 31-13-05

Section 10-17-01-07 is amended as follows:

10-17-01-07. Procedures for data base system usage and integrity.

1. Except as provided in subsection 2, the results of the genetic marker ~~grouping analysis~~ profile may be disclosed only to:

- a. Criminal justice agencies for law enforcement official purposes;
 - b. A defendant for criminal defense purposes in response to valid subpoenas or other court orders;
 - c. Any person who is the subject of a record;
 - d. A public official or the official's authorized agent who requires that information in connection with the discharge of the official's duties;
or
 - e. Any other person required by law.
2. In addition, the division may use test results for system integrity and quality control, including ~~to assist~~ assisting in a population statistics data base and for other research purposes if personally identifying information is removed.
 3. The DNA identification index may include the analysis of DNA samples recovered from crime scenes, medical examinations, ~~and~~ unidentified human remains, and qualified offenders. For the purpose of missing persons, the DNA identification index may include DNA records of close biological relatives of a missing person.
 4. If a court with proper jurisdiction has ordered an expungement and no other grounds exist for sample collection, the record of the sample will be removed from the data base and all samples from the person will be destroyed.

History: Effective May 1, 2004. Amended effective:

General Authority: NDCC 31-13-08

Law Implemented: NDCC 31-13-06, 31-13-07, 31-13-09