



## COLORADO'S DNA LAWS

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State legislatures have emphasized the importance of collecting deoxyribonucleic acid (DNA) to solve crimes. This *issue brief* describes legislative efforts, both in Colorado and across the country, to mandate that individuals convicted of or arrested for a crime submit a DNA sample for entry into the national DNA database.

### Background

DNA has become an important tool for solving crimes. DNA is collected from a crime scene when an individual leaves behind traces of biological matter. Scientists develop a DNA profile from the sample by identifying a series of markers, which creates a pattern that is unlikely to occur in another individual.

Previously, it was necessary for DNA to be collected from an individual via a blood sample, but as technology has improved, DNA now is collected by a less invasive cheek swab. Patterns of DNA markers from a cheek swab are not unique, but are sufficiently rare that when combined with other evidence, investigators can be fairly certain that the DNA match is correct.

Collected DNA samples are entered into a national DNA database, the Combined DNA Index System (CODIS), where they are searched against DNA samples from unsolved crimes to determine if a match exists. As of 2015, the CODIS database contained nearly 12 million offender DNA profiles, which resulted

in 296,490 matches, assisting in more than 282,175 investigations nationwide.<sup>1</sup>

### DNA Laws for Felony Arrestees

State legislatures have begun to enact legislation mandating that individuals submit a DNA sample upon being arrested for certain crimes. Twenty-nine states have enacted laws requiring individuals arrested for some or all types of felonies to submit a DNA sample. For example, California requires DNA testing of all felony arrestees, while in Tennessee the law is limited to certain violent felony arrestees. In 2013, the U.S. Supreme Court held that DNA identification of arrestees is a reasonable search under the Fourth Amendment of the U.S. Constitution that can be considered part of the routine booking procedure.<sup>2</sup>

In 2009, the Colorado General Assembly enacted legislation that requires an individual arrested for any felony to provide a DNA sample as a part of the booking process.<sup>3</sup> Local law enforcement agencies are responsible for collecting the sample. If the Colorado Bureau of Investigation (CBI) already has a DNA sample for the individual, the local law enforcement agency is not required to obtain another sample.

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<sup>1</sup> *Combined DNA Index System (CODIS)*. FBI.gov.

<sup>2</sup> *Maryland v. King*, 133 S. Ct. 1958 (2013).

<sup>3</sup> Section 16-23-101, *et seq.*, C.R.S.

A collected sample is sent to the CBI for storage, analysis, and submission to the CODIS database. The CBI is required to hold an arrestee's sample until it receives confirmation that the individual was charged with a felony. If the CBI does not receive this confirmation within a year of receiving the DNA sample, the sample is to be destroyed and not submitted to the CODIS database.

The law also provides a mechanism for an individual to request in writing that the DNA sample be expunged from the national database and destroyed by the CBI if the charge is dismissed, results in an acquittal, or the individual is convicted of an offense other than a felony. Upon receiving the request, the CBI must verify with the local district attorney that the contents of the individual's request are factual and, if appropriate, destroy the DNA sample and remove it from the national database. The CBI must notify the individual that the sample has been expunged or the reasons it was not eligible for expungement.

Implementation of the DNA collection program is funded by a surcharge of \$2.50 on each conviction for all felonies, misdemeanors, misdemeanor traffic charges, and traffic infractions.

### **DNA Laws for Those Convicted of Felonies and Other Specific Offenses**

Every state and the federal government has enacted laws requiring convicted felons to provide a DNA sample for entry into the CODIS database. Some states require those convicted of any felony to provide a sample, while others require a sample from only those convicted of enumerated crimes. In Colorado, the legislature has enacted several laws concerning the collection of DNA from convicted offenders.

***Colorado law concerning genetic testing of convicted offenders.*** From 2000 to 2002, the General Assembly enacted laws authorizing the Department of Corrections (DOC) to collect a blood sample for the purposes of DNA testing from offenders convicted of certain crimes.

In 2006, Senate Bill 06-150 repealed the prior statute and replaced it with a new law specifying that all offenders convicted of a felony must submit to DNA testing, including juveniles who are convicted of crimes that would be considered felonies if they were committed by an adult. The bill also required DNA testing of those who committed an offense involving unlawful sexual behavior.

In 2007, House Bill 07-1343 repealed and reenacted, with amendments, the 2006 law. The new law maintained the testing requirements from the prior law, and expanded them to include certain offenders in custody prior to the bill's effective date.<sup>4</sup>

### **Proposed Laws for Those Convicted of Misdemeanors**

Under current Colorado law, an offender convicted of a misdemeanor is only required to provide a sample of his or her genetic material for inclusion in the state's database if the offense involved unlawful sexual conduct. Recently, two bills have been introduced that would have expanded DNA collection to include misdemeanors that did not involve unlawful sexual conduct. The General Assembly did not adopt either bill.

***House Bill 13-1251.*** House Bill 13-1251, as introduced, would have required collection of a DNA sample from anyone convicted of a class 1, 2, or 3 misdemeanor. The bill passed the House and was postponed indefinitely by the Senate Finance Committee.

***House Bill 15-1312.*** Introduced in 2015, House Bill 15-1312 would have required collection of a DNA sample from those convicted of enumerated misdemeanors. The bill was postponed indefinitely by the House Judiciary Committee.

<sup>4</sup>Section 16-11-102.4, C.R.S.